

CAPACITY BUILDING ON “TRADE POLICY ANALYSIS”

Session 3: RTAs – Basic Concept

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Presentations structure

- ▣ GATT Rules**
- ▣ WTO Rules**
- ▣ Doha negotiation – transparency**
- ▣ Some facts on Asia-Pacific RTAs**
- ▣ Challenges and policy options**

BASIC GATT PRINCIPLES

- **MFN (Most Favoured Nation Treatment)**
- **TRADE TO BE REGULATED BY CUSTOMS DUTY ONLY**
- **DUTIES TO BE BOUND**
- **NATIONAL TREATMENT**

Non-discrimination: Basic principle

- **The most basic principle in the GATT/WTO system is that there should be free and open competition in trade through non-discrimination between imports from different countries and between imported goods and domestically produced goods.**
- **Legal manifestation through**
 - **MFN**
 - **National Treatment**

MFN

- **Non – discriminating clause**
- **All WTO members to be treated at par for:**
 - **Export control/policy**
 - **Import control/policy**
- **If give any preference to non-WTO member – it should be extended automatically and unconditionally to all members of WTO.**

Most Favoured Nations (MFN) treatment

- **It provides that there must not be any discrimination between different Member countries in the matter of treatment that a Member extends to them.**
- **Permitted exceptions**
 - **RTAs**
 - **Enabling Clause**

National treatment

- **It is a commitment by a country to treat foreign products in the same manner as they would treat domestic products**
 - **provided that the foreign products are “like” their domestic counterparts.**
- **Wines disputes**

Basic Principle: Mainly tariffs for import control

- Tariffs should be the only instrument for controlling trade.
- These tariffs should be **bound**.
- Exceptions
 - QRs on BOP grounds
 - Articles XX and XXI exceptions

GATT RULES

- Permitted under Article XXIV of GATT 1994.
- Exception to MFN treatment within the Rules subject to fulfillment of conditions:
 - items on which there is **substantial trade** to be covered
 - the phase out of duties should be **within a reasonable length of time**
 - it should **not have trade distorting effect** to non-RTA Parties.
- **Enabling Clause Decision – flexibility.**

WTO RULES

- **The text of Article XXIV became part of WTO Agreement.**
- **During Uruguay Round an understanding was reached on duties & other regulations of commerce, reasonable length of time, and procedure for RTA notification to WTO.**
- **Services: Article V of GATS allows for Economic Integration.**

