### The Trans Pacific Partnership – Some selected aspects

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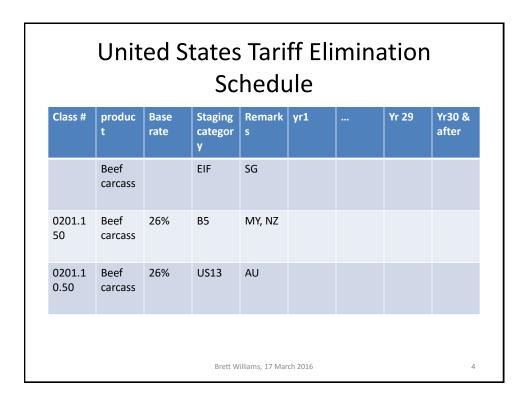
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### The Politically Sensitive Agricultural Products - Background

- Some WTO members have very high tariff bindings on some agricultural products
- USA
- Sugar- around 100%
- Japan
- Rice 700%; range of high rates on dairy products.
- Canada
- Some dairy products, & poultry 350%
- Draft WTO texts would allow Members to choose products to which the cut would be only 23% accompanied by an expansion of volume of a Tariff Rate Quota & they have strongly resisted the addition of a tariff cap to the draft rules
- So what happens to these products under the TPP?
- How would you look that up?

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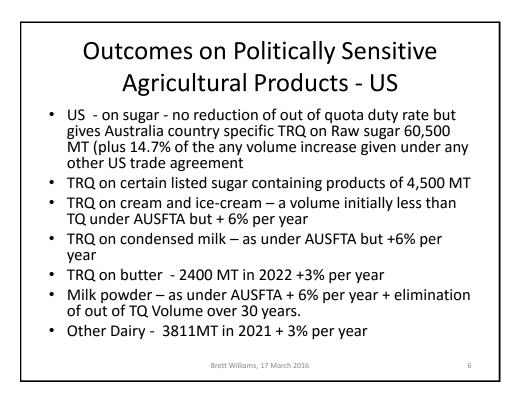


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### The USA Annex A on TRQs

- With a few exceptions, products designated TRQ do not have any reductions to the out of quota bound duty rate.
- The liberalization is only in the form of giving additional volumes of imports to which an in-quota rate applies that is a zero rate or near zero rate.
- The commitments on expanding volumes of TRQs is sometimes gives on the basis that it applies to imports from any TPP member in which case you need to check whether the Schedule refers to a method of allocation of that volume - there is likely a clause saying that it is allocated on a first come first serve basis – but in some cases, the expansion o the TRQ volume given on a country specific basis

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## Outcomes on Japan's politically sensitive agricultural products

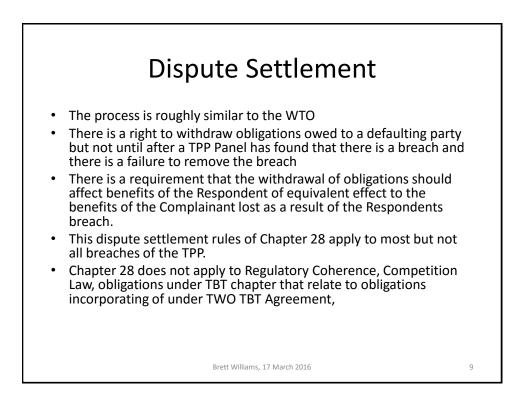
- Equally or more complicated number of staging categories
- Most staging categories eventually eliminate duties but not all go to zero (but importantly beef goes to 9% after 15 years)
- There is a category governed by an annex on TRQs
- For rice no reduction to out of quota rate but a country specific quota for US reaching 70,000 MT by year 13; and a country specific quota for Australia reaching 8,400 MT by year 13.
- Other products for which there is no reduction in out of TQ rate (the MFN rate) but commitments to allow TRQ volumes on a first come first serve basis (mostly by year 6) including – for wheat (10,000 MT), food made primarily of wheat (22,500MT), for uncooked udon (100MT), food prepared from barley (115 MT), barley flour (500 MT), barley (65,000MT by year 9),
- Cheese TRQ based on a ratio of 3.5 times estimate prospective production
- Butter: by year 11 in quota rate of 35% on 45,898 MT
- Skim milk powder by year 11 in quota rate between 25 and 35% on 24,102 MT
- Milk power duty free TRQ by year 11 of 60,000 MT
- Condensed milk = duty free on 750 MT

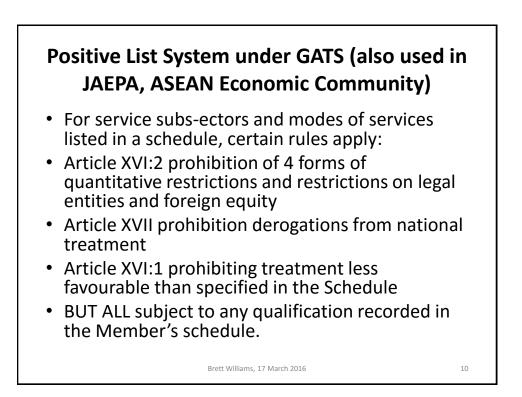
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# Will there ever by any further reduction of import barriers to these politically sensitive products?

