

Identifying Coverage and Modalities of PTAs to Strengthen Inclusive and Equitable Trade

Enhancing the contribution of PTAs to
inclusive and equitable trade:

Bangladesh

28-29 March 2017

Dhaka



Workshop outline

- Trade policy: from efficiency to meeting social objectives
- PTAs and multilateral trading system and PTAs in Asia-Pacific
- Managing trade liberalization: trade adjustments and trade remedies
- Towards PTA's contribution to inclusive and equitable trade
- Getting a PTA done:
 - Stakeholders
 - Negotiation
 - Implementation and evaluation
- Trade reforms and PTAs of Bangladesh
 - Bangladesh experience so far

**IDENTIFYING COVERAGE AND MODALITIES OF PTAs TO
STRENGTHEN INCLUSIVE AND EQUITABLE TRADE (I and II)**

SESSION 4

SESSION 5

Key Learning Objectives

1. Understanding inclusive growth and the key policy issues that arise in the context of designing and implementing PTAs that support it
2. Towards inclusive PTAs – enhancing PTAs' contribution to inclusive trade so as to maximize the welfare gains from trade and make their distribution more inclusive (the key is a selection of PTAs' coverage and modalities)
3. Taking the economic frameworks developed in earlier sessions and applying them in the context of inclusivity

Outline

1. Inclusive growth
 1. Relationship with trade
 2. The role of complementary policies
2. Different approaches to and modalities for trade liberalization
3. Towards inclusive trade - Designing PTAs that support inclusive growth
 1. Goods
 2. Services
 3. Investment
 4. Trade facilitation
 5. Government procurement
 6. Intellectual property rights
 7. Labour standards
 8. Environmental standards
4. Conclusion

1. Inclusive Growth

Mapping the effects of trade

- Under the right circumstances, trade can lead to **inclusive growth**
 - **inclusive growth** =
 - increases in mean household income
 - adjusted by increases in economic inequality (Gini coefficient)
- Growth is a prerequisite (necessary) for inclusive growth
 - **However, it is not sufficient**
- Inclusive growth must benefit the whole society, or at a minimum, an increasing group of beneficiaries
- Consequently, inclusive growth is promoted by:
 - **income growth**
 - **lower inequality**
 - **lower poverty**
- Conversely, inclusive growth is hindered by:
 - **overall declines in income**
 - **higher inequality**
 - **higher poverty**

1. Inclusive Growth

Mapping the effects of trade

- ▶ By changing relative prices and factor incomes, trade has implications for inclusive growth.
- ▶ It changes overall income and welfare patterns, but also affects the welfare of particular groups:
 - ▶ Producers vs. Consumers.
 - ▶ Skilled vs. Unskilled Labour.
 - ▶ Poor vs. Non-Poor Households.
 - ▶ Women vs. Men.
- ▶ Intuitively, the ways in which trade is linked to inclusive growth depend on country-specific factors that determine the production and consumption patterns of different social groups.

1. Inclusive Growth

More on trade and inclusivity

- The empirical evidence on the direct relationship between inclusive growth and trade is mixed
- To a great extent, the effects trade will have on inclusivity depends on **complementary policies**
- What are complementary policies?
 - policies which are effected simultaneously with trade liberalization to curb negative effects and to promote positive effects
 - complementary does not necessarily mean compensatory
 - policies that support positive adjustment
- Instating complementary policies often requires political, institutional, social and economic reforms

1. Inclusive Growth

Complementary policies

- In sum, to make trade work for all, trade considerations must feed into and be mainstreamed to:
 - All programmes and policies dealing with inclusivity
 - Education, skills development and other human capital investment policies
 - Social welfare and protection policies such as unemployment benefits and reskilling support
 - Financing, SME development and entrepreneurship policies
 - Discussions on political inclusion and access to rights overall

PTAs: Negotiating principles, approaches and modalities

2. Important decisions on negotiating PTAs

- Scope: level of engagement (depth) under PTAs and broad areas
- Negotiating (guiding) principles
- Mandates and approaches

2. Scope: Levels of engagement under PTAs

Type	Shorthand	Definition
Preferential trade area (Partial scope agreement)	PTA	An agreement with two or more countries which lowers but does not eliminate trade restrictions
Free trade area	FTA	An agreement with two or more countries that eliminates trade restrictions in a substantial manner
Customs union	CU	An agreement with two or more countries to eliminate trade restrictions and to apply a uniform external tariff
Common/Single market	CM/SM	An agreement with two or more countries to eliminate trade restrictions, apply a uniform external tariff and allow free movement of labour and capital

2. Scope and sequencing

- ▶ As most of the PTAs aim for FTA or CEPA* level, the scope will range from (phase I):
 - ▶ tariff /goods liberalization (cum ROO),
 - ▶ customs procedures (TF),
 - ▶ transit,
 - ▶ NTMs (?),
 - ▶ remedies,
 - ▶ disputes,

To (Phase II):

- ▶ Services
- ▶ investment

And (Phase III) the areas under “next generation PTAs”....

*CEPA= Comprehensive Economic Partnership Agreements...

2. Negotiating (guiding) principles (example)

- ▶ Member/Partner State driven (if no bloc involved)
- ▶ Variable geometry (if more than 2 parties)
- ▶ Flexibility and Special and Differential Treatment
- ▶ Transparency including the disclosure of information
- ▶ Substantial liberalization
- ▶ MFN Treatment
- ▶ National Treatment
- ▶ Reciprocity (may be not full),
- ▶ Decisions shall be taken by consensus (if more than 2 parties).

2. Modalities for trade liberalization

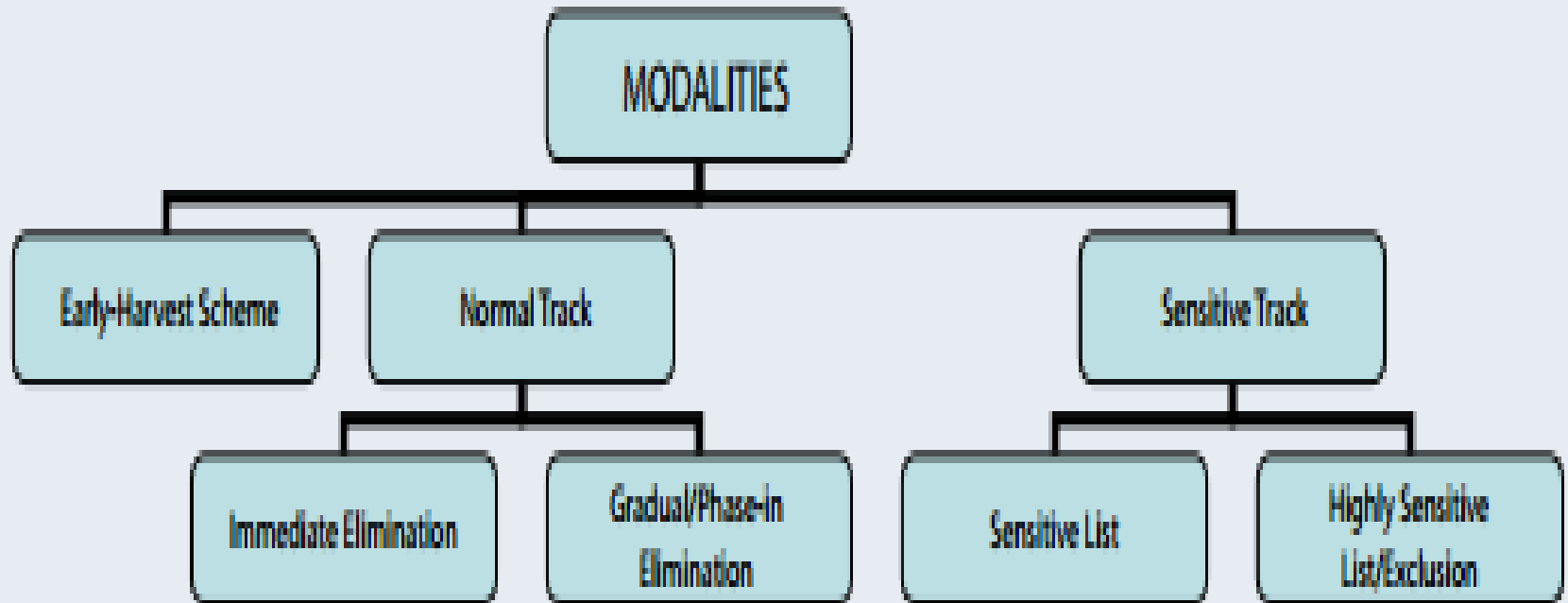
- ▶ Modalities imply the basic framework by which a specific aspect of a negotiation will be conducted.
- ▶ Will be (most likely) different for different areas of PTAs
- ▶ For example, the modalities for a tariff negotiation (goods):
 - ▶ request-offer, or
 - ▶ formula negotiations,
 - ▶ PLUS each of these broad modalities might be further specified:
 - a formula-based modality might be based upon the Swiss formula, or a tiered version of the Swiss formula, with certain specified coefficients,
 - etc.
- ▶ Depending on the precision of these modalities and the amount of "wiggle room" that they provide for (e.g., whether and to what extent countries can take specific products off the table), the modalities might determine most or all of the results of a negotiation.