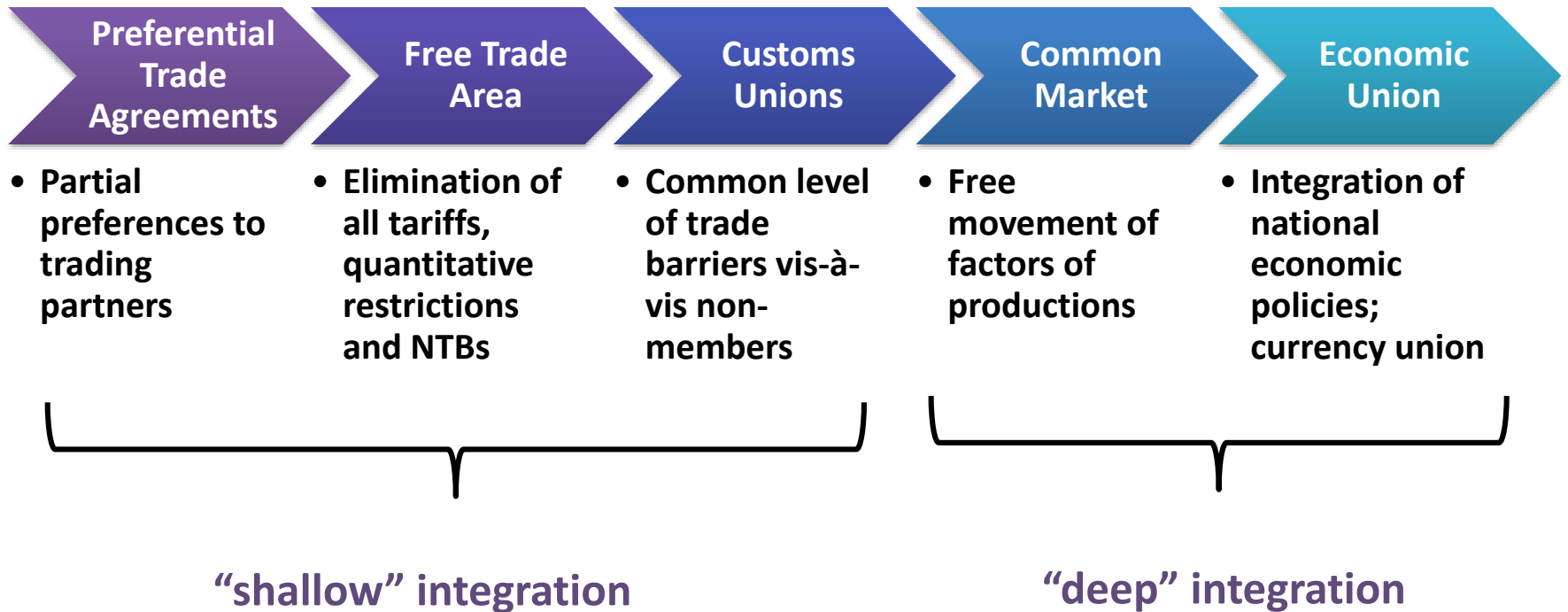
SAT - Test

- **Para 8(a) of Article XXIV of GATT.**
- **Trade value?**
- **Tariff lines?**
- **Both?**
- **Being discussed and debated in WTO but no clarity – no decision – neither in Uruguay Round nor in Doha Round.**

Reasonable Length

- **The reasonable length of time [para 5 (c)] should exceed 10 years only in exceptional cases.**
- **In cases where members believe that 10 years is insufficient, they shall provide a full explanation to the Commission for Trade in Goods of the need for a longer period.**