- TPP accessions will likely accord some exceptions for new members
- TPP members may never have a further round of liberalization of these products
- WTO negotiation might be completed that reduces the most protected products – but only say 20-25% cuts for developed countries and possible zero cuts for developing countries

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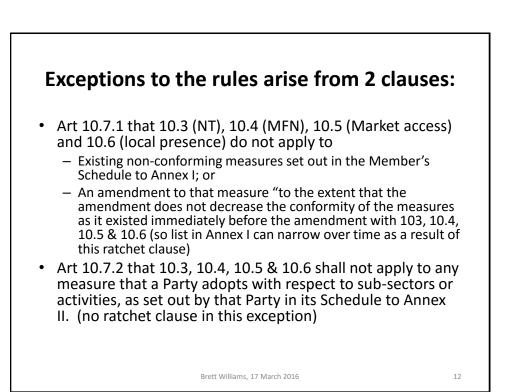


#### Negative List system for Services under TPP (as in NAFTA, AusUSFTA)

- Article 10.3 national treatment
- Article 10.4 most favoured nation treatment
- Article 10.5 market access, that is a prohibition in form like GATS Article XVI:2 covering quantitative restrictions, and limits on foreign equity
- Article 10.6 local presence prohibiting a Member from requiring a services supplier of another Party to maintain a local office or enterprise or be resident in its territory as a condition for cross-border supply of a service.

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• Apply to all sectors unless ....



## Trade in Services – Background to the dual regulation of legal services

- Traditionally countries have tended to have a single regulation that prohibits unlicensed persons from carrying on legal practice. The legal effect of that prohibition varied depending on how it defined legal practice – whether it included advising on non-contentious as well as litigious matters, and whether it was limited to practising the law of the host country or whether it purported to cover practice relating to any kind of law.
- Australia has been part of a push toward countries having dual legal regulation –a distinction between full licensing for the practice of host country law, but limited licensing or even no licencing requirements for a person to practice of law of another country where they are fully licenced to practice.
- A transition is happening but it has been gradual and varies from country to country.

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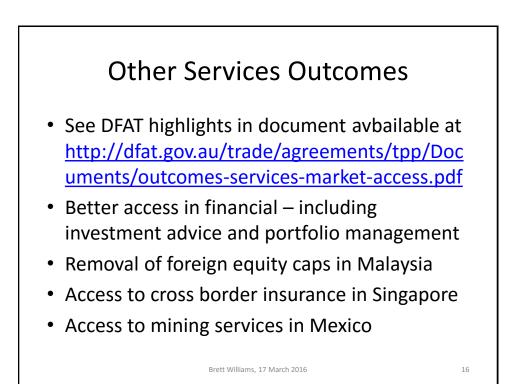
Trade in Legal Services - USA

- The commitments by the US In the WTO:
- There is a commitment on services relating to foreign and international law but it does not apply to 35 out of 50 states – so US committed to permit foreign lawyer to practice foreign law in 15 of 50 states; 35 states reserved the right to require lawyers to obtain a local practising certificate in order to be able to practice foreign or international law on any basis, whether through commercial establishment of fly-in fly-out.
- US commitments under AUSFTA were limited by an exclusion from the obligations of any regulation of legal services at the sub-national level – so it did not create any obligations on the USA going beyond those under WTO
- In TPP US commits to permit foreign lawyers of TPP parties to practice foreign law in an additional 8 states [8 in addition to the 15 states subject to the WTO commitments]. Arizona, Indiana, Louisiana, Massachusetts, Nex Mexico, North Carolina, Missouri and Utah

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### Movement of Natural Persons – The Framework

- A separate chapter on MNP in Ch 12
- Art 12 provides that MNP chapter and not services of investment chapters impose obligations regarding immigration measures.
- Art 12.4 A party shall grant temporary entry or extension of temporary stay to business persons of another Party to the extent provided in [that party's commitments in its Annex 12-A] ... provided that those business persons

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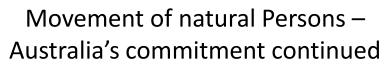
- (a) follow the Party's application procedures ; and
- (b) meet all eligibility requirements for temporary entry or extension of temporary stay.

