

EXECUTIVE SUMMARY

This report presents a comparative analysis of CEPs/FTAs mainly those completed or currently being negotiated by Australia and New Zealand with ASEAN countries, aimed at drawing implications for the AANZFTA.

An analysis of existing CEPs/FTAs between Australia and New Zealand and ASEAN countries indicates significant differences as well as similarities in the provisions of the agreements. Differences are found in both the content of provisions of specific issues, such as market access for trade in goods and services, and in the inclusion or non-inclusions of provisions covering particular issues, for example chapters on trade in services and investment, or understandings on labour and environment issues. Many of these differences can be put down to differences in the socio-economic environment or the political economy or the time of agreement. Similarities tend to reflect common WTO consistent positions.

The report involves a comparative analysis of the provisions of the existing FTAs, classifying them according to whether they indicate a standard approach that may be applicable to the proposed AANZFTA or whether they reflect country specific priorities or sensitivities. Particular emphasis is on rules of origin, given their potential importance in so-called “spaghetti bowl” effects.

The principal substantive obligations in the existing agreements of Australia and New Zealand with ASEAN countries are found in the chapters of each agreement relating to trade in goods, trade in services, investment, and dispute settlement. In the treatment of trade in goods the existing agreements exhibit a preference for comprehensive product coverage, with allowance for sensitive products being made through extended implementation periods and availability of additional measures such as tariff rate quotas and special safeguards rather than excluding the sensitive products from the agreement entirely. In services trade the classification of sectors and subsectors, as well as modes of supply, follow the GATS model. Provisions on temporary entry or movement of persons (GATS Mode 4) are however kept separate from the provisions on the other three modes of supply. An important difference among the existing agreements is between the “positive list” and “negative list” approaches to sectoral coverage. In the investment chapters the provisions on pre-establishment do not generally require any liberalisation beyond that occurring under the services provisions on Mode 3 (commercial presence), but there are substantive obligations on investor protection. The latter are generally similar in nature although there are possibly significant differences in the sections dealing with investor-state disputes.

The emergence of a divergence between ASEAN and the CER countries in the approaches taken to rules of origin is an important development that will have to be addressed. ASEAN continues to promote an regional value content (RVC) rule of origin, based on a 40% RVC requirement, whereas Australia and New Zealand appear to have taken the policy decision that change in customs classification (CTC) rules are preferable to RVC rules. CTC rules are said to have the advantage of providing greater certainty and giving rise to lower transaction costs. These advantages tend to be nullified however if the CTC rule is combined with an RVC requirement that must be satisfied simultaneously, as both Australia and New Zealand have done for textiles and clothing in their agreement with Thailand, and as Australia has also done with a range of other manufactured products in the same agreement. The choice of rules of origin for AANZFTA has important implications for the overall consistency of rules governing trade between the ASEAN and CER countries. For ASEAN this is part of the wider question of whether it will be possible to overcome potential “spaghetti bowl” problems by rationalising the rules of origin across all the FTAs of ASEAN and its members with external partners. As an input to the decisions that must be taken research is urgently needed on the advantages and disadvantages of the competing approaches to rules of origin.

The existing agreements contain chapters on government procurement, intellectual property, and competition policy, but these generally impose few if any substantial obligations beyond the parties' existing multilateral commitments. They thus represent an intermediate approach between complete omission of these issues and their inclusion with substantial new obligations.

Interviews with government and business representatives in Australia and New Zealand, and other information such as publications and presentations, were used in assessing the likely attitudes in these countries to issues such as the "spaghetti bowl" effect. Business representatives interviewed in the CER countries also tended to favour a comprehensive approach to product and issue coverage, although some special interest organisations predictably argued for special treatment of their constituents. On rules of origin there was a clear division between those seeking liberal rules and those seeking more restrictive rules. Business is concerned that negotiation of AANZFTA could be held up by the sensitivities of some individual ASEAN members.

The report notes that several dimensions need to be taken into account in the analysis of preferences, including the margins of preference, product coverage, and the length of the transition period over which the preferences are introduced. It is also important to consider the relationship of the preferences to the trade competitiveness of the countries receiving the preferences. As well as the relationship to MFN tariffs, the relationship to preferences available under other preferential arrangements needs to be considered. The somewhat haphazard spread of bilateral FTAs threatens to create complex patterns of preference and exclusion, and one important impact of AANZFTA will be in the nature of "levelling the playing field" in the Australian and New Zealand markets, both among ASEAN members and between ASEAN and other existing and future FTA partners of those two countries. It is also necessary to consider the special position of the CLMV countries (Cambodia, Laos, Myanmar and Vietnam). The report also notes that the value of preferences can be partially or even wholly nullified by restrictive rules of origin

Preferences in services trade are measured in principle by comparing each member's FTA commitments with its GATS commitments for the sectors in which GATS commitments have been made, or with its existing practice in sectors for which no GATS commitments have been made. The results of a study reported here indicate that Singapore has made commitments in its bilateral agreements that go significantly beyond its GATS commitments, and New Zealand has also been willing to make some commitments beyond its GATS commitments. Assessment of this issue is handicapped by not knowing how commitments in either the GATS or the FTAs relate to existing practice.