2. Modalities for trade liberalization

- ▶ In PTAs (unless partial scope agreement), the focus should be on meeting GATT Art XXIV:
 - ▶ elimination of tariffs (and other measures) in goods' trade*,
 - ▶ on substantially all trade
 - ▶ in a reasonable period of time
- *if building CU, new level of common external protection, not to be higher than parties' before
- the base rate from which tariffs are eliminated is usually the applied rate in an agreed year (whereas in a MTN the base rate is usually the WTO bound rate).

2. Modalities for trade liberalization

- ▶ Because substantially all tariffs will be eliminated, the focus of the PTA negotiations is usually on the **phase-out period** of the tariffs.
- ▶ Tariffs in a PTA are only eliminated between the participants and the benefits are not available to non participants (no multilateralization)
- Phase-outs can be
 - ▶ *Immediate (when agreement is put in force),*
 - ▶ *Linear (a sequence of equal cuts over the phase out period),*
 - ▶ *Front-end or*
 - ▶ *Back-end loaded*



Source: Author's compilation from various free trade agreements (FTAs).

- How will this play-out often depends on level of development of parties in the PTA and their objective for the PTA

2. Different Modalities of Liberalization North-South, South-South

- The level of development affect the gains of trade
- North-South trade
 - Driven by the concept of comparative advantage
 - Can produce technological spill overs through FDI and tech transfer
 - Promotes global value chain connectivity
 - Market access considerations different for North and South
- South-South trade
 - Driven by economies of scale and product differentiation
 - Typically defined by high grow rates and significant trade barriers
- Multilateralism/plurilateralism
 - To a great extent negotiations at WTO and elsewhere have been aligned along the North-South divide



2. Different Modalities of Liberalization

Summary of levels of engagement

- Overall NS-SS considerations that impact negotiations and outcomes:
 - Allocation of technologies and absorption capacities
 - Wage differentials and labour skill levels
 - Size and sophistication of consumer markets
 - Income effects of tariffs may be important for S but not for N
 - Trade costs and tariffs impact low and lower-middle income countries more
- Developing countries in particular stand to benefit from stronger regional trade integration – but they might lack the resources to engage in larger trade deals productively
 - Programmes such as **Aid for Trade** can help

2. Different Modalities of Liberalization

- ▶ In terms of negotiating modalities and outcomes, SS and NS have some important differences.
- ▶ In NS agreements, there is scope for “**special and differential treatment**”—a concept from WTO law which means that the Northern partner can give larger concessions than the Southern partner, or that there can be longer transition (phase-out) periods.
- ▶ **Technical assistance and capacity building** are also important in the NS context: in a variety of issue areas, participants can work together to build mutually beneficial capacity in the Southern partner.
- ▶ Negotiating a PTA is very complex and resource intensive—which poses severe problems for low income countries, LDCs, and small economies. It is important to focus on high potential partners. Northern partners can mobilize resources to support negotiating capacity in the South.

3. Designing Inclusive PTAs

The core areas of coverage for PTAs

- The modalities of trade liberalization matter, as e.g.
 - Elimination of trade barriers will generate more impact than lowering them
 - Free movement of labour and capital and external tariffs may be politically unsavory but will generate significant impact and ameliorate issues such as human trafficking
- The sectors and goods/services that are liberalized **often matter even more**
 - Inclusive growth can be kickstarted by targeting sectors such as clothing and textiles which are known to employ groups whom have not benefitted from growth on equal terms before

3. Designing Inclusive PTAs:

The core areas of coverage for PTAs

- Not all trade is **the same**
- The kinds of goods and services that are being traded have significant impact on how trade, and changes therein, will affect inclusive growth
- For example, increased trade in certain parts of the agricultural sector might **benefit the consumers while harming the producers in a less competitive country**

3. Designing Inclusive PTAs

The core areas of coverage for PTAs

- Opening certain sectors such as financial services may society-wide direct benefits through, e.g. lower business costs and increased overall financial efficiency
- However, certain goods and services may not have any direct impacts on inclusive growth, rather, they may have only **indirect effects**
- The first step to mapping and understanding the different effects is to examine intermediate and final goods

GOODS

3. Designing Inclusive PTAs

The core areas of coverage for PTAs: Intermediate goods

- Intermediate goods are goods that are used as inputs when making final goods
 - The distinction is not always obvious, as intermediate goods can be final goods in certain situations, such as the wheels on a car that can be sold separately or as a part of a final good
 - However, for national accounts purposes the distinction must be made to avoid double counting
- Trade in intermediates, in a sense, is the modern manifestation of Adam Smith's specialization

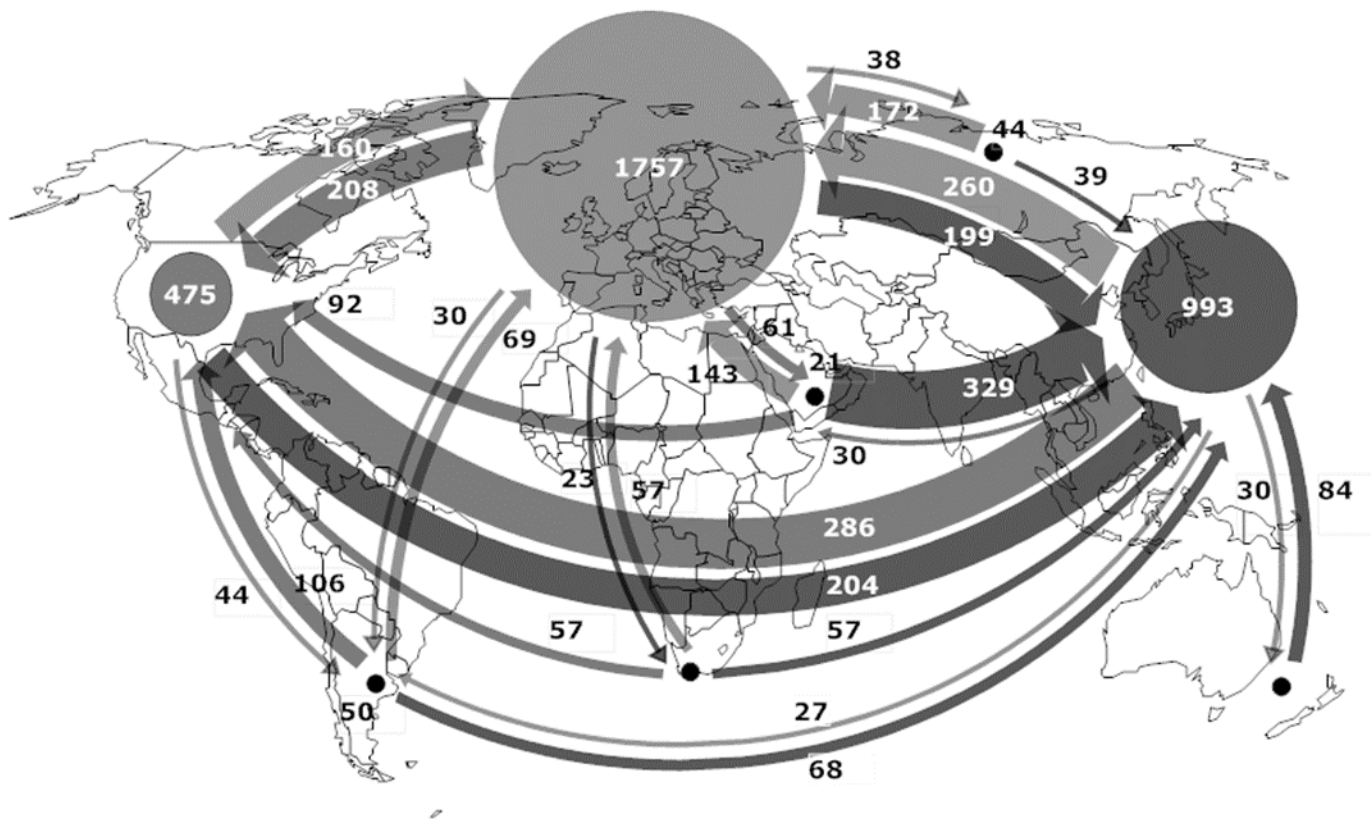
3. Designing Inclusive PTAs

The core areas of coverage for PTAs: Intermediate goods

- Trade in intermediates is more sensitive to trade barriers.
 - Consequently, trade measures can have significant effects on GVC participation (GVC participation highlights the “global” nature of trade in intermediate goods)
 - Policies aiming at fully benefiting from international production networks should reach a higher degree of trade liberalisation. But tariff escalation should be avoided.
- Trade in intermediates has an important regional dimension.
- Trade in intermediates depends less on the size of the market and on the "home bias" of consumers.
 - This represents a chance for emerging economies and small economies that can specialise in the production of inputs.