Movement of Natural Persons – The Commitments USA – The USA did not give any schedule of commitments on MNP

- Australia's schedule:
- Business Visitors who do not derive financial support in Australia 3 months; or 6 -12 months if selling supply of services.
- Installers / servicers 3 months for persons installing or providing services for equipment sold in Australia
- Contractual services suppliers covers persons employed by an entity that does not have a commercial presence but has a contract to supply a service and person engaged by an enterprise in Australia to supply a service (and their spouses) – subject to Australia's list of eligible occupations and requirements for employer sponsorship – 12 months + extension.

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- Independent executives for persons seeking to establish a commercial presence of an enterprise which has its head of operations in the territory of another party (+ spouse and dependents) subject to eligible occupations list and employer sponsorship – up to 2 years.
- Intra-corporate transferees (+ spouse and dependents) existing employees of a enterprise of another Party which has established a commercial presence in Australia, covering
- Executives up to 4 years + extension
- Specialists a person already a employee for 2 years, who has with advanced skills and experience assessed as meeting Australia' s domestic standards for the occupation
- Subject to employee sponsorship requirements including a list of eligible occupations.
- Does not contain the express prohibition on imposing quantitative limits on the number of temporary visas that is contained in the Japan and Korea FTAs.

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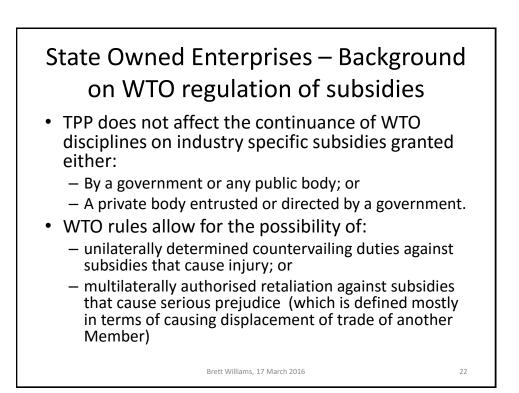
Regulatory Coherence - Background **Existing WTO obligations:** TBT – obliges members to explain their objectives, and give other Members an opportunity to consider proposed measures, and to maintain only measures that are no more restrictive than necessary to fulfil a legitimate objective. SPS – requires a measures (unless conforming to an international standard) to be based upon a risk assessment and to choose the least trade restrictive measure which achieves the desired level of protection which involves a comparison between alternative ways of achieving the protection. In Australia – Competition Policy deriving from the Hilmer Report of 1994 - states and Cth entered into the Competition Principles Agreement providing for review of state regulations . Art 5.1: the guiding principle is that "legislation should not restrict competition unless it can be demonstrated that The benefits of the restriction outweigh the costs; and - the objective of the legislation can only be achieved by restricting competition. 20 Outcomes in annual reports by the National Competition Council.



- Key obligation is in Article 25.2
- 25.2.1 members should encourage agencies to conduct regulatory impact assessments on proposed covered regulatory measures
- 25.5.2 that a regulatory impact assessment should
  - Describe the problem to be address by the regulation.
  - Examine feasible alternative ways of addressing the problem.

 Explain the grounds for choosing the selected alternative.
Members are allowed to make a declaration about what scope of regulatory measures are covered by the Chapter.
Not subject to Ch 28 dispute settlement.





### Obligations on State Owned Enterprises

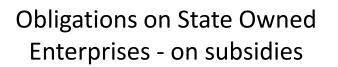
- The GATT does not contain a prohibition on granting an entity an exclusive right to import.
- If a Member does grant an exclusive right to import a bound product , then GATT does prohibit the charging of a mark-up above the bound rate
- Bit no discipline on an entity with exclusive import rights deciding not to import a market clearing quantity.
- Some limited advances on that achieved in dispute settlement *Korea Beef*, & *Turkey Rice*
- China alone among WTO Members is obliged to allow any entity the right to import any product (so a law giving SOEs exclusive right to import magazines and audiovisual products was a violation in *China Audiovisuals*).
- Question: What does TPP do to regulate the grant of exclusive import rights and to stop such entities from surreptitiously limiting the quantity of imports?

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Obligations on State Owned Enterprises – on trading

- 17.3 obliges Parties to ensure that any SOE exercising governmental functions does so in accordance with the agreement
- 17.4 obliges parties to ensure that SOEs and designated monopolies
- Act in accordance with commercial considerations
- In purchases of imports of goods and services from TPP parties – accord NT and MFN
- In purchases of goods or services of investments of a TPP party – accord NT and MFN
- In sale of goods or services, accord NT and MFN to enterprises of another TPP party or a covered investment of a TPP party.

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- Obligations on causing injury or causing adverse effect
- 17.6.2 & 17.7 prohibit causing adverse effects to the interests of another Party through the use of any non-commercial assistance to any of its SOEs with respect to production, sale of goods or supply of services
- Art 17.7 defines adverse effects in terms similar to the definitions of serious prejudice in WTO SCM Agreement Article 6

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