The question of difficulties that may be encountered by ASEAN as a group if it were to provide the same concessions as in the existing FTAs/CEPs could be answered in relation to the concessions offered by either Singapore or Thailand, or both. It is likely that the Thailand case, which is more representative and recent, is more relevant for other ASEAN members. There are two possibilities to be considered: the offering of the same concessions on the same products, or the offering of equivalent concessions on the sensitive products of the other ASEAN members, which are different from the sensitive products of Thailand. The latter possibility would appear to be more relevant. This requires an identification of the sensitive products of each ASEAN member, and an assessment of whether the treatment provided to Thailand's sensitive products in its FTAs with Australia and New Zealand would be adequate for those sensitive products of other ASEAN members. This assessment was based on information obtained from a range of sources, including the ASEAN Secretariat. Analysis shows that there is great diversity in the sensitive sectors nominated by individual ASEAN economies, and there is not always a strong correlation between sensitivity and existing protection levels. Thus there are likely to be difficulties in reaching a common position within ASEAN on this matter. Rationalisation of the situation within ASEAN itself would facilitate progress here.

In principle the proposed AANZFTA could either reduce or intensify “spaghetti bowl” effects, the proliferation and overlapping of CEPs/FTAs that may lead to complications for traders and administrators, increasing the cost of trading. Moving toward a consistent approach to rules of origin is likely to be crucial to minimising “spaghetti bowl” effects. Prospects for this are complicated because of the differences in the rules of origin in existing agreements, and because ASEAN and the CER countries now have divergent preferences, with ASEAN preferring a 40% RVC rule and the CER countries preferring a CTC approach. At least initially it may be necessary to consider the implications of allowing two rules to operate simultaneously, with exporters able to choose whichever rule they prefer, as appears to be envisaged with the simultaneous operation of the NZSCEP and TPSEP agreements involving New Zealand and Singapore.

The report concludes by highlighting the features of the existing agreements with significant implications for AANZFTA as well as other implications from the study and issues for future research. Key issues to be highlighted are:

- The existing agreements exhibit a preference for comprehensiveness in both product and issue coverage;
- Comprehensive product coverage in the existing agreements is facilitated by the use of extended time periods, TRQs and special safeguards;
- Flexibility can be provided to cater for the sensitivities of individual members while maintaining overall WTO-consistence of the agreement;
- Preferences will diminish over time as the level of tariffs continues to decline with liberalisation, unilaterally, bilaterally and multilaterally. Ultimately the preferential impact is likely to be largely in the nature of “levelling the playing field” in the Australian and New Zealand markets, both among ASEAN members and between ASEAN and other existing and future partners of those two groups. One implication is that other provisions in the FTA such as investment will grow in importance supporting a comprehensive approach at the outset;
- The existing agreements suggest the generosity of concessions offered by Australia and New Zealand may be related to the degree of openness in partner’s markets;
- In the existing agreements, Australia and New Zealand have offered the longest implementation periods, with corresponding lessening of the value of preferences, for their most sensitive products, notably textiles and clothing, which are also subject to the most restrictive rules of origin;
- Consolidation of liberalisation commitments with ASEAN would facilitate the development of a coherent ASEAN approach to sensitive products and make AANZFTA more attractive, as well as facilitate intra-ASEAN trade with its associated benefits;
- There is an important choice to be made between a “positive” or “negative” list approach in services;
- The relation between investment provisions and services provisions on Mode 3 (commercial presence) is an important issue to address, with implications for liberalisation of pre-establishment, investor protection provisions and investor-state dispute settlement;
- Provisions on government procurement, Intellectual property and competition policy are included in the existing agreements, but inclusion of these issues does not necessarily imply a need to undertake substantial obligations. An important issue is whether such provisions should be subject to dispute settlement. This is not generally the case in the existing agreements;
- Consistency of rules of origin across ASEAN FTAs could be an important contribution to untangling the “spaghetti bowl” effect with its high costs; and

- It would be desirable for ASEAN to seek a definite assessment of the relative advantages and disadvantages of RVC versus CTC in facilitating trade and converge to the most appropriate approach.