3. Designing Inclusive PTAs

The core areas of coverage for PTAs: Intermediate goods



3. Designing Inclusive PTAs

The core areas of coverage for PTAs: Final goods

- Intermediate goods are used in the production of final goods
 - Final goods are ultimately consumed as they are delivered (without further processing)
- Final goods are intrinsically linked to the concept of value added and GDP
 - GDP itself can be calculated by summing up the value added of all producers

- For example:

Intermediate Goods used as inputs	\$400.00
Labor used in production	\$400.00
Capital expenditures	\$300.00
Land and other inputs	\$50.00
Profit kept by the entrepreneur	\$50.00
Total Value	\$1200.00
Value Added	\$800.00



3. Designing Inclusive PTAs

Rules of Origin (RoO)

- RoO come in two main varieties:
 - Preferential (those RoOs that grant preferences based on the country of origin)
 - Non-preferential (e.g. those pertaining to MFN treatment, anti-dumping etc.)
- RoOs can be very powerful instruments that can:
 - support certain sectors by increasing investment
 - promote the interest of certain intermediate producers

However, RoO can also be:

- highly complex and difficult to use by industries (SMEs)
 - used to **deflect and mitigate** the effects of trade agreements by making practical use of preferences difficult
 - the justification for preferential RoO is to ensure that non-members do not obtain access to regional preferences (**trade deflection**)
-



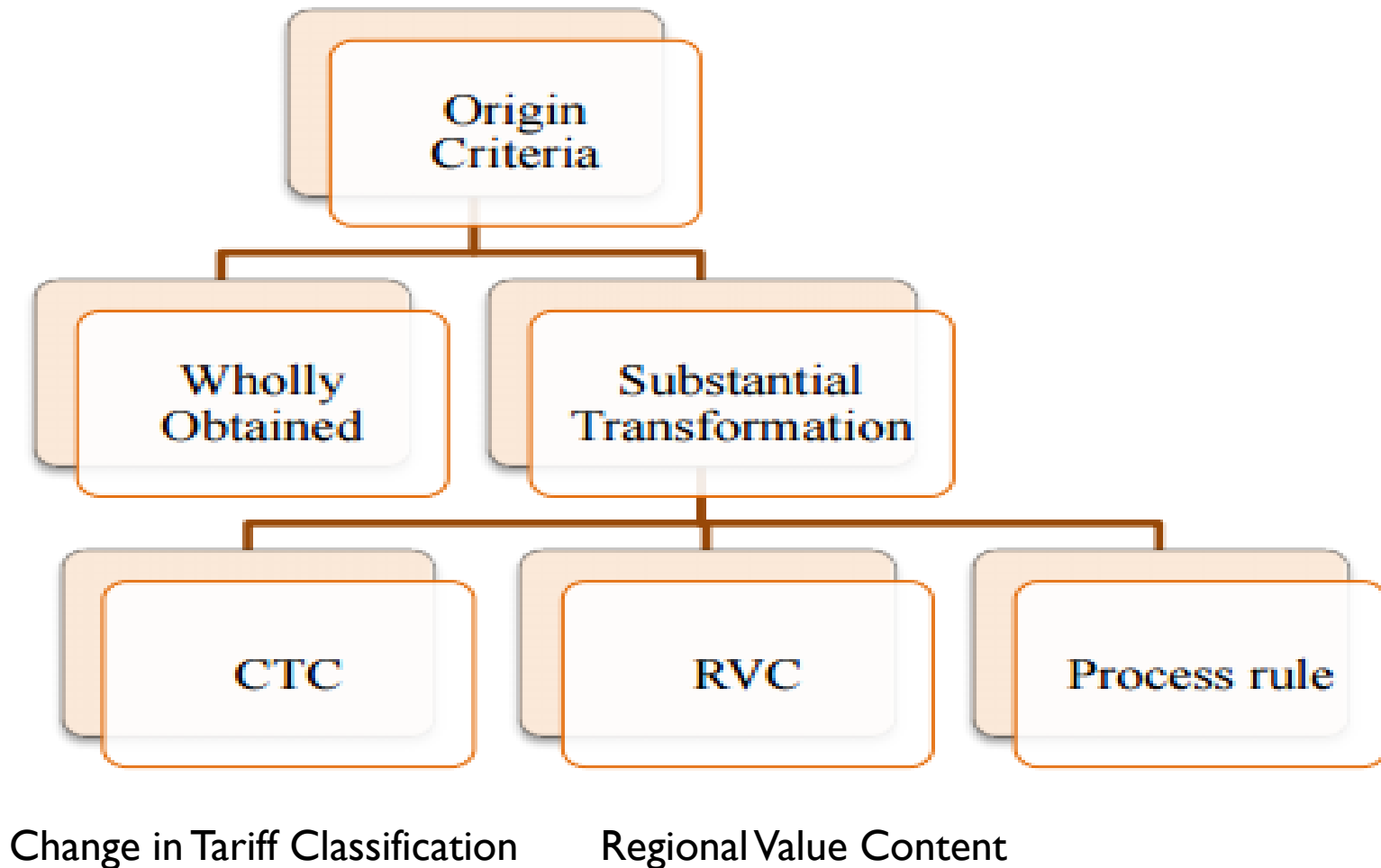
3. Designing inclusive PTAs

Rules of origin

- What do RoOs look at?
 - Whether a product was “wholly obtained, acquired or produced” in Country A
 - Whether a product underwent “substantial transformation” by Country A and B
 - What are the tools involved?
 - Change in tariff classifications based on e.g. HS codes
 - A move from one HS tariff heading, chapter or sub-heading to another due to production processes in a country
 - “Quotas on” imported content and regionally added value
 - Rules that set the definite minimums for locally added value for Country A and B, and/or the maximum value added in other countries
 - Technical requirements
 - Requirements concerning the *technical manufacturing processes* the product must undergo within Country A and B
-



Different concepts for Rules of Origin



3. Designing Inclusive PTAs

Rules of origin

- Designing “flexible” RoOs involves:
 - adding rules on cumulation, de minimis exemptions, self-certification procedures and the utilization of absorption principles
- Burdensome RoOs contain:
 - rules that rely on complex certification and technical requirements, limitations on drawback adjustments at the border and limitations on cumulation
- In many situations, there is no single best practice. For example:
NAFTA Formula for calculating regional value content

Transaction value approach:

$$\text{Regional value content} = \frac{(\text{Transaction Value} - \text{Value of Non-Originating Material})}{\text{Transaction Value}} \times 100$$

