



# ENHANCING THE CONTRIBUTION OF PREFERENTIAL TRADE AGREEMENTS TO INCLUSIVE AND EQUITABLE TRADE

*Investment provisions in PTAs and how they  
contribute to inclusive trade*

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# Overview of the Presentation

## Set the Scene

- Growth in Investment flows in the region
- What are Investment Provisions

## IIA Provisions

- Defining Provisions
- Approaches to including investment.
- Some descriptive Statistics

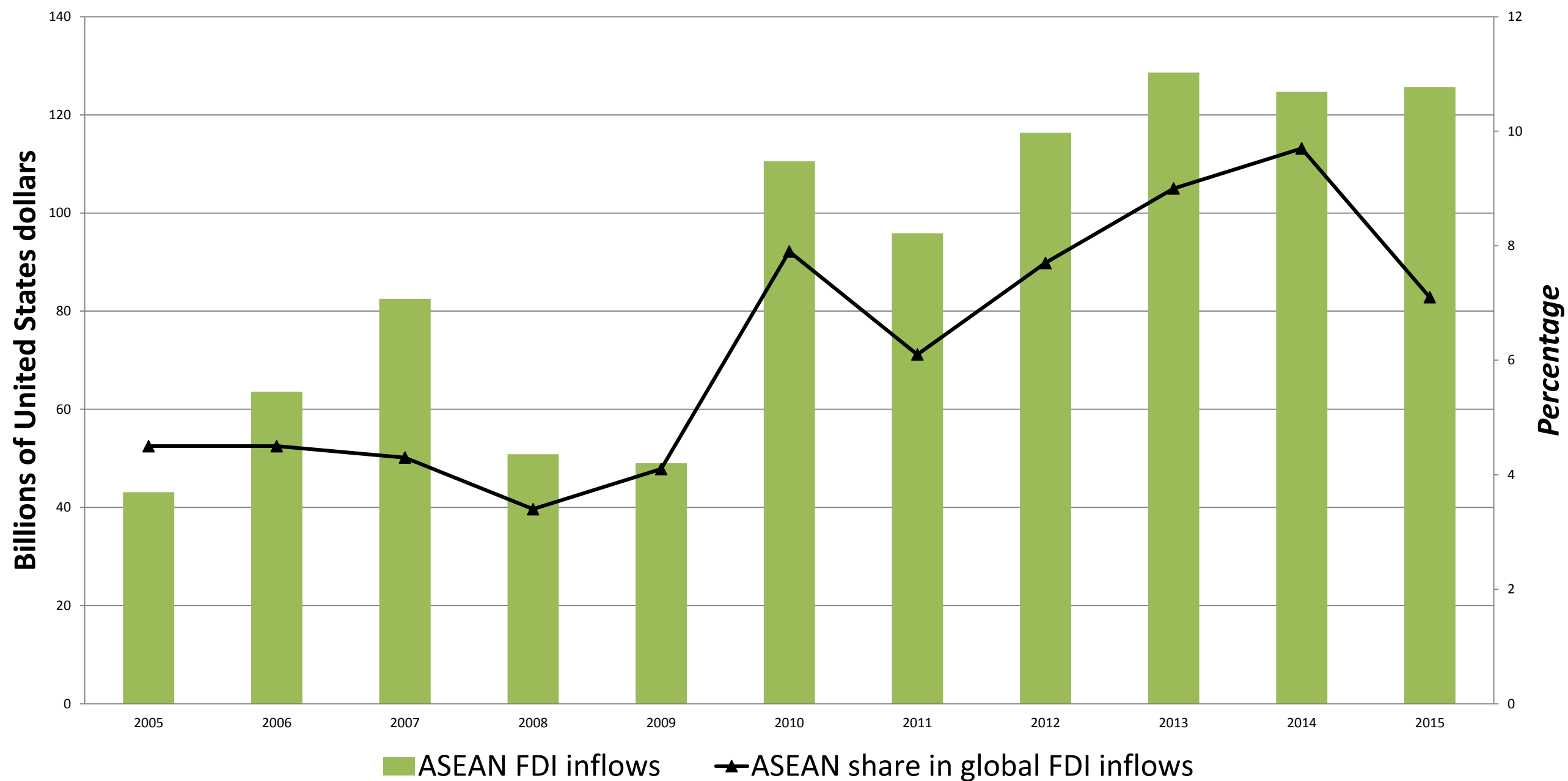
## Discerning Patterns

- Does investment promote trade
- Do these provisions support open markets more generally

How does this support inclusive growth?



