

CONDUCTING NEGOTIATIONS AND POST NEGOTIATION ISSUES

TRAINING COURSE ON
“ENVIRONMENTAL GOODS AND SERVICES NEGOTIATIONS”
10-11 AUGUST 2016

United Nations Conference Centre, Bangkok, Thailand

Rajan Sudesh Ratna

Economic Affairs Officer

Trade Policy and Analysis Section

Trade, Investment and Innovation Division

UNESCAP, Bangkok

ratna@un.org

Presentation structure

- * Recap
- * Conduct negotiations
- * Post negotiation issues
- * Some evidences
- * Way forward

RECAP

Recap: Pre-negotiation step

- * **Cost benefit analysis : Study**
 - * Patterns of trade
 - * Modeling
 - * Identify gains and losses
 - * Vulnerable sectors
 - * Regulatory audit
- * **Evaluation of maximum gain:**
 - * PTA or FTA, BIT or RTA, WTO, Autonomous?
- * **Wide consultations: stakeholders**
 - * Strengths and weakness
 - * Sensitive sectors
 - * Market access benefits
 - * Rules of Origin – Juridical or natural persons

Recap: Negotiation step

- * **Decide modalities first**
- * **Negotiations are held in different Rounds**
- * **Positive/Negative list approach**
- * **Request is made to other Parties on export interest sectors**
- * **Other Party then offers – items & level**
- * **Negotiations are then held on expanding the sectors and domestic regulations**

Negotiations Process



Framing the negotiations and issues

Analysis of the issues involved

Exploration of Stakeholders Interests

Establishing a Negotiating Strategy and start negotiation

Implementing the Agreement

CONDUCT NEGOTIATIONS



National Law and International influence

National law needs to be in conformity with international obligations

Care to be taken while making international commitments

Experience in negotiations a crucial factor

Negotiating skills

Networking with like-minded states

... International influence... 2

First stage of using trade positions

Identify national priority and objectives on the issue (SWOT)

Harmonise the laws across borders irrespective of the stage of development

Second stage

Stress on effective enforcement of harmonised laws in bilateral negotiations

Third stage

Seek multilateral redress at WTO/RTA Dispute Settlement

Key negotiating strategy

- * **Frame the issue for negotiations**
- * **Identify of win-win solutions**
- * **Identify potential supporters among domestic and foreign stakeholders**
- * **Outline message to potential supporters**
- * **Identify opposing stakeholders & the means for reducing or deflecting opposition**
- * **Establish the utility, legitimacy and fairness of proposed outcome**

Structure

- * **Definitional and legal issues?**
- * **Market access**
 - * **WTO Doha Round Negotiations**
 - * **FTA negotiations**
- * **Goods or services – different approaches**
- * **Opportunities and Challenges**

Negotiating issues

- * How do you define what is “environmental goods or services”?**
- * Should you look at national perspective or global perspective?**
- * What is a ‘win-win-win’ situation?**
- * Is import always bad?**

Negotiations

- * **Goods**
 - * Reduction/elimination of tariffs and non-tariffs
- * **Services**
 - * Market access
 - * Domestic Regulation
 - * Mutual Recognition
- * **Investment**
- * **Technology Transfer**

Negotiations in Doha

- * **The negotiations focus on three main themes:**
 - * **the relationship between the WTO rules and multilateral environmental agreements (MEAs)**
 - * **the collaboration between the WTO and MEA secretariats; and the elimination of tariffs and non-tariff barriers on environmental goods and services**
- * **These discussions take place in “Special Sessions” of the Committee on Trade and Environment.**

Doha Mandate

Paragraph 31 (iii) of the Doha Ministerial Declaration calls for negotiations on "the reduction or, as appropriate, elimination of tariff and non-tariff barriers to environmental goods and services", with a view to enhancing the mutual supportiveness of trade and environment.