Types of trade agreements

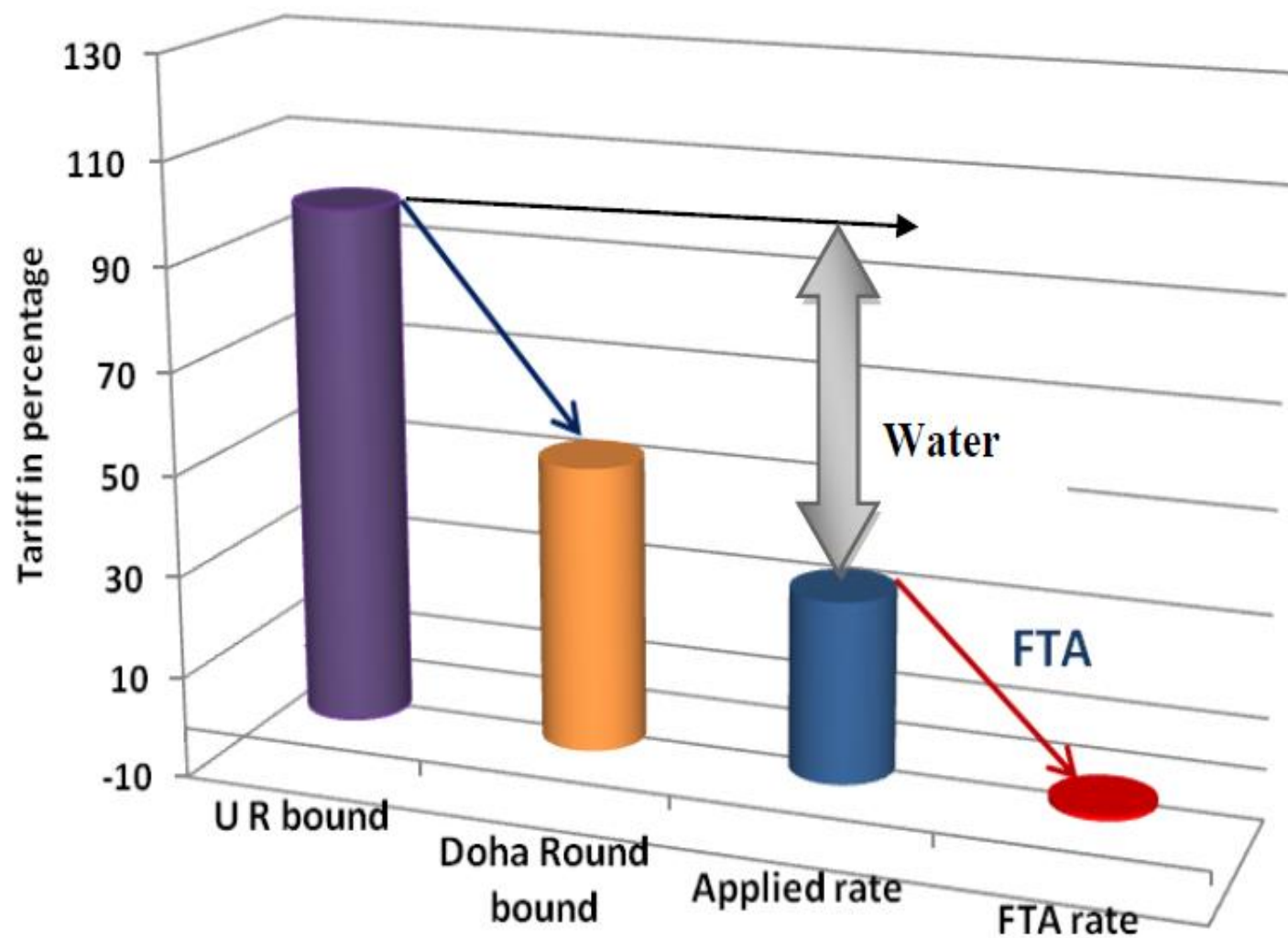


PTA Negotiations

- **Limited items and limited tariff concessions**
- **Negotiations are held in different Rounds**
- **Positive list approach**
- **Request is made to other Parties to give Tariff Preferences on items of export interest**
- **Other Party then offers – items & MoP**
- **Negotiations are then held on expanding the items & MoP**
- **Issue – reciprocity or non-reciprocity**

FTA

- **Negative/Sensitive/Exclusion List - SAT**
- **Decide on modality**
 - Time frame
 - Tracks of liberalisation
 - Trade/Tariff line coverage
- **Offer**
- **Negotiate – position of items & TLP**



Services in RTAs

- **Article V of GATS**
 - **substantial sectoral coverage (12 sectors – 160 subsectors);**
 - **Elimination of existing discriminatory measures, and/or prohibition of new or more discriminatory measures either at the entry into force or on the basis of reasonable time-frame.**
- **Flexibility for developing countries**
- **Facilitate trade between parties and to to raise the overall level of barriers to trade in services within the respective sectors or sub-sectors compared to the level applicable prior to such an agreement.**

Understanding provisions

When entering an RTA containing provisions on goods, a WTO Member should invoke one of the following provisions, and comply with the relevant conditions:

	RTA parties		
	Developed only	Developing only	Developing & developed
Trade in goods	GATT XXIV	GATT XXIV Enabling Clause	GATT XXIV
Trade in services	GATS V		GATS V

Doha Round - Rules negotiations

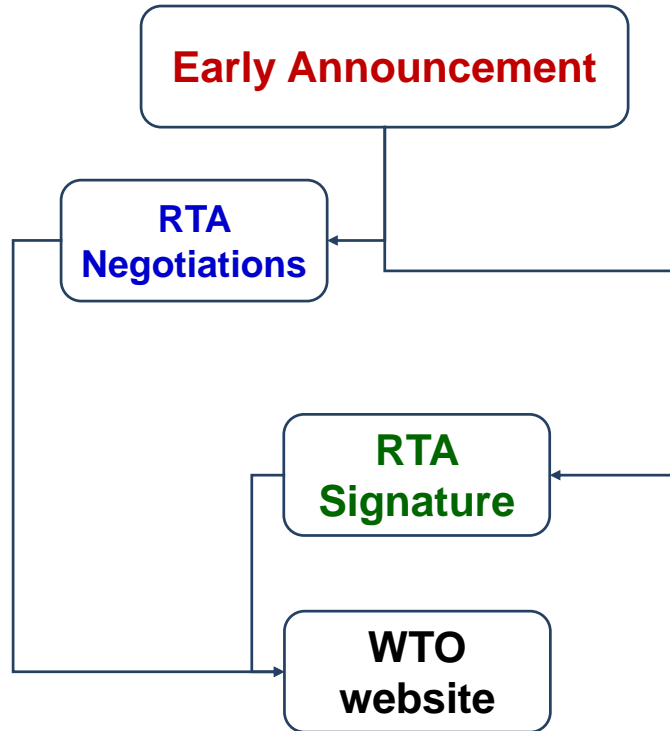
- **RTA transparency part of Doha Round negotiations.**
- A decision was taken on 14th December 2006 on Transparency mechanism for RTAs which was adopted by the General Council. It involved issues relating to:
 - Early announcement
 - Notification
 - Procedures to enhance transparency, etc.

Transparency mechanism

GATT Art. XXIV	GATS Art. V	Enabling Clause – Para. 2(c)
Transparency Mechanism for RTAs General Council's Decision of 14 December 2006 (WT/L/671) <i>(Provisional application pending conclusion of the Doha Round)</i>		

- Improves existing RTA transparency provisions
- Outlines specific guidelines for the provision of RTA data
- Charges the Secretariat with the preparation of a factual presentation of all RTAs notified to the WTO
- Requires the establishment of a public database on RTAs (paragraph 21).

