

Trade in health products: implications for health in ASEAN

Sanya Reid Smith
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Some current WTO negotiations/discussions that can affect health

- All WTO Members:
 - Doha Round
 - Services domestic regulation disciplines
 - Whether to renew moratoria on TRIPS non-violation complaints and customs duties on electronic transmissions
 - Whether Appellate Body stops working on 11/12/2019:
https://www.wto.org/english/tratop_e/dispu_e/ab_members_descrp_e.htm
 - WTO reform (includes proposals on ecommerce, domestic regulation, investment, restrictions on: technology transfer requirements and caps on voluntary licence royalties, eg see JOB/GC/201, trade.ec.europa.eu/doclib/docs/2018/september/tradoc_157331.pdf)
- Plurilaterals:
 - Services domestic regulation disciplines
 - Investment facilitation
 - Ecommerce
 - MSMEs?
 - Gender?

Some examples of FTA negotiations

ON-GOING NEGOTIATIONS

- 1  **Indonesia-Australia CEPA**
Current status: 11th Round/CN meeting (Dec 2017/April 2018)
Negotiations started: 2012
Target: August 2018
- 2  **Indonesia-European Union CEPA**
Current status: 4th Round (February 2018)
Negotiations started: 2016
Target: 1st Semester 2019
- 3  **Indonesia-EFTA CEPA**
Current status: 14th Round (February 2018)
Negotiations started: 2011
Target: 2018
- 4  **Indonesia-Iran PTA**
Current status: 5th Round (February 2018)
Negotiations started: 2010
Target: 2018
- 5  **Indonesia-Turkey CEPA**
Current status: 1st Round TIGs (January 2018)
Negotiations started: 2018
Target: 2019
- 6  **Regional Comprehensive Economic Partnership (RCEP)**
Current status: 21st Round (February 2018)
Negotiations started: 2013
Target: 2018

REVIEW (IMPROVEMENT)

- 1  **Indonesia-Japan EPA**
Negotiations: 2005-2007 (7 rounds)
Implemented: 2008
Current status: 7th JCM (March 2018/further liberalization)
Target: 2018 (General Review)
- 2  **Indonesia-Pakistan PTA**
Negotiations: 2006-2012 (8 rounds)
Implemented: 2013
Current status: deepen and expand the PTA to TIGA
Target: 2018 (Trade in Goods)
- 3  **AEC, AANZFTA, AIFTA**
Current status: on-going review
Target: 2025/2019/2019

INDONESIA TRADE NEGOTIATIONS

AS OF MAY 2018

CONCLUDED/RATIFICATION PROCESS (2017-2018)

- 1  **Indonesia-Chile CEPA**
Negotiations: 2014-2017 (6 rounds)
Current status: Concluded (Trade in Goods)
Signed in 14 Dec 2017
- 2  **MOU Indonesia - Palestine**
Current status: Concluded
Signed in 12 December 2017
- 3  **ASEAN - Hong Kong FTA & Investment Agreement**
Current status: Concluded
Signed in 12 November 2017
- 4  **Protocol to Amend ASEAN Comprehensive Investment Agreement (ACIA)**
Current status: Concluded
Signed in 20 December 2017
- 5  **ASEAN - Japan Investment, Service & MNP Agreements**
Current status: Concluded (2017)
To be signed in August/September 2018
- 6  **Protocol to Amend Indonesia-Pakistan PTA**
Negotiations (Review): 2016-2017 (3 rounds)
Current Status: Review Concluded
Signed in 27 January 2018
Note: Protocol Ratification

INITIATED NEGOTIATIONS

- 1  **Indonesia-Bangladesh PTA**
Current status: Launch of Negotiations (2018)
- 2  **Indonesia-Mozambique PTA**
Current status: Launch of Negotiations (April 2018)
- 3  **Indonesia-Tunisia PTA**
Current status: Negotiations will be Launched (June 2018)
- 4  **Indonesia-Morocco PTA**
Current status: Preliminary Meeting (June 2018)