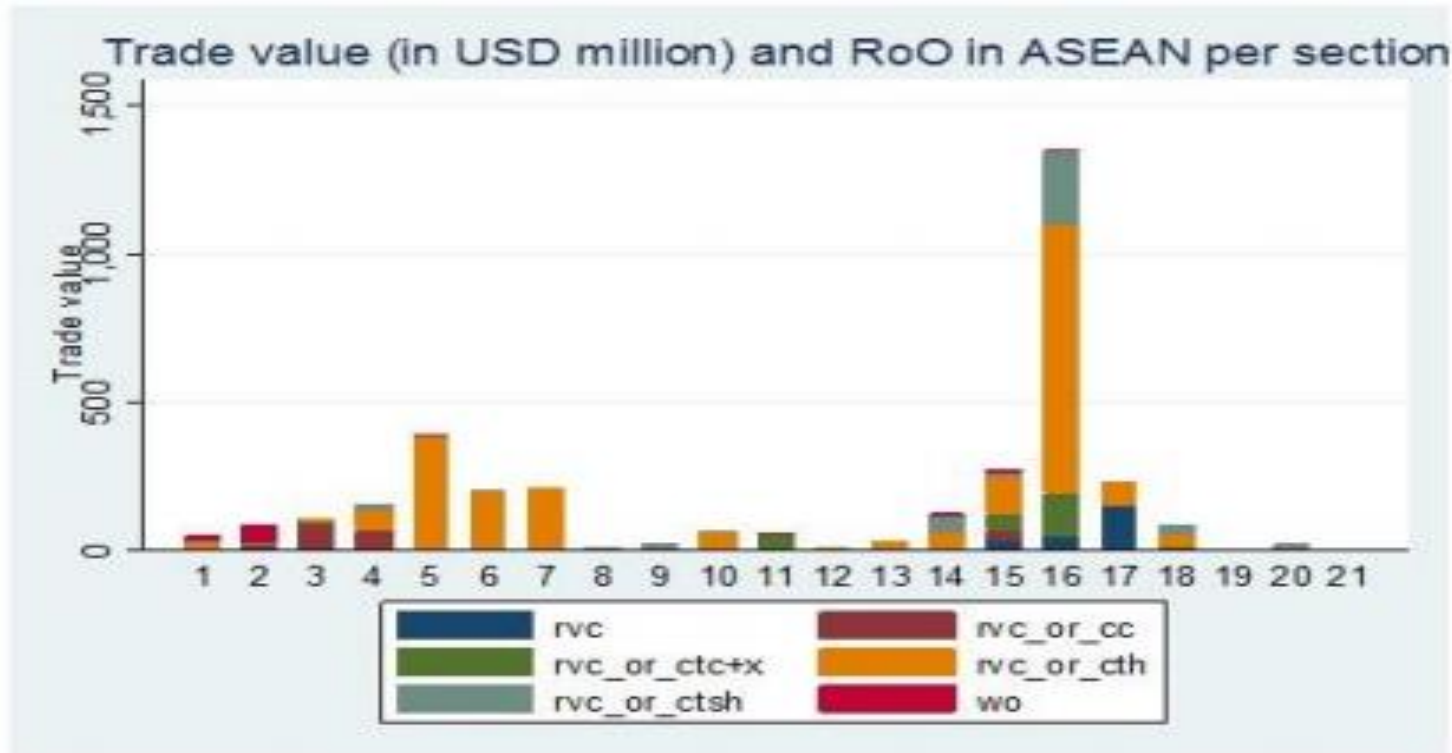
Net cost approach:

$$\text{Regional value content} = \frac{\text{Net cost} - \text{Value of Non-Originating Material}}{\text{Net Cost}} \times 100$$

Lead to different results...



Ex. ASEAN Rules of Origin



RVC = 40%

Note: Sections 1–3: agricultural products; section 4: prepared foods; section 5: commodities; section 6: chemicals; section 7: plastics; section 8: leather; section 9: wood; section 10: pulp & paper; section 11: textile & apparel; section 12: footwear; sections 13–14: cement, stone etc.; section 15: base metals; section 16: machinery & electronics; section 17: transport equipment; section 18: precision instruments; sections 19–21: miscellaneous.

Source: Walz (2014).

Costs of ROOs: ASEAN case

Table 3: Average AVEs for All RoO Instruments, by Section

Section	Summary description	Average AVE (%)	Trade weights a/
1	Live animals; animal products	-	
2	Vegetable products	1.91	2.61
3	Animal or vegetable fats	6.67	0.58
4	Food, beverages and tobacco	1.73	3.05
5	Mineral products	1.52	19.59
6	Products of the chemical or allied industries	3.50	9.70
7	Plastics and articles thereof; rubber and articles thereof	1.87	4.63
8	Leather and leather products	9.05	0.60
9	Wood and articles of wood	-3.20	0.77
10	Pulp and paper	4.98	1.75
11	Textiles and apparel	8.29	4.06
12	Footwear	12.67	0.77
13	Cement, glass and stone	2.42	0.93
14	Precious metals and stones	3.81	2.97
15	Base metals and articles of base metal	-0.46	7.77
16	Machinery and electrical equipment	-0.36	25.89
17	Vehicles	6.89	8.99
18	Precision instruments, optics, watchmaking	3.34	3.33
19	Arms and ammunition; parts and accessories thereof	-	-
20	Miscellaneous manufactured articles	-3.37	1.99
21	Works of art, collectors' pieces and antiques	-	
<i>Average (%)</i>			
<i>Simple</i>		3.40	
<i>Trade-weighted</i>			2.09

Note: Trade weights calculated using world trade, following Leamer (1974), averaged over 2010-

11. Only sections where RoO AVEs are significant used in their calculations; Section 1 omitted because entirely covered by “wholly obtained” rule.

Source: Authors calculations using BACI.

Source: Ing and Cadot (2016)

Implications of ROO on GVCs



A cross-cumulation arrangement

- ▶ A cross-cumulation arrangement is an evolution of rules of origin in the face of the GVC economy.
 - The imported materials from all the countries participating in the arrangement including **materials from the non-parties to the RTA** will be treated as originating materials in determining whether the final good is qualified for preferential treatment as an originating good.

3. Designing Inclusive PTAs

AGOA and inclusivity

An example of an inclusive growth-promoting RoO regimes is AGOA (African Growth Opportunity Act)

- Cumulation: Items must be "growth, product or manufacture" of one or more AGOA-beneficiary countries
- Local sourcing: Cost of local materials + direct cost of processing must equal or be greater than 35%
- However these rules have been relaxed for certain textile and apparel products
 - Apparel manufactured from US fabric, yarn, and thread = given duty-free and quota-free access
 - Apparel manufactured from domestically produced fabric and yarns, or from fabrics and yarns produced in AGOA-beneficiary countries = qualifies to preferences up to a limit of 3.5% of total US imports (thus far quota has not been hit in any year)
- Women in developing countries are positively affected by AGOA type liberalization
 - e.g. evidence has shown that agricultural trade expansion benefits women less than men while expansion in textiles generates positive effects



3. Designing Inclusive PTAs

Non-tariff measures (NTMs)

- As tariffs have been lowered, countries are increasingly utilizing non-tariff measures (NTMs) to achieve trade and public policy goals
- NTMs include but are not limited to:
 - Quotas for export and import
 - Technical requirements
 - Sanitary and phytosanitary requirements
 - Labeling, standards and conformity requirements
 - Subsidy frameworks
 - Countervailing duties and anti-dumping measures

3. Designing Inclusive PTAs

NTMs, classification

Table 1. Classification of non-tariff measures

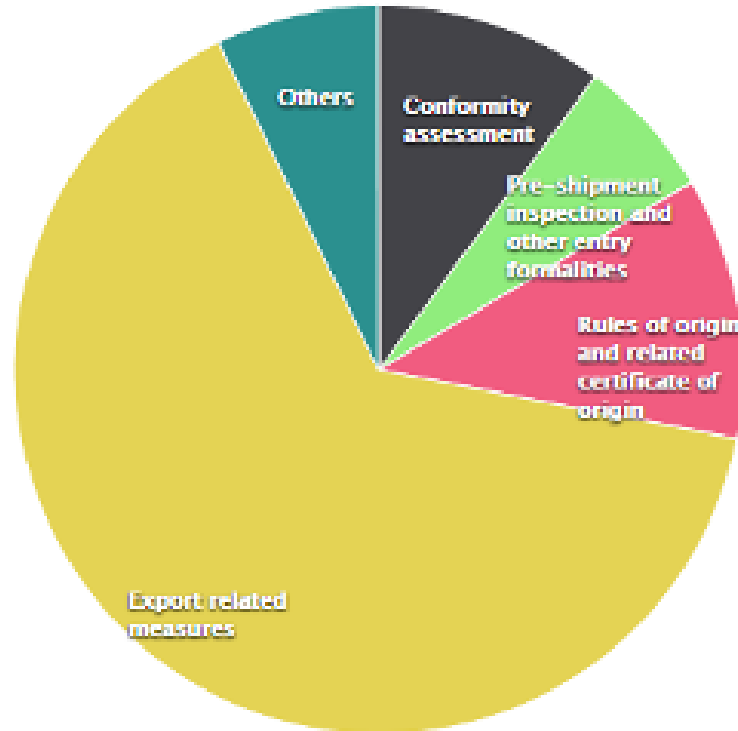
Technical measures	A	Sanitary and Phyto-sanitary Measures (SPS)
	B	Technical Barriers to Trade (TBT)
	C	Pre-Shipment Inspection And Other Formalities
Non-technical measures	D	Contingent Trade-Protective Measures
	E	Non-Automatic Licensing, Quotas, Prohibitions And Quantity-Control Measures Other Than For SPS Or TBT Reasons
	F	Price-Control Measures, Including Additional Taxes And Charges
	G	Finance Measures
	H	Measures Affecting Competition
	I	Trade-Related Investment Measures
	J	Distribution Restrictions
	K	Restrictions On Post-Sales Services
	L	Subsidies (Excluding Export Subsidies Under P7)
	M	Government Procurement Restrictions
	N	Intellectual Property
	O	Rules Of Origin
Exports	P	Export-Related Measures

