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28.06.23

Singapore's ban on HTPs is not consistent with the EU-Singapore FTA

- The European Union (EU) and Singapore concluded a free trade and investment agreement in 2018 and it entered into force in 2019. It was the EU's first trade agreement with a Southeast Asian country.

- When the FTA was approved by the EU Parliament, the President of the European Commission hailed it as a "win-win trade agreement … that will create new opportunities for European producers, workers, farmers and consumers".[1] However, the FTA is not living up to the rhetoric. At present, Singapore continues to impose market access barriers on important EU exports. The EU must ensure that Singapore abides by its FTA obligations.

- In particular, Singapore currently imposes a ban on heated tobacco products (HTPs) exported from the EU. While banning EU exports of HTPs, Singapore allows imports of conventional cigarettes (CCs) from other sources and sales of domestic CCs.

- Singapore's ban on EU exports of HTPs is inconsistent with multiple FTA obligations, including:

    - **Article 2.9**, which precludes Singapore from imposing import prohibitions or restrictions on the importation of any product from the EU. Singapore's ban effectively prohibits all HTPs imports from the EU and thus violates Article 2.9.

    - **Article 2.3**, which establishes a national treatment obligation that requires Singapore to afford no less favourable treatment to EU products than they do to their own like domestic products. Singapore bans the sale of HTPs, preventing its importation from the EU, while allowing the sale of domestic CCs. This discriminatory treatment of HTPs imported from the EU is clearly inconsistent with the national treatment obligation of Article 2.3.

    - **Article 2.6**, pursuant to which Singapore committed to eliminate customs duties on all EU exports. By imposing a ban on imports of HTPs from the EU, Singapore is effectively circumventing its obligation to eliminate customs duties on all EU exports.

    - **Article 4.3**, which incorporates the obligations of the TBT Agreement into the FTA.

        - Article 2.1 of the TBT Agreement obligates Singapore to ensure most-favoured nation and national treatment in the application of technical regulations. A ban on HTPs but not on CCs violates the most-favoured nation treatment, because EU HTPs are being treated less favourably—by being denied access to the market—than CCs from other countries. Moreover, it also violates the national treatment obligation of Article 2.1 by allowing the sale of domestic CCs while prohibiting HTPs imported from the EU.

[1] https://ec.europa.eu/commission/presscorner/detail/en/IP_19_906

- Article 2.2 of the TBT Agreement, which requires Singapore to "ensure that technical regulations are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade". A technical regulation that bans HTPs but not CCs is more trade-restrictive than necessary to fulfil a legitimate objective (e.g., public health), given the highly trade-restrictive nature of the ban, its limited contribution to the objective of protecting public health (considering that HTPs are less harmful than CCs), and the availability of less trade restrictive alternatives that could fulfil any public health objectives pursued.

- **Article 4.6**, which obligates Singapore to "make best use of good regulatory practice with regard to the preparation, adoption and application of technical regulations", including "considering, when developing a technical regulation, inter alia, the impact of the envisaged technical regulation and the available regulatory and non-regulatory alternatives to the proposed technical regulation which may fulfil the Party's legitimate objectives". A key element in good regulatory practices is the use of the latest scientific and technical information.[2] Banning HTPs but not CCs ignores the growing body of scientific evidence that HTPs are a less harmful alternative to CCs.[3]

- Singapore cannot justify the ban under the general exceptions. Banning HTPs, which are less harmful, while allowing CCs, which are more harmful, is not consistent with the objective of protecting public health. To the contrary, the ban on HTPs undermines public health. Nor can the ban be defended as a legitimate regulatory distinction since banning HTPs, while allowing more harmful CCs, is not even-handed or proportionate to the risks allegedly being addressed.

- In short, Singapore's ban on HTPs violates its obligations under the FTA with the EU.

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[2] *See, e.g.*, OECD, RECOMMENDATION OF THE COUNCIL ON REGULATORY POLICY AND GOVERNANCE (2012), https://www.oecd.org/regreform/regulatory-policy/49990817.pdf; APEC, GOOD REGULATORY PRACTICES: 2014 APEC ECONOMIC COMMITTEE REPORT (2014), https://www.apec.org/docs/default-source/publications/2014/11/factsheet-2014-apec-economic-policy-report/aepr-factsheet2014_2pp_final_formpload.pdf?sfvrsn=3c9c9c63_1; WORLD BANK, GOOD REGULATORY PRACTICES (2017), https://documents1.worldbank.org/curated/zh/753291501065430312/pdf/117750-BRI-PUBLIC-GGPTACJointOfferingonGoodRegulatoryPractices.pdf.

[3] FCTC/COP/9/9.