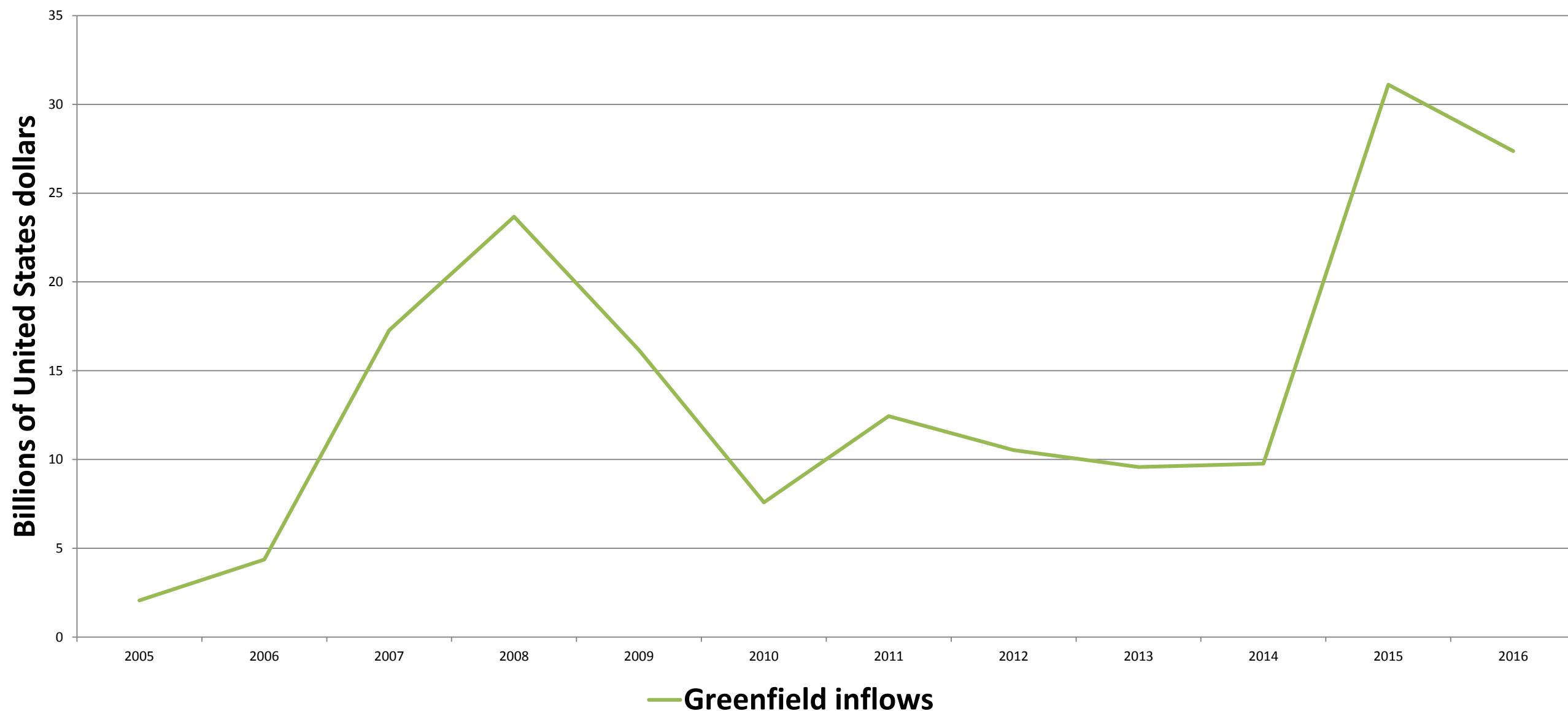
# FDI in ASEAN



Source: ESCAP calculations based on UNCTAD, 2017



# Increasing South-South Flows: Intra ASEAN Flows



Source: ESCAP calculations based on fDi Intelligence data, 2017





# Treaties with Investment Provisions

Investment issues are usually handled in Bilateral Investment Treaties (BIT). However, other methods also exist.