3. Designing Inclusive PTAs

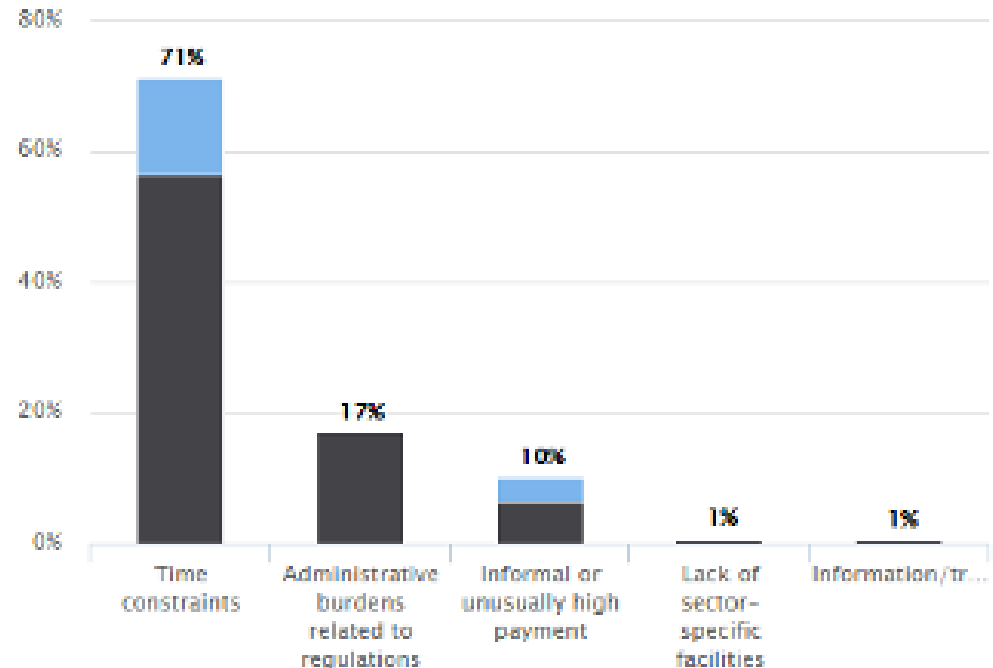
Non-tariff measures, survey data from industry

Types of procedural obstacles related to NTMs faced by exporters

Types of NTMs faced
Number of NTM cases : 207



POs related to selected NTMs
Number of PO cases : 195
POs related to all NTMs



Procedural obstacle occurring in :

Partner Home

3. Designing Inclusive PTAs

NTMs, standards

- Recent years have seen the rise of **public and private standards**
- Ostensibly, standards promote consumer protection, environmental and social goals
- Standards can entail:
 - Protectionist effects
 - Supply cost effects where the cost of compliance is shifted between local and foreign producers
 - Demand enhance effects, where e.g. increased safety trumps negative costs
 - Example: TPP negotiating countries showing less impact to poultry crisis in 2015 due to regulatory cooperation and higher standards
- Example from Asia:
 - The ASEAN Consultative Committee on Standards and Quality (ACCSQ) harmonizes national standards with international standards and implement mutual recognition arrangements (MRAs) on conformity assessment to achieve its goal of “One Standard, One Test, Accepted Everywhere”

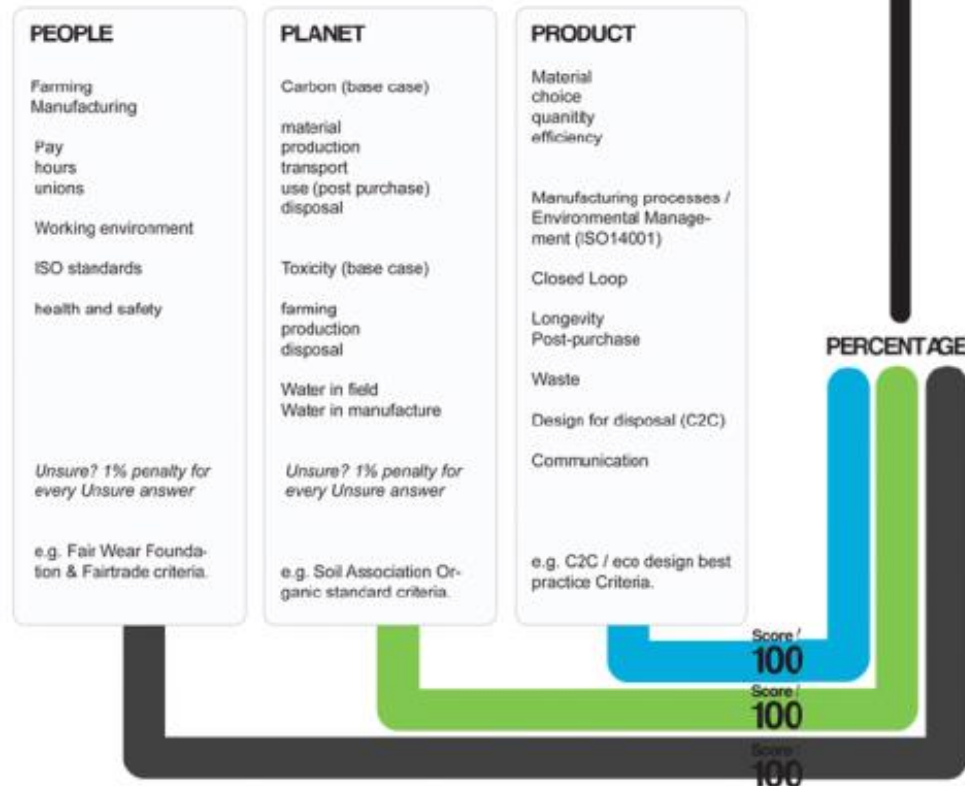
Ex. Rapanui's ecolabelling

CALCULATIONS

Proposed that multiple common variables in all fashion manufacture be included in a set number of category bins, their equality in value to sustainability overall debated and determined by experts.

Base cases can be established (Carbon trust has already done this work for a t-shirt) and scores allocated to each variable in a self-assessment questionnaire format.

These bins are sketch examples populated with basic variables to illustrate the concept.



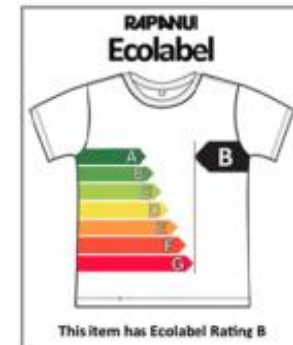
= MEAN SCORE

* OverRide

To prevent companies reaching a ceiling that requires reforming the system (with ratings added such as AA++ etc that undermine the integrity of the tool) - and to take into account of improved technology in time, Rapanui propose an override mechanism, will reduce the score by a percentage each year from 2015. Adding this to the the algorithm from day one will reduce long term cost, stimulate sustained improvement and create long-term stability of the policy rules.

