

Tax Aspects of FTAs, Customs Unions, the WTO...

and the Australian perspective...

Leigh Obradovic
CCES, Canberra, Australia

Seventh Meeting of the Asia Tax Forum
Siem Reap, Cambodia
21 October 2010



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- Australia's Free Trade Agreements
- WTO context of Free Trade Agreements
- Incorporating 'substantially all trade' into an FTA
- The impact of Free Trade Agreements on Excise-equivalent taxation for imported products



Free Trade Agreements: *The Australian context*



- Over the last 30 years Australia has advocated progressive reductions in trade protectionism
- Since the early to mid 1980s, Australia has progressively reduced its MFN import duties as part of broad market deregulation to enhance the competitiveness of the Australian economy
- Australia has a strong agricultural sector, which does not benefit from direct subsidies – unlike agricultural sectors in the US and EU
- Australia has been an active campaigner for liberalisation in multilateral trade negotiations – especially as a founding member of the ‘Cairns Group’ of agricultural producing nations
- Since the early 2000s, Australia has pursued direct Free Trade Agreements as part of its trade strategy



Free Trade Agreements: *The Australian context*



Current Free Trade Agreements

- New Zealand (N.Z.) CER
- Singapore
- Thailand
- United States
- ASEAN – Aus. – N.Z.
- Chile



Proposed Free Trade Agreements

- China
- India
- Japan
- South Korea
- Malaysia
- Gulf Cooperation Council
- ‘Trans-Pacific Partnership’
 - Vietnam
 - Singapore
 - New Zealand
 - United States
 - Chile
 - Brunei
 - Peru

*Potential regional FTA that
could incorporate current
bilateral FTAs
(i.e. Singapore & New Zealand)*



The WTO context



- Members of the WTO are bound by its rules
 - "A Member which accepts this Agreement.... shall implement.... those obligations...."
(Article XIV, paragraph 2 of the WTO Agreement)
 - "Each member shall ensure the conformity of its laws, regulations and administrative procedures with its obligations as provided in the annexed Agreements"
(Article XVI paragraph 4 of the WTO Agreement)
- Governments consider WTO obligations in laws that involve domestic or import taxes, or in administration
- Losing a WTO dispute is embarrassing and costly to Government



Free Trade Agreements

Intent and purpose

GENERAL MOST FAVOURED NATION (MFN) PRINCIPLE

- The foundation principle of the General Agreement on Tariffs and Trade (GATT) 1994 enshrined within Article I of the GATT 1994 is the “**General Most-Favoured Nation**” (MFN) principle
- The General MFN Principle prima facie requires a country as a WTO member to grant any duty reductions whatsoever to all other WTO members.
- There is however an exception to this general principle enshrined in *Article XXIV* of the *GATT 1994*



Free Trade Agreements

Intent and purpose

ARTICLE XXIV - CUSTOMS UNIONS AND FREE TRADE AREAS

- Article XXIV of the GATT 1994 permits WTO members to establish a 'free trade area'. A free trade area can be established by a free trade agreement (FTA) between Parties
- Free trade areas are defined under Article XXIV(8)(b) as meaning a group of two or more parties where duties and regulations of commerce are eliminated “**substantially on all trade**”
- Therefore, FTAs are a bilateral and regional method for WTO members to pursue trade liberalisation within the international rules-based framework



“Substantially all trade” principle

- Article XXIV of the GATT states that tariffs under FTAs and Customs Unions be eliminated on “**substantially all the trade**”;
- If this condition is not met, the FTA or Customs Union would be in breach of the country’s obligations pursuant to the General MFN Principle;
- *A breach of Article XXIV relating to free trade areas could invoke the provisions in Article XXII and XXIII of GATT 1994 to establish a Dispute Settlement Understanding*
- The term ‘substantially’ is not defined within the *GATT 1994*;
- Nevertheless, various Reports of Working Parties on agreements presented under Article XXIV have acknowledged that “*the exclusion of a whole sector, no matter what percentage of current trade it constituted was contrary to the spirit of both Article XXIV and the General Agreement.*” (Report 215/79 paragraph 12)



Excise taxation aspects of FTAs



- Most significant impact of FTAs is the reduction or removal of Customs/Import Duty from the excisable base value
 - (e.g. **CIF + Customs Duty (x %)**)
- This only impacts imported goods taxed under the *ad valorem* method
- In Australia, imported excisable goods are levied a separate Customs Duty that is equivalent to the Excise Duty paid on domestically-manufactured goods
 - This excise-equivalent customs duty is payable on top of the MFN or concessional Customs duty, *if there is one*.