UPCOMING NEGOTIATIONS

- 1  **Indonesia-Sri Lanka**
Current status: Launch of Joint Feasibility Study FTA (2018)
- 2  **Indonesia-GCC**
Current status: Proposed Feasibility Study
- 3  **Indonesia-Kenya (EAC) PTA**
Current status: Being proposed (2017)
- 4  **Indonesia-Nigeria (ECOWAS) PTA**
Current status: Being proposed (2017)
- 5  **Indonesia-SACU PTA**
Current status: Been proposed (2017)
SACU cannot pursue; focus on South Africa
- 6  **Indonesia-EAEU**
Current status: Proposed JSG (2017)
- 7  **Indonesia-Taiwan ECA**
Current status: On-going Review Feasibility Study (2017)
- 8  **Indonesia-Peru**
Current status: Joint Study finished
Target to Launch: TBC
- 9  **ASEAN-Canada FTA**
Current status: On-going Feasibility Study

Many FTA chapters can affect health, e.g. TPP & CPTPP chapters:

Preamble	
Initial Provisions and General Definitions	Competition Policy
National Treatment and Market Access for Goods	State-Owned Enterprises and Designated Monopolies
Rules of Origin and Origin Procedures	Intellectual Property
Textile and Apparel Goods	Labour
Customs Administration and Trade Facilitation	Environment
Trade Remedies	Cooperation and Capacity Building
Sanitary and Phytosanitary Measures	Competitiveness and Business Facilitation
Technical Barriers to Trade	Development
Investment	Small and Medium-Sized Enterprises
Cross-Border Trade in Services	Regulatory Coherence
Financial Services	Transparency and Anti-Corruption
Temporary Entry for Business Persons	Administrative and Institutional Provisions
Telecommunications	Dispute Settlement
Electronic Commerce	Exceptions and General Provisions
Government Procurement	Final Provisions

Chapters which could affect health in **bold**

TRIPS+ impact on medicine prices, some examples

- Patent term extensions has been calculated by the Korean National Health Insurance Corporation to cost US\$529 million to extend medicine patents for 3 years and US\$757 million for a 4 year extension, http://english.hani.co.kr/arti/english_edition/e_business/165065.html
- 8 years of data exclusivity alone in Canada would have added \$600 million to prescription medicine costs alone in the last 5 years, http://www.canadiangenerics.ca/en/news/nov_14_06.shtml
- If Australia-USFTA delayed market entry of generic versions of just the top 5 reimbursed medicines due to come off patent by 2 years, this could increase the cost of the PBS by \$1.5 billion over 2006-2009. > \$53 million a year in economic gains from the whole FTA, 'Regionalism, Bilateralism, and 'TRIP Plus' Agreements: The Threat to Developing Countries', Ruth Mayne, Occasional Paper, Human Development Report 2005, UNDP.
- WHO model found: combined effect of original Colombia-USFTA TRIPS+ provisions: Colombia would require an extra US\$1.5billion to be spent on medicines every year by 2030. If this were not spent, Colombians will have to reduce their medicine consumption by 44% by 2030.
<http://www.ftamalaysia.org/article.php?aid=153>.

Ecommerce: Changes in source code exception over time

FTA	Japan-Mongolia	TPP/CPTPP	TISA	EUFTA	USMCA (new NAFTA)
Date of proposed text/ FTA was concluded	February 2015	6/10/2015	November 2016	Indonesia: 27/7/2017 Chile: 6/2/2018 Mexico: 21/4/2018	Text released on 1/10/2018
Exception to source code provision	For critical infrastructure	-For critical infrastructure -For patents	For legitimate public policy objectives, provided that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or disguised a restriction on trade.	<ul style="list-style-type: none"> • 'legitimate public policy objective, including to ensure security and safety' • 'requirements by a court, administrative tribunal or competition authority to remedy a violation of competition laws;' • intellectual property rights and their enforcement' • military procurement 	'Nothing in this Article shall preclude a regulatory body or judicial authority of a Party from requiring a person of another Party to preserve and make available the source code of software, or an algorithm expressed in that source code, to the regulatory body for a specific investigation, inspection, examination enforcement action or judicial proceeding'