= ECOLABEL RATING

90-100% A
80-90% B
70-80% C
60-70% D
50-60% E
40-50% F
30-40% G
20-30% U
10-20%
0-10%



SERVICES

3. Towards Inclusive Trade

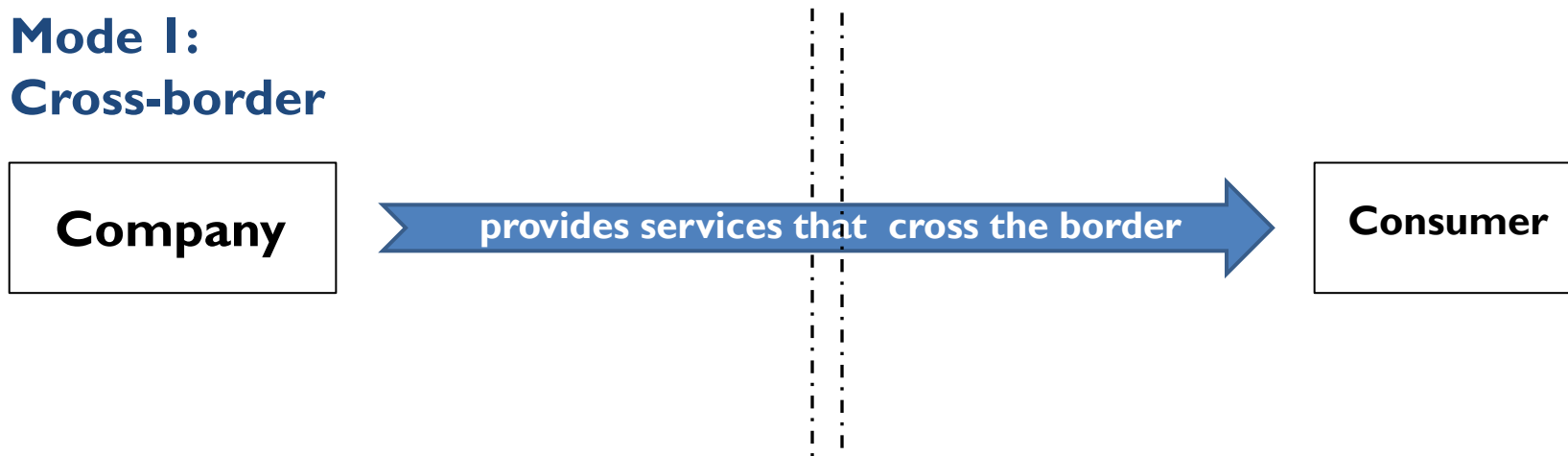
The core areas of coverage for PTAs: Trade in services

- Trade in services is unique and operates under different rules than trade in goods
- Recent years has seen a significant **servicification of trade** where the following intangible inputs add value at different parts of production:
 - transport
 - financial services
 - educational and training
 - insurance
 - legal
 - marketing, PR
 - and so on

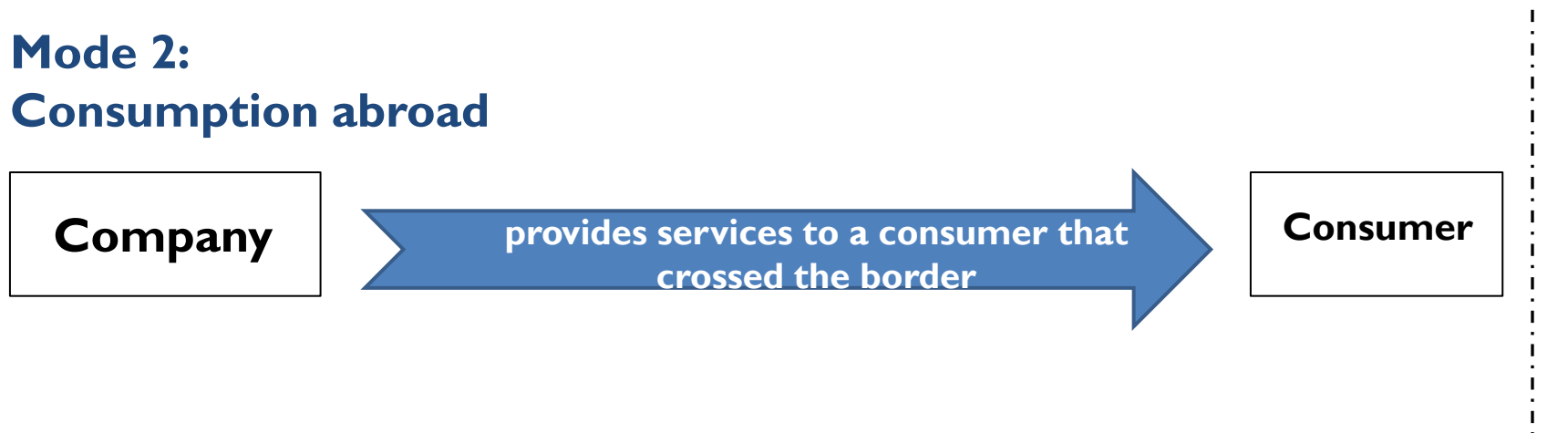
3. Designing Inclusive PTAs

The core areas of coverage for PTAs: Trade in services

Mode 1: Cross-border



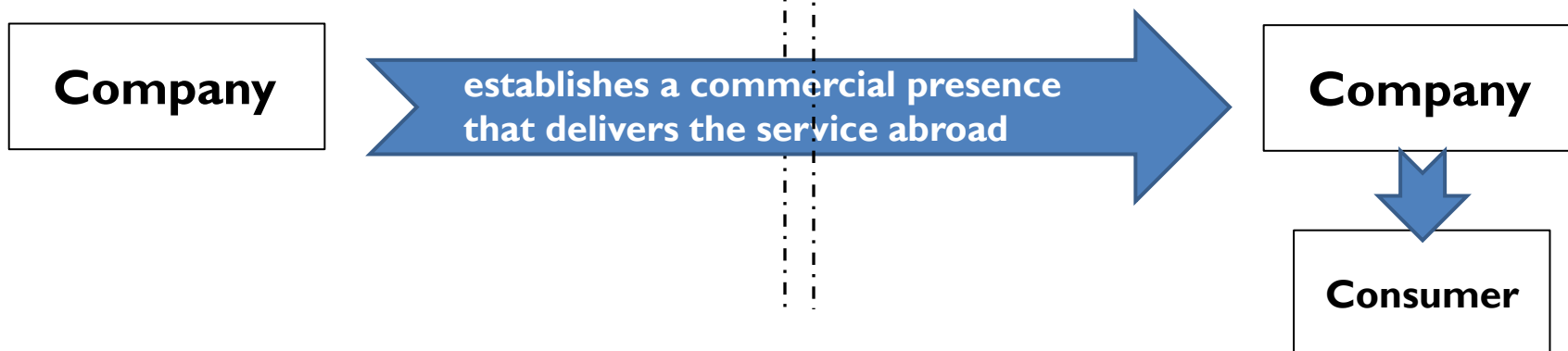
Mode 2: Consumption abroad



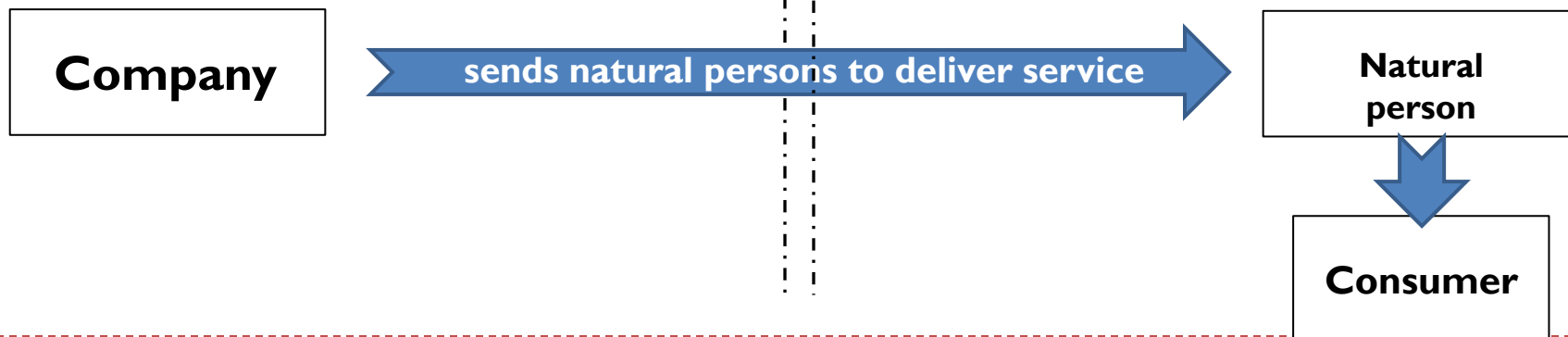
3. Designing Inclusive PTAs

The core areas of coverage for PTAs: Trade in services

Mode 3: Commercial presence



Mode 3: Presence of natural persons



3. Designing Inclusive PTAs

The core areas of coverage for PTAs: Trade in services

- Trade in goods controlled at the border while trade in services is controlled through national regulations
- This changes how commitments are approached in trade negotiations to e.g. positive listing of whole modes of service and sectors vs. negative lists and HS code based approach
- Trade in services is guided by GATS commitments
 - GATS introduces general obligations and disciplines, schedules for commitments and annexes on particular areas and issues
 - GATS commitments are categorized under sectors and modes