Transparency mechanism



Early announcement:

- **Best endeavor to inform the WTO Secretariat of participation in new RTA negotiations**
- **Parties to a signed RTA are to inform the Secretariat and provide basic info on the RTA**
- **Such information will be posted on the WTO website and be periodically updated**

RTAs – other elements

- **Anti Dumping**
- **Safeguard**
 - **Global**
 - **Bilateral**
- **Duty drawback**
- **Rules of Origin**
- **Export taxes/licenses**
- **Import licenses**

Comprehensive Agreements

- **Cover goods, services, investments etc.**
- **Commitments on IPRs**
- **Commitments on GP**
- **TF & Customs Cooperation**
- **Mutual Recognition Agreements**
 - **Goods – for NTBs**
 - **Services – for MA**
- **Other Areas of cooperation – Tourism, Technology, R&D etc.**
- **Package – Single Undertaking or in staging.**

Exercise 1

- **How do you define SAT?**
 - **Tariff lines**
 - **Trade Value**
 - **Both**
- **Reasonable length of time?**
- **General rule vrs PSRs?**
- **Single undertaking or step by step approach?**

Exercise 2

- Can N-S FTAs like use enabling clause of GATT or it has to be under Article XXIV of GATT?
- How can parties renegotiate such FTAs that are already signed and implemented? Which components can be renegotiated?
- In FTA negotiations, what should be the base rate of tariff liberalisation: WTO bound or the applied MFN rates? If applied tariff rate, should the rate be on the date of imports or a fixed base rate with reference to a specific date?
- If applied MFN at $x\%$ was used as the base rate but later a party increased its MFN applied rate to $x+$, can the party change its base rate to $x+$?
- Are FTAs under enabling clause required to go to zero duty or can be even higher than zero? What about the SAT clause?

Why Regional Trading Arrangements?

- **A desire to obtain more secure, quick and preferential access to major markets.**
- **The pressures of globalisation, forcing firms and countries to seek efficiency through larger markets, increased competition, and access to foreign technologies and investment.**
- **Slow progress in Doha**
- **A desire to jog the multilateral system into faster and deeper action in selected areas by showing that the GATT/WTO was not the only game in town and by creating more powerful blocs that would operate within the GATT/WTO system.**
- **Investments flow – JVs**
- **Coverage of Services**
- **Mutual recognition of standards, laboratories and services**
- **Trade facilitation, Harmonisation of Customs procedures etc.**

Why Regional Trading Arrangements? (2)

- ▣ Governments' desire to maintain sovereignty by pooling it with others in areas of economic management where most nation-states are too small to act alone.**
- ▣ Governments' wish to bind themselves to better policies and to signal such bindings to domestic and foreign investors.**
- ▣ A desire to help neighbouring countries stabilizes and prospers, both for altruistic reasons and to avoid spillovers of unrest and population growth.**
- ▣ The fear of being left out while the rest of the world swept into regionalism, either because this would be actually harmful to the excluded countries or just because "if everyone else is doing it, shouldn't we?"**

Concerns

- Too many overlapping bilateral RTAs
- Preference erosion for LDCs
- Impacts on third parties not understood and low-income economies often excluded from “21st century” deals
- Weak capacity to utilize research in policymaking, weak negotiation and implementing capacity
- Under-utilization of existing agreements
- PTAs not going sufficiently into WTO+ and WTO-beyond areas
- No post-adjustment programmes

Policy Options

- **Negative List : Protection to industry**
- **Rules of Origin :**
 - **Circumvention/Deflection**
- **Trade Defence Measures : in cases of surge in imports**
- **Multiplicity of RTA partners – need for consistency**
- **Trade creation vis-à-vis Trade diversion**
- **Services Negotiations**
- **WTO plus obligations**

Selected sources

ESCAP:

- Asia-Pacific Trade and Investment Report
www.unescap.org/tid/ti_report2016/home.asp
- APTIAD Briefing Note 8 (August 2016)
<http://www.unescap.org/sites/default/files/APTIAD-brief-August2016.pdf>
- Asia-Pacific Trade and Investment Preferential Agreements Database – APTIAD:
www.unescap.org/tid/uptiad

OTHERS SOURCES:

- WTO, World Trade Report 2011
https://www.wto.org/english/res_e/publications_e/wtr11_e.htm
- WTO RTA database
https://www.wto.org/english/tratop_e/region_e/region_e.htm

Thank You