Investment provisions:

some examples of exceptions including for health

- CPTPP Art 29.5: a Party can choose not to have ISDS for **tobacco control** (TPP concluded in October 2015)
- Peru-Australia FTA investment chapter fn17: no ISDS allowed ‘in relation to a measure that is designed and implemented to protect or promote **public health**. For greater certainty, for Australia, such measures include: measures comprising or related to the Pharmaceutical Benefits Scheme, Medicare Benefits Scheme, Therapeutic Goods Administration and Office of the Gene Technology Regulator. A reference to a body or program in this footnote includes any successor of that body or program.’ (PAFTA negotiations started 2017, signed February 2018) <https://dfat.gov.au/trade/agreements/not-yet-in-force/pafta/full-text/Pages/chapter-8-investment.aspx#footnote-17>
- USMCA: ISDS mostly removed (text released October 2018), <https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/agreement-between>
- RCEP: ISDS negotiations may be negotiated 2 years after entry into force if there is consensus (September 2019): <http://www.bernama.com/en/news.php?id=1766612>, <https://themalaysianreserve.com/2019/09/13/rcep-talks-to-proceed-without-isds/>

Some further information: texts

- WTO plurilateral proposals:
 - Ecommerce: INF/ECOM*
 - Investment facilitation: INF/IFD*

https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S001.aspx
- CPTPP text: <https://www.mfat.govt.nz/en/trade/free-trade-agreements/free-trade-agreements-in-force/cptpp/comprehensive-and-progressive-agreement-for-trans-pacific-partnership-text-and-resources>
- RCEP:
 - proposed investment chapter: <https://www.keionline.org/23065>
 - Various proposed chapters including ecommerce chapter terms of reference: <https://bilaterals.org/?-mega-regional-ftas->
- EUFTAs:
 - Countries negotiating: http://ec.europa.eu/trade/policy/countries-and-regions/negotiations-and-agreements/#_being-negotiated
 - EU's FTA proposals: <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1395>
 - Concluded texts: https://ec.europa.eu/trade/policy/countries-and-regions/negotiations-and-agreements/#_in-place
- EFTA FTAs:
 - Countries negotiating: <https://www.efta.int/free-trade/ongoing-negotiations-talks>
 - Texts of those concluded: <https://www.efta.int/Free-Trade/Free-Trade-Agreements-510711>
- Bilateral investment treaty texts: <https://investmentpolicy.unctad.org/international-investment-agreements/by-economy#iiaInnerMenu>
- Which investment treaties have which provisions:
<https://investmentpolicy.unctad.org/international-investment-agreements/iia-mapping>
- ISDS cases: <https://investmentpolicy.unctad.org/investment-dispute-settlement>

Some further information: analyses

- Difficulties replacing lost tariff revenue for middle and low income countries: <http://www.imf.org/external/pubs/ft/wp/2005/wp05112.pdf>
- Some implications of no tariffs on electronic transmissions (ecommerce proposals/chapters) on revenue: http://unctad.org/en/PublicationsLibrary/gdsecidc2017d3_en.pdf, https://unctad.org/en/PublicationsLibrary/ser-rp-2019d1_en.pdf, https://www.researchgate.net/profile/RASHMI_BANGA/publication/335740100_Modelling_Impact_of_Moratorium_on_Electronic_Transmissions_using_CGE_A_Critique/links/5d78b52992851cacdb31160e/Modelling-Impact-of-Moratorium-on-Electronic-Transmissions-using-CGE-A-Critique.pdf?origin=publication_detail
- Ecommerce: source code analysis: Briefing 4 at https://www.twn.my/briefings_MC11.htm.
- Ecommerce: Video of Sanya's presentation on the source code proposals at 2019 WTO Public Forum https://www.wto.org/english/ress_e/webcast_e/webcast_video_e.htm?webcast_id=87&subject_code=PF19 from minute 44.55
- Ecommerce: cross-border data flows: some implications: Briefing 3 at https://www.twn.my/briefings_MC11.htm.
- Services domestic regulation disciplines analysis: Briefing 2 at: https://www.twn.my/briefings_MC11.htm
- Some examples of potential implications on health (not based on final TPP/CPTPP text): <http://www.twn.my/title2/FTAs/General/TPPHumanRights.pdf>
- GATT/GATS exceptions have worked 1/44 times: https://www.citizen.org/sites/default/files/general-exception_4.pdf
- Some examples of compulsory licensing experiences:
 - <http://www.twn.my/title2/books/pdf/CompulsoryLicense.pdf>
 - <http://www.twn.my/title2/IPR/pdf/ipr10.pdf>
 - <http://www.twn.my/title2/IPR/pdf/ipr09.pdf>
 - <https://www.citizen.org/sites/default/files/public-citizen-statement-special-301-2018.pdf>

Thank you

sanya@twnetwork.org