3. Designing Inclusive PTAs

The core areas of coverage for PTAs: Trade in services

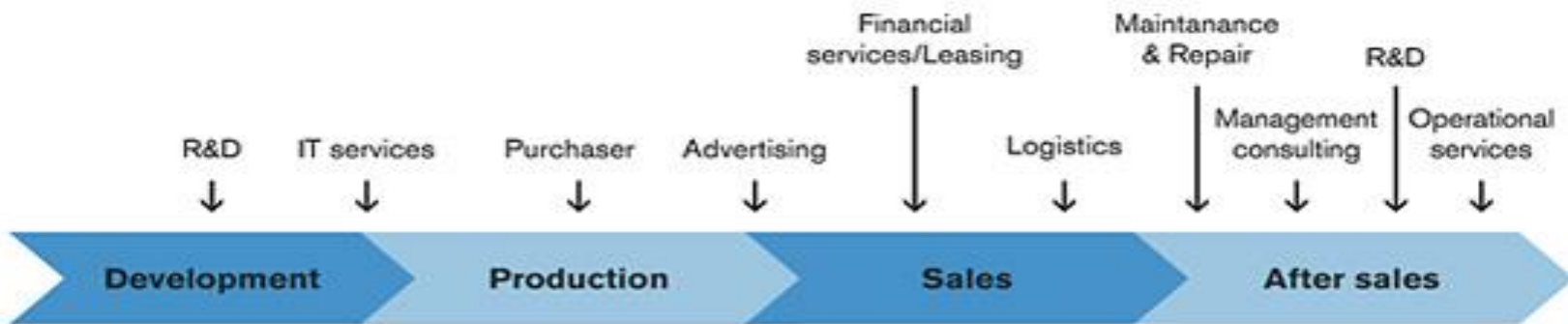
- Trade in services is particularly likely to have positive effects on inclusive growth
- Trade liberalization and freer movement generate increased demand targeting the bottom of the pyramid
 - Services open up opportunities in particular for low-skilled/unskilled labour
- Gender balance is different in service sectors than in goods sectors
 - In particular, trade changes tend to affect men and women differently
 - partly due to historical starting conditions and arbitrary reasons such as access to education distribution of sexes between sectors
 - partly due to differences in orientation
 - As a result, liberalization can create wealth for previously 'ignored' groups



3. Designing Inclusive PTAs

The core areas of coverage for PTAs Services and GVS

- Services play a major role in connecting to GVCs
 - Range from assembly to transport, R&D, marketing, management and beyond
 - Represent intangible and often hidden value added along the production chain



3. Designing Inclusive PTAs

Services and GVS, North-South implications

- North-South trade agreements correlate with engagement in GVCs
- Engagement in GVCs correlates with, e.g.
 - Technology transfer and spillovers
 - Productivity gains
 - Increasing sophistication in production
- In Asia, GVCs are driven largely by developed economies such as Japan and South-Korea
 - Bilateral treaties can support GVC integration
 - South-South treaties can be augmented by triangulated trade support in the form of e.g. Aid for Trade programmes



Designing inclusive PTAs

Services modalities

GATS like/hybrid

- ▶ Schedule positively list sectors etc in which commitments are undertaken
 - ▶ a la carte liberalization
- ▶ Locking in of regulatory status quo not guaranteed
- ▶ Transparency more limited
- ▶ Future nonconfirming measures- can be done omit or unbound
- ▶ No ratchet mechanism

Negative list

- ▶ Free trade and investment in all sectors etc assumed unless in reservation list
 - ▶ List it or lose it
- ▶ Locking in of regulatory status quo generally guaranteed
- ▶ Transparency generally higher
- ▶ Future nonconfirming measures – a la GATS unbound
- ▶ Many feature a ratchet mechanism

INVESTMENT

3. Designing Inclusive PTAs

Investment clauses

- Countries are increasingly incorporating investment clauses into trade agreements
 - Investment was traditionally dealt with in separate bilateral investment treaties that did not contain trade provisions
- The move from BITs to PTAs signifies a paradigm shift towards a more **holistic view of trade**, where investment is a key component
- Investment clauses expand the range of concessions and compromises a country can make in the trade context, i.e. ancillary to trade
- However, investment clauses can also be extraneous and pursued separately
 - such clauses are sometimes criticized for bargaining national markets in return for foreign market access
 - however, every trade deal operates through mutual commitments and concessions, the true issue is about what are the impacts of the chosen concessions



3. Designing Inclusive PTAs

Investment clauses

- The main objectives of investment clauses are to establish:
 - nondiscrimination of investment (MFN and national treatment)
 - minimum standard regarding the fair and equitable treatment of foreign investors
 - processes and obligations to avoid expropriation and to allow for compensation for any expropriation conducted



3. Designing Inclusive PTAs

Investment clauses

- Particular areas that investment clauses touch upon include:
 - Establishment of investments clauses, including procedures, licenses, quotas etc.
 - Nondiscrimination clauses that provide equal treatment to local and foreign investors within local processes
 - Allowed regulation and investor protection clauses, protecting investors from arbitrarily onerous procedures and expropriation
 - Dispute settlement clauses that aim to assist in the adjudication of disputes arising from the agreement, typically between investors and states
 - Promotion of investment and cooperation through various means, including harmonization of procedures and regulations and information sharing
-



3. Designing Inclusive PTAs

ISDS

- **Investor state disputes** (ISDS) have generated a wealth of discussion in recent years
 - In essence, ISDS clauses mean that a state agrees to adjudicate alleged breaches of investment clauses in the PTA under arbitration procedures
 - *The “court” is an ad hoc tribunal, typically with three arbitrators chosen from e.g. the WTO roster*
 - *The arbitrators decide on the case with final effect, and can award damages, costs and interests as they see appropriate*
 - *Their decision is directly enforceable and cannot be appealed as such*
 - **Rationale for including ISDS**
 - *Ensuring rule of law and proper treatment of investors in foreign jurisdictions*
 - *Lower investment risks by providing an enforcement measure for government commitments*
 - **Negative impacts:**
 - *Subjects government to legal risks and costs*
 - *Moral outrage and perceived pro-company bias*
-



TRADE FACILITATION

3. Designing Inclusive PTAs

Trade facilitation

- Trade facilitation has recently gathered renewed attention
 - often a “low-hanging fruit” and non-contentious area of negotiations
 - The key objective of trade facilitation clauses is to lower the trade costs between the parties through simplification and standardization of existing procedures
 - Trade facilitation is an easy target for multilateral agreements as every partner stands to gain equally for lower costs of doing business
-



3. Designing Inclusive PTAs

Trade facilitation

- The main modalities and clauses include:
 - single windows that provide all required services for e.g. export clearing
 - authorised trader systems and financial integration networks
 - border agency coordination requirements
 - transparency of information such as applicable procedures and forms
 - rule of law/predictability requirements including due promulgation of laws and regulations
 - nondiscrimination clauses
 - anti-corruption requirements
 - digital infrastructure
-



3. Designing Inclusive PTAs

Trade facilitation

- Trade facilitation is a form of soft collaboration
 - However, it has a decisively strong impact that effectively **multilateralizes preferences**
 - All exporters and importers benefit from lower trade costs and costs of doing business
 - As such, avoids the issues of trade diversion which can jeopardize gains in inclusivity
 - Implementing trade facilitation measures often requires multi-agency collaboration and wide reforms
 - E.g. customs officers, port authorities and banks for an export nexus
 - Essential institutional and legal reforms include e.g. e-commerce laws and the establishment of lead agencies that manage the efforts of multiple ministries
-



GOVERNMENT PROCUREMENT

3. Designing Inclusive PTAs

Government procurement

- Governments are responsible for significant purchases and account for large amounts of trade
 - they are also responsible for making the rules in their respective territory
 - Government procurement clauses aim to ensure that:
 - governments do not unfairly discriminate against foreign vendors
 - governments get the best value for money in each solicitation
 - Other policy objectives can include geographical and demographical redistribution, SME promotion and regional development
-



3. Designing Inclusive PTAs

Government procurement

- Thus far, PTAs that cover government procurement follows the WTO GPA model and lists sectors through **a positive list**
 - Government procurement provisions cover:
 - the types of local entities that are intended to be covered by the provisions – municipal to military
 - the types of foreign entities to whom bidding is opened – typically not significantly limited
 - the procurement thresholds after which provisions kick in
 - the entities and sectors that are exempted, such ministries of defense
 - **positive discrimination in favor of e.g. women and indigenous populations**
-



3. Designing Inclusive PTAs

Government procurement

- Government procurement rules benefit:
 - local governments by ensuring that they receive best value for money
 - local producers by ensuring fair competition within the country
 - foreign producers by ensuring equitable access to markets
 - foreign governments through reciprocity of rules and increased tax revenue from foreign dealings
 - Overall, reduces opportunities for protectionism and corruption and improves resource allocations
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INTELLECTUAL PROPERTY RIGHTS

3. Designing Inclusive PTAs

Intellectual property rights

- Since early 2000s', bilateral trade agreements with developed countries have contained clauses concerning intellectual property rights
 - patents, trademarks, copyrights, geographical indications etc.
- IPRs aim to incentivize innovation and R&D by granting temporary monopolies
- In the trade context, IPRs protect intangible investments from private appropriation
 - often more important for developed countries that originate patents, designs etc.