Treaties with investment provisions (TIPs) are economic agreements other than BITs that include investment-related provisions, including,

- investment chapters in economic partnership agreements (EPAs) and free trade agreements (FTAs),
- regional economic integration agreements and framework agreements on economic cooperation.

While there is no comprehensive investment framework, there are some scattered disciplines which have implications for foreign investment in some multilateral trade agreements.





# Examples of other international agreements that impact Investment

- Agreement on Trade-Related Investment Measures (TRIMS): prohibits a number of trade-related measures that could be imposed on foreign investors in a discriminatory bases (e.g. local content and trade balancing requirements);
- General Agreement on Trade in Services (GATS): recognizes commercial presence (i.e. FDI) as one of the four modes of services trade;
- Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS): sets minimum standard for Intellectual Property Rights (IPR); and
- Energy Charter Treaty (ECT): extends World Trade Organization (WTO) trade rules to energy products and equipment and accords investment protection at levels normally found in higher end BITs.





# Role of IIAs in the Region

- Most common form of IIA is bilateral investment treaty (BITs).
- Of the more than 2,400 BITs currently in force, more than half (1,480) involve a country from the Asia-Pacific region.
- The majority of BITs focus on investor protection:
  - Fair and equitable treatment of foreign investors
  - Compensation in the case of expropriation
  - Right to move investment-related capital freely
- More and more investment provisions included in PTAs