Non- tariff measures on env. goods

- * **Chairman of CTESS in March 2010 reported:**
 - * *'16. With respect to non-tariff barriers, there are some proposals on the table, relating in particular to the harmonization of standards on organic products and energy efficient goods. Some examples of NTBs were also mentioned in the context of the September 2009 workshop, including with respect to renewable energy products in the wind and solar sectors; these examples included: difficulty to obtain working visa; business licensing and registration; local content requirements; lengthy procedures at point of entry; non recognition of testing standards; and transiting procedures. Such examples could be reverted to in future discussions, and Members' constructive ideas and proposals will be required to make progress.'*

Negotiating dilemma

- **No fixed definition of “Environmental goods and Services”**
- **Avoid inverted duty structure:**
 - Certification of only end product as being environmentally benign would provide tariff benefits to these products but in long run open up case for tariff reduction for all its sub-components/components and raw materials thereof as otherwise inverted tariff structures may arise.
 - This would weaken the position to negotiate for sub-components and materials which are of polluting nature but go in for manufacture of environment friendly end products.
- **Identifying ex-outs**
- **Identifying dual use risk**
- **Possibility to monitor end use:**
 - Is it possible to certify that an environmental product will only be used for environmental purposes (i.e., actual user)? E.g. many of the renewable energy products , such as mechanical devices like AC generators, steam generators and controlling instruments are dual/multiple purpose devices which can even be used where conventional fuels are adopted for power energy/applications.
 - Are Customs in developing countries equipped?

Negotiating dilemma (2)

- **Technology Transfer & Investment:**
 - Most environment goods are of export interest to developed countries. If developed countries get duty-free market access to the developing country, why will the investments come to the developing countries and how will TOT take place? If there is no mechanism for TOT, in the long run the developing countries may become dependent on the developed countries for their imports and the major players may create a monopolistic situation that is neither warranted nor desirable.

Green Goods Initiative

- * In July 2014, 14 WTO members (Australia, Canada, China, Costa Rica, Taiwan Province of China, the European Union, Hong Kong, China; Japan, Republic of Korea, New Zealand, Norway, Switzerland, Singapore, USA, Israel, Turkey and Iceland) launched negotiations to liberalise global trade in environmental goods.
- * This 'green goods initiative' aims to remove barriers to trade and investment in 'green' goods, services and technologies.
- * At the first stage the talks are focussing on removing tariffs on a list of 54 products on which the member countries of APEC (Asia-Pacific Economic Cooperation) have agreed to reduce their tariffs to 5% or less by 2015, and a broad range of additional products.

Green Goods Initiative (2)

- * The 15th round of the Environmental Goods Agreement negotiations took place from 25th to 29th July 2016 in Geneva. The round represented an important milestone in the negotiation process, building on the commitment expressed by G20 Trade Ministers on 10 July 2016 in Shanghai: *"G20 EGA participants recognize the substantial progress made to date in the negotiations on an Environmental Goods Agreement, and aim to conclude, using best efforts, an ambitious, future-oriented EGA that seeks to eliminate tariffs on a broad range of environmental goods by an EGA Ministerial meeting to be held by the end of 2016, having achieved a landing zone by the G-20 Summit in September in Hangzhou, after finding effective ways to address the core concerns of participants."*
- * During the round, the Chair of EGA talks tabled a proposal for such 'landing zones' in line with the G20 instructions. The proposal lists 303 products (identified by Customs Codes) further narrowing down the previous Chair's list of December 2015.

Services, Investments and ToT

- * Not much progress in WTO nor in FTAs
- * Important sectors:
 - * Environmental services (Sewage, Refuse disposal, Sanitation and similar services, Other)
 - * Professional Services (Architectural services, Urban planning and landscape architectural services, Other)
 - * Research and development services
 - * Other business services (Building-cleaning services)

Services, Investments and ToT (2)

- * **Market access**
 - * **Mode 1**
 - * **Mode 3**
 - * **Mode 4**
- * **MRAs**
- * **Liberalizing sectors for investments – attract FDIs**
- * **Technical assistance and capacity building.**

Approaches

- * WTO (Bound, different than actual)
 - * Goods – tariff and non tariff
 - * Services – market access and domestic regulations
- * FTAs (WTO bound plus)
 - * Goods – tariff (duty free), non-tariff
 - * Services – market access and domestic regulations
 - * Transfer of technology - investment
 - * Technical Assistance

Implementation

- * **Schedules to be drawn:**
 - * **WTO**
 - * **FTAs**
- * **Binding commitments**
- * **Violation - subject to disputes**
- * **Ratification:**
 - * **Domestic policy changes**
- * **Implementation**

Monitoring and enforcement

- * **Role of coordinating Ministry is important**
- * **Ratification**
- * **Ensure that all the domestic legislations are in place before the implementation date**
- * **Transparency: notify to partners**
- * **Preparing domestic industry as well as other stakeholders**
- * **Monitor progress – annual or as per schedule and re-notify**
- * **Cases of surge in imports - monitor**