3. Designing Inclusive PTAs

Intellectual property rights

- Empirical evidence on causal effects of IPRs clauses is mixed
 - However, they are de facto MFN and apply to all equally
 - Avoid trade diversion issues
 - For developing countries, strong IPRs protection might not be beneficial in the short term as long as local capacity to originate is low
 - however, will become beneficial as the country develops capacity
 - Accordingly, one must carefully weight the dynamic v. static effects
 - IPRs clauses in one bilateral agreement are effectively made available to all parties as IPRs legislation does not allow for discrimination (consider e.g. patent registration)
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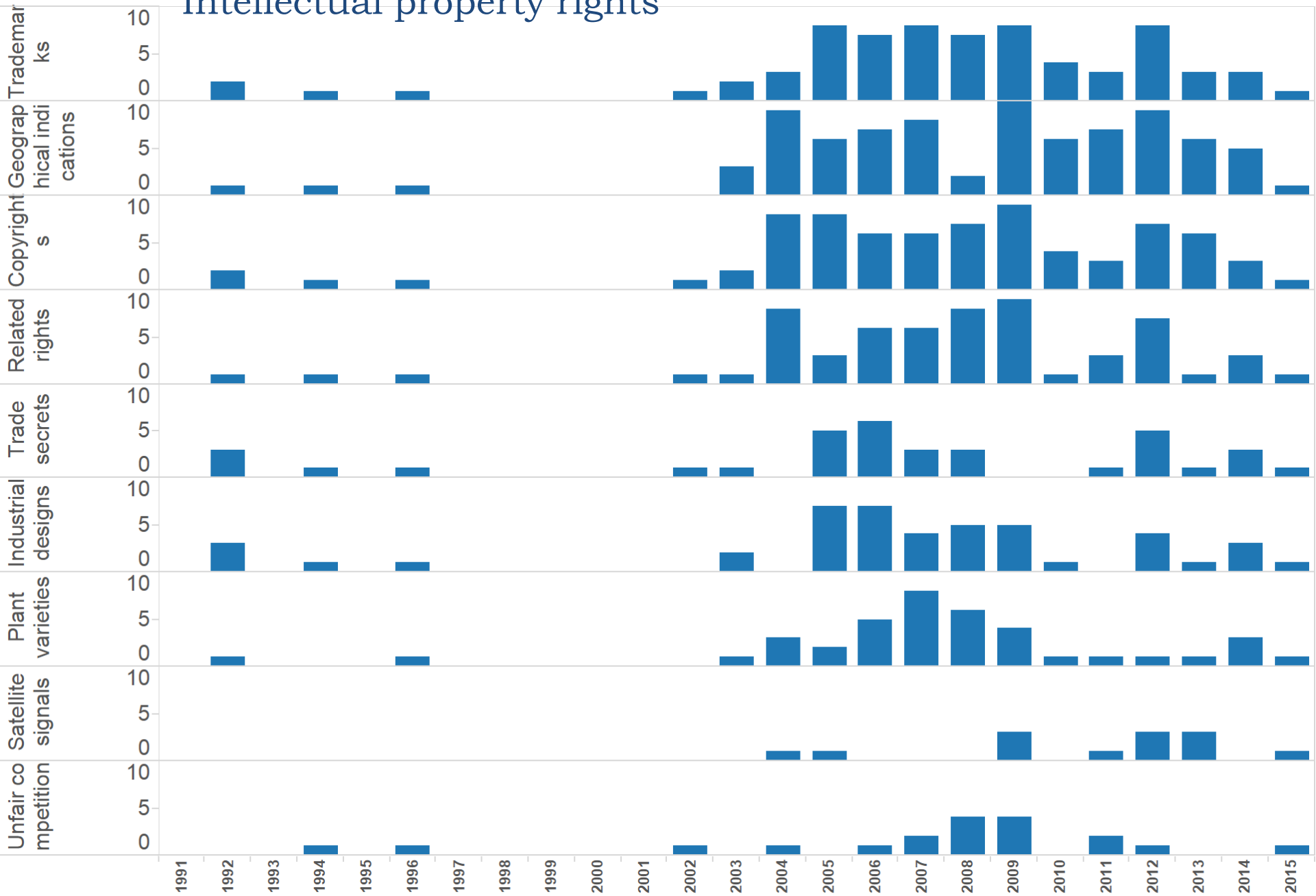
3. Designing Inclusive PTAs

Intellectual property rights

- Typical IPRs clauses include:
 - Clauses on each individual area of IPRs
 - Cooperation and harmonization of procedures
 - Reaffirming international obligations
 - MFN and nondiscrimination
 - Commitments to technology transfer and access to technology
 - Competition and consumer protection
 - Enforcement
 - Dispute settlement
 - Side-agreements such as Japan-Viet Nam Patent Prosecution Highway agreement further deepen collaboration on IPRs in connection to PTAs
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Intellectual property rights



LABOUR AND ENVIRONMENT

3. Designing Inclusive PTAs

Labor rights

- Free trade needs rules, in particular for the use of labor to avoid exploitation and races to the bottom
 - The inclusion of labor rights clauses in trade agreements began in earnest with NAFTA
 - These provisions are typically based on the various treaties and declarations of the International Labor Organization
 - The main objective of labor rights clauses is to ensure that trade is conducted under fair conditions throughout the chain of production
 - however, labor right clauses also correct unfair competition issues faced by firms, by e.g. eliminating slave labour
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3. Designing Inclusive PTAs

Labor rights

- In particular, labor rights clauses have been used to:
 - abolish child labor
 - abolish forced labor
 - eliminate discrimination in employment
 - protect the freedom of association
 - Labor rights are based on social values and may not always be directly transferable as easily as other clauses such as investment provisions
 - In modern consumer markets protecting labour rights correlates with increased consumer demand
 - As a result, GVCs in areas such as textiles are keen to adopt private and public standards
 - Note: Labour rights are not typically used to refer to the free movement of people or the recognition of professional credentials
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3. Designing Inclusive PTAs

Environment

- Modern trade entails significant environmental effects at every stage:
 - production
 - transportation
 - consumption
 - disposal
 - However, trade agreements do not usually contain provisions on environmental protection
 - Side agreements such as NAFTA's North American Agreement on Environmental Cooperation do
 - When environmental clauses are included they come in two varieties:
 - binding commitments
 - non-binding soft obligations such as goals and objectives
-



3. Designing Inclusive PTAs

Environment

- When binding commitments are included, they come in the form of:
 - obligations on adopting standards for products and processes
 - dispute resolution mechanisms for environmental disputes on e.g. spillages
 - technical assistance, capacity building and other forms of cooperation
- Environmental provisions may be very difficult to negotiate, due to both external and internal resistance
 - ongoing political debate on climate change, even after scientific verification
- Further difficulties arise from the fact that the costs of environmental protection is immediate and tangible, while the benefits are long-term and somewhat intangible

3. Designing Inclusive PTAs

Environment

- APEC has created a list of environmental traded goods that promote green growth and sustainability
 - List includes items such as boilers, flooring, turbines etc. which have positive environmental implications
- Applied tariff rates are dropped to 5% or less under a rapid schedule
- Preferential treatment of "green goods" such as solar panels provides positive incentives to apply, adapt and further develop environmentally friendly technologies

4. Conclusion

1. Modern PTAs cover a wide range of issues in addition to traditional tariffs on goods.
2. Identifying the scope for “deep” integration, as well as sectoral particularities, is key to making PTAs inclusive.
3. PTAs increasingly deal directly with development-related issues, like social and environmental standards. Negotiating mutually satisfactory approaches is challenging, but gains are possible.
4. Many different architectures are possible for preferential integration, using different degrees of formality and issue coverage. There is no single recipe.