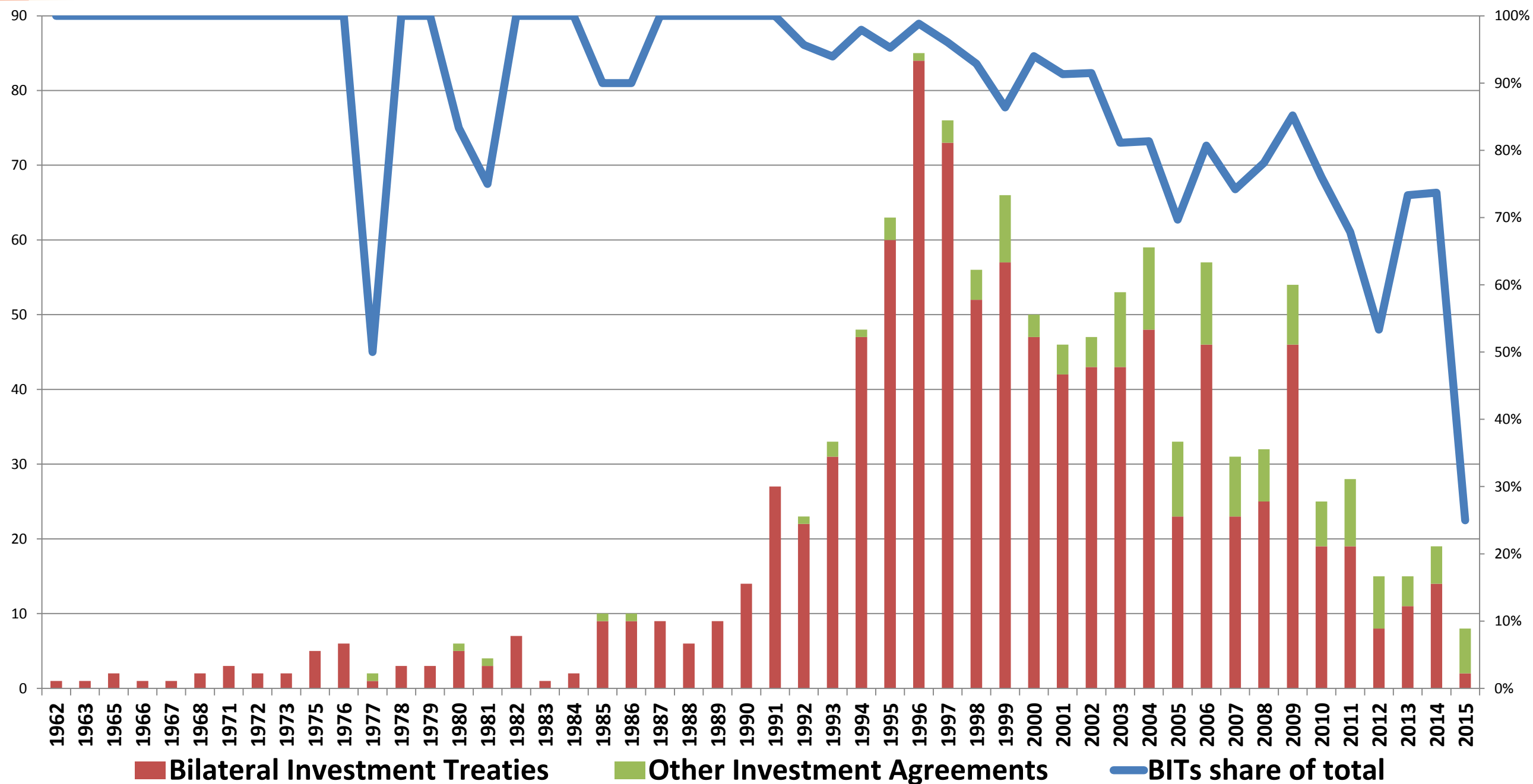


# Sample Statistics of Regional IIAs

Year grouping	Number in sample	Category compared to total sample	Number in total population	Category compared to total population
-75	17	3%	20	2%
76-85	25	4%	40	4%
86-95	157	24%	234	23%
96-00	206	31%	313	31%
01-05	128	19%	199	20%
06-10	94	14%	159	16%
11-15	30	5%	54	5%
Classification				
North-North	33	5%	46	5%
North-South	338	51%	497	49%
South-South	286	44%	476	47%
Income classification				
Has HIC	371	56%	543	53%
Has LIC	287	44%	449	44%
Has LMIC	332	51%	533	52%
Has UMIC	206	31%	315	31%
Grand Total	657		1019	



# Evolution of Agreements



# Relationship between IIAs and FDI



- Empirical evidence has remained ambiguous as to the overall benefit of IIAs in driving FDI.
- FDI inflows from developed countries into developing countries, BITs appear to have a positive impact on FDI inflows (UNCTAD 2009; Berger et al. 2010) .
- Although most BITs would not change the key economic determinants of FDI, they are shown to have marginal impact that could improve several policy and institutional determinants. Those developing countries that engage in BIT programmes tend to receive more FDI (UNCTAD 2009).





# Investment and PTAs

- However, this impact is not limited to BITs. There is evidence that investment provisions or chapters in wider regional trade or economic partnership agreements actually have a larger impact on investment flows than bilateral investment treaties (Leshner and Miroudot 2007).
- This could be attributed to the informational effects, that trade agreements institutionalize commitments to liberal economic policies, hence making these commitments more credible and thus boost FDI (Büthe and Milner 2008).





# Increasing importance of these provisions in PTAs

Besides the main determinants for FDI, such as general political, economic and social stability and the ease of doing business among others, IIAs add a number of important elements to the determinants of FDI (UNCTAD, 2009) including:

- Create beneficial conditions for investors by liberalizing, facilitating, promoting and protecting cross-border FDI.
- Contain commitments to a business-supportive and investment-friendly environment
- Contain positive steps towards unifying their national investment regimes that now govern domestic as well as foreign investment, giving domestic as well as foreign investors the same protection provisions, which increases the attractiveness of doing business.





# Rise of IIAs, especially BITs can lessen clarity

- Investors can struggle with the overwhelming overlaps between treaties, while host States are confronted with the risks of the multilayered regulations of FDI. S
- Since investors have a variety of investment choices available to them due to the multilayered IIAs, governments might have to deal with numerous claims (Alschner, 2014).
- The jurisdictional overlap of these treaties can lead to investors being able to bring the same claim to a center of arbitration under a BIT, and if unsuccessful, bring it to an arbitrator under another agreement, such as the ACIA (Alschner, 2014).







