

REGULATORY FLEXIBILITIES AND TENSIONS IN PUBLIC HEALTH AND TRADE — AN ASIAN PERSPECTIVE

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ABSTRACT

Regulatory issues relating to public health are a source of tensions in recent trade and investment negotiations, treaties and disputes. Issues arising from the intersection between public health regulation and trade and investment treaties have given Asian states pause for thought. They have led to a critical need to confront the scope and meaning of legal obligations vis-à-vis public health and regulatory objectives, and their implications for stakeholder interests. The intersection and resulting tensions have already led the WTO, WHO and WIPO to work together in an unprecedented manner to address some of the issues at the global level. The laws evolving around these

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issues are demonstrating a notable divergence. As an example, the debate on access to medicines demonstrates divergent approaches to solutions. This paper examines the reasons behind legal and policy divergences in public health issues in the context of treaty obligations, with examples from Asia, and suggests that a convergence of purpose(s) is needed for a convergence of solutions to be found, in order to deal with such tensions.

KEYWORDS: *trade, investment, public health, TRIPS, flexibilities, medicines, FTAs, BITs*