SOME EVIDENCES

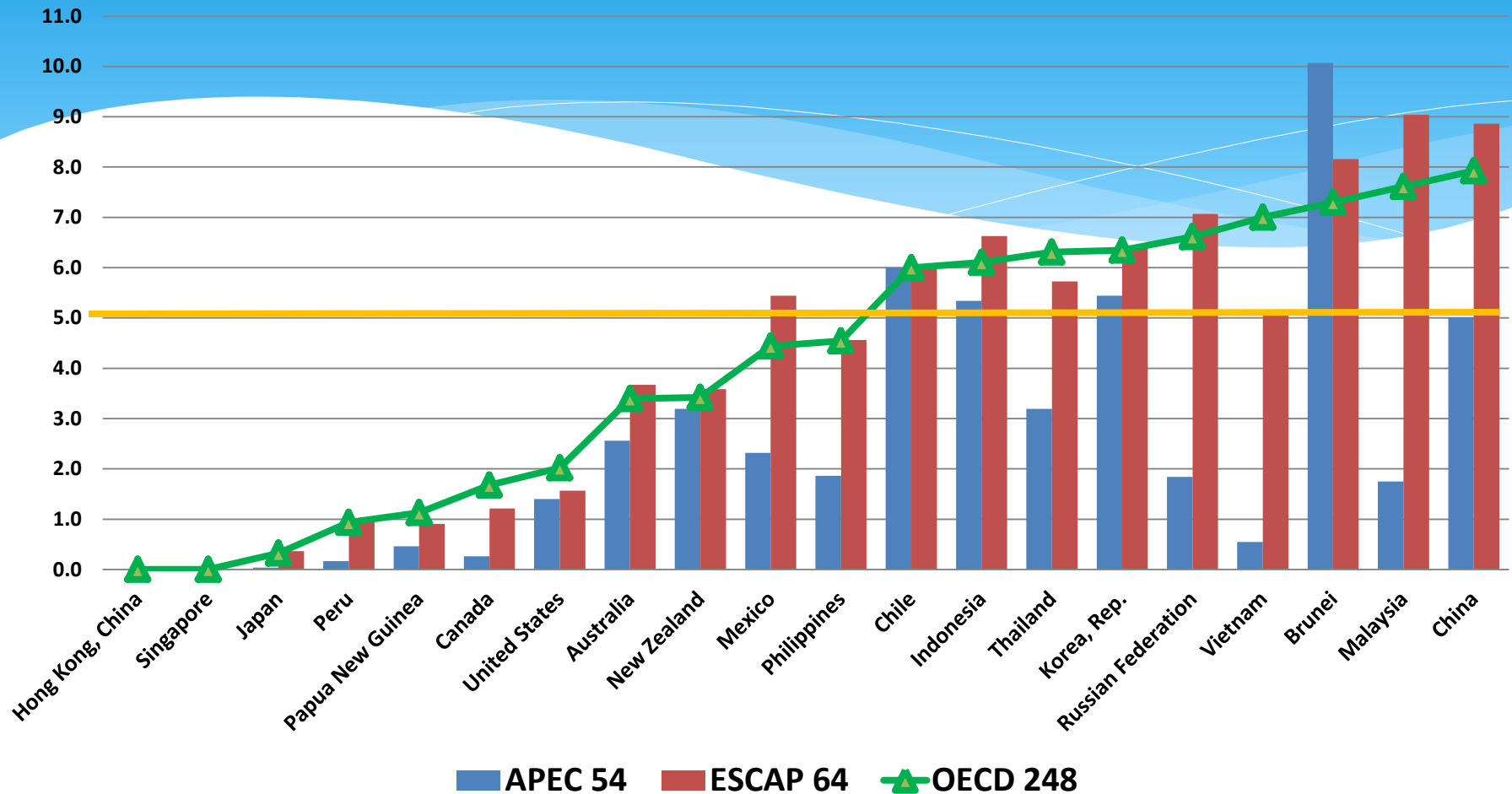
Goods - Lists

- * **Environmental Goods and Services:**
 - * OECD (132)
 - * WTO (480, 153, request list)
 - * APEC (54)
- **Climate Friendly List**
 - * World Bank (43)
- * **Climate Smart Goods and Technologies**
 - * UNESCAP (64)