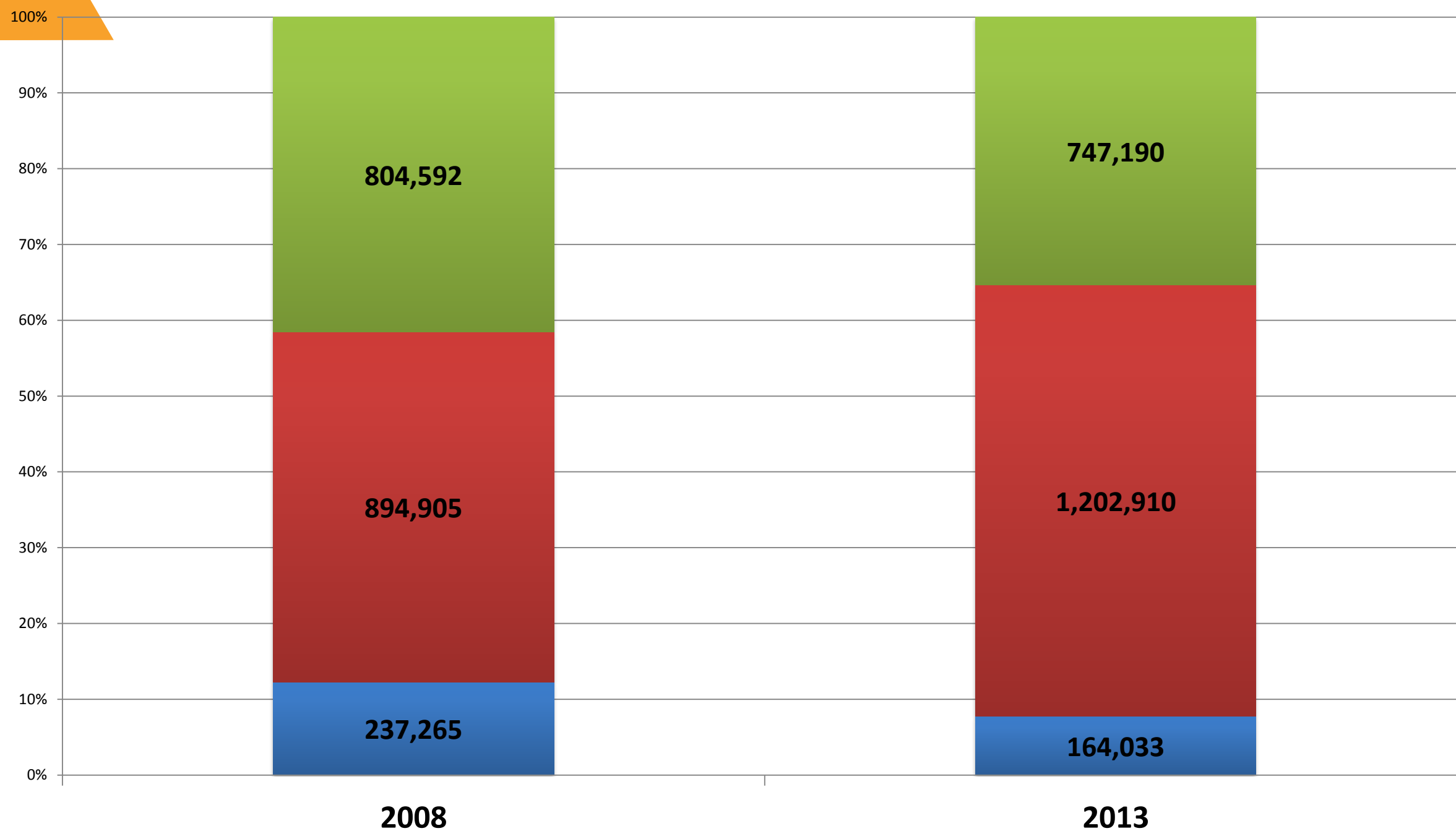


# IIAs mission expanding

- New model agreements specify that investment protection and liberalization objectives of IIAs must not be pursued at the expense of the protection of health, safety, the environment and the labour rights. (UNCTAD 2015)
- Begin to address larger issues of services and ecommerce.
- Broader issues of IPR, etc.
- Regional agreements focusing on trade in the region, for example the increasing trade in technologically advanced products.