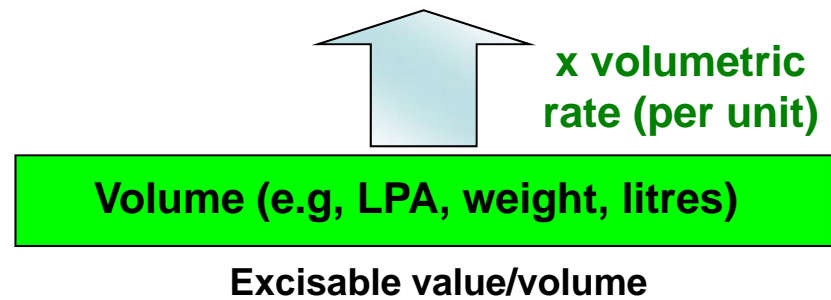
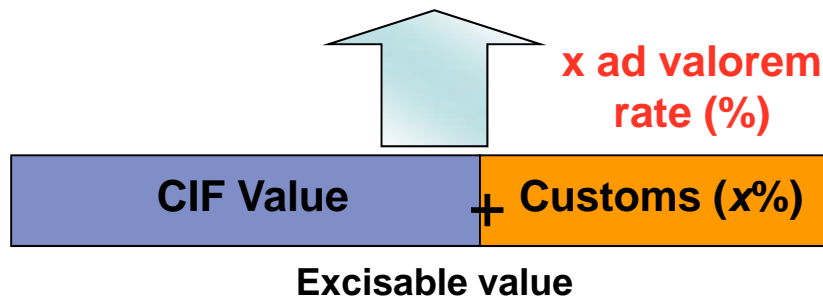
Assessable value for *Excise-equivalent Customs Duty* on imported products



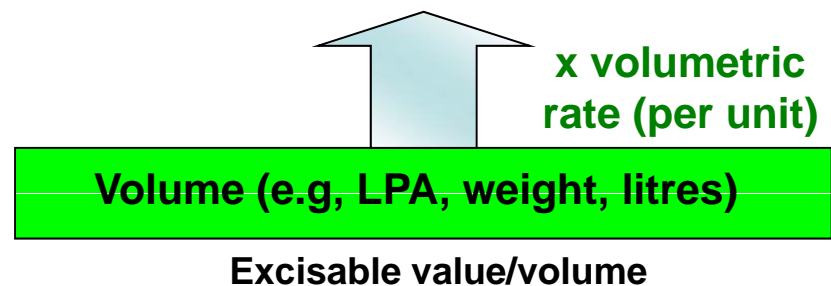
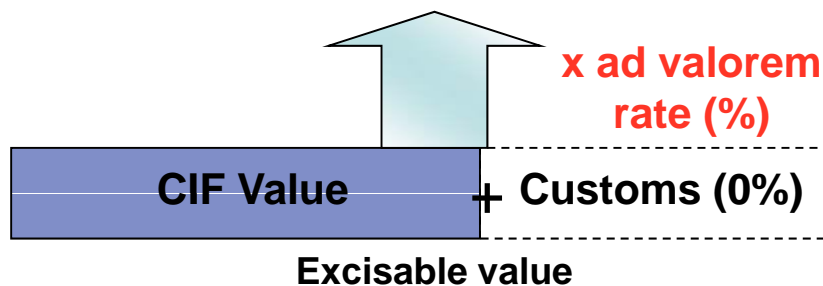
Ad valorem system

Specific system

No Free Trade Agreement




Free Trade Agreement




The impact of FTAs on Excise-equivalent tax bases – key imported products



Imported Beer




Excise Equivalent




No impact

Petroleum products	\$ X per litre
Beer & spirits	\$ X per litre of pure alcohol
Wine	29% of wholesale sales value
Tobacco	\$ X per 'stick' cigarette rate (<0.8g)
	\$ X per k.g. rate for other products

Imported Spirits




Excise Equivalent




No impact

Imported Petroleum products



Excise Equivalent




No impact

Imported Wine




WET




Impacted

Imported Tobacco



Excise Equivalent



No impact

Thankyou!!

Leigh Obradovic

Lecturer

Centre for Customs and Excise Studies

University of Canberra

Australia

Email: leigh.obradovic@canberra.edu.au

Phone: + 61 438 274 833