# High-tech products traded



■ USA

■ ESCAP-Asia

■ Rest of the world



Source: Comtrade



# Patents in the Region

Patent

50000

40000

30000

20000

10000

0

2000 2001 2002 2003 2004 2005 2006 2007 2008 2009 2010 2011 2012 2013 2014

Japan China, People's Republic of Australia India

Patent

1400

1200

1000

800

600

400

200

0

2000 2001 2002 2003 2004 2005 2006 2007 2008 2009 2010 2011 2012 2013 2014

Singapore Thailand Malaysia Indonesia Viet Nam





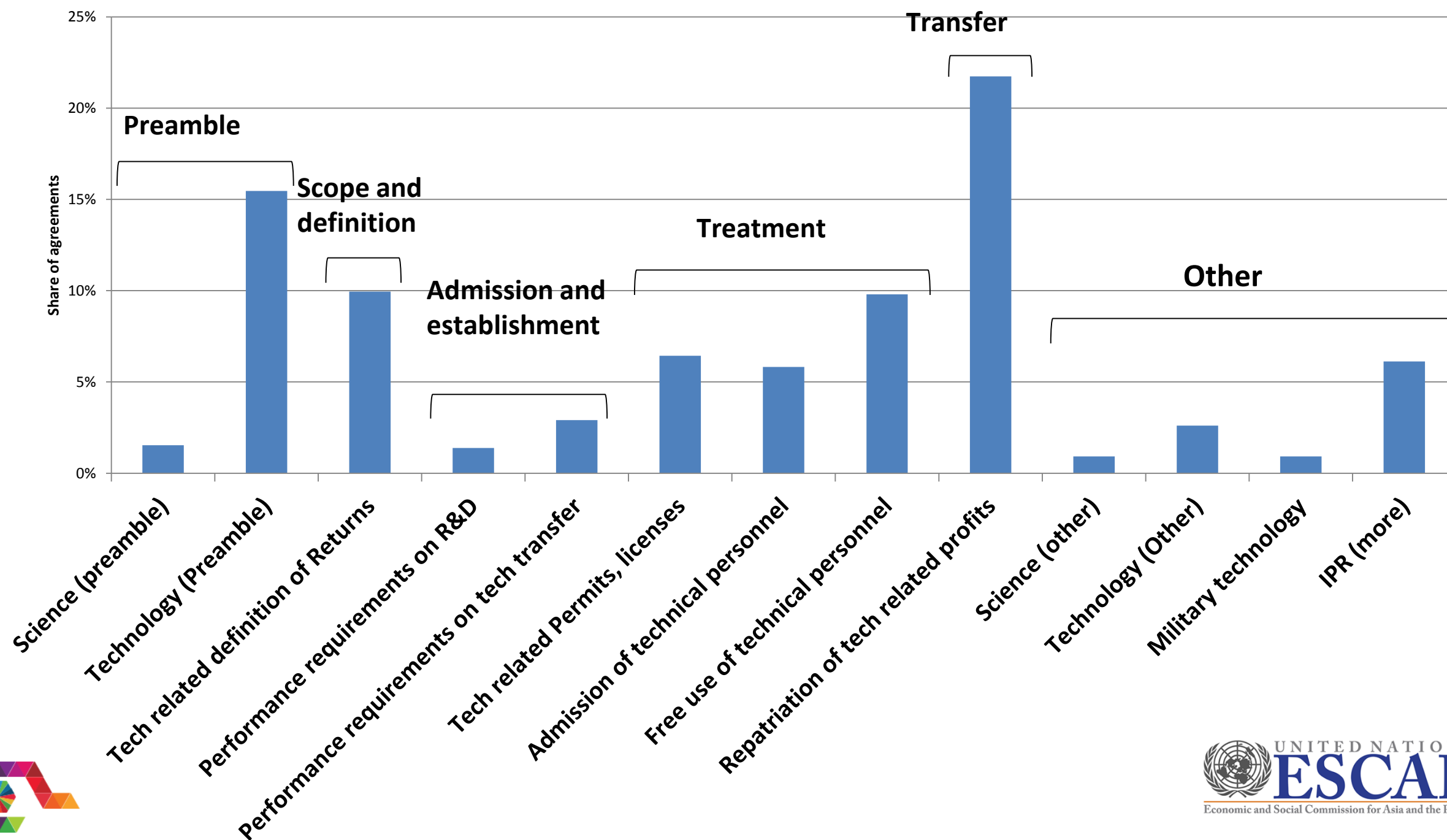
# Approaches to including STI in BITs

Examined agreements to see if reference is made to science, technology or innovation:

- Preamble
- Scope and definition of the agreement
- Admission and establishment
- Treatment
- Transfer
- Other



# Share of STI Provisions





# Concluding Thoughts

- Tremendous growth in investment related agreements in the region
  - Risk creating parallel noodle bowl to PTAs
- Increasing pressure put on agreements to cover complex and cross cutting issues.
- Another example of the need for an inclusive approach to rule making – at both the domestic and international level.



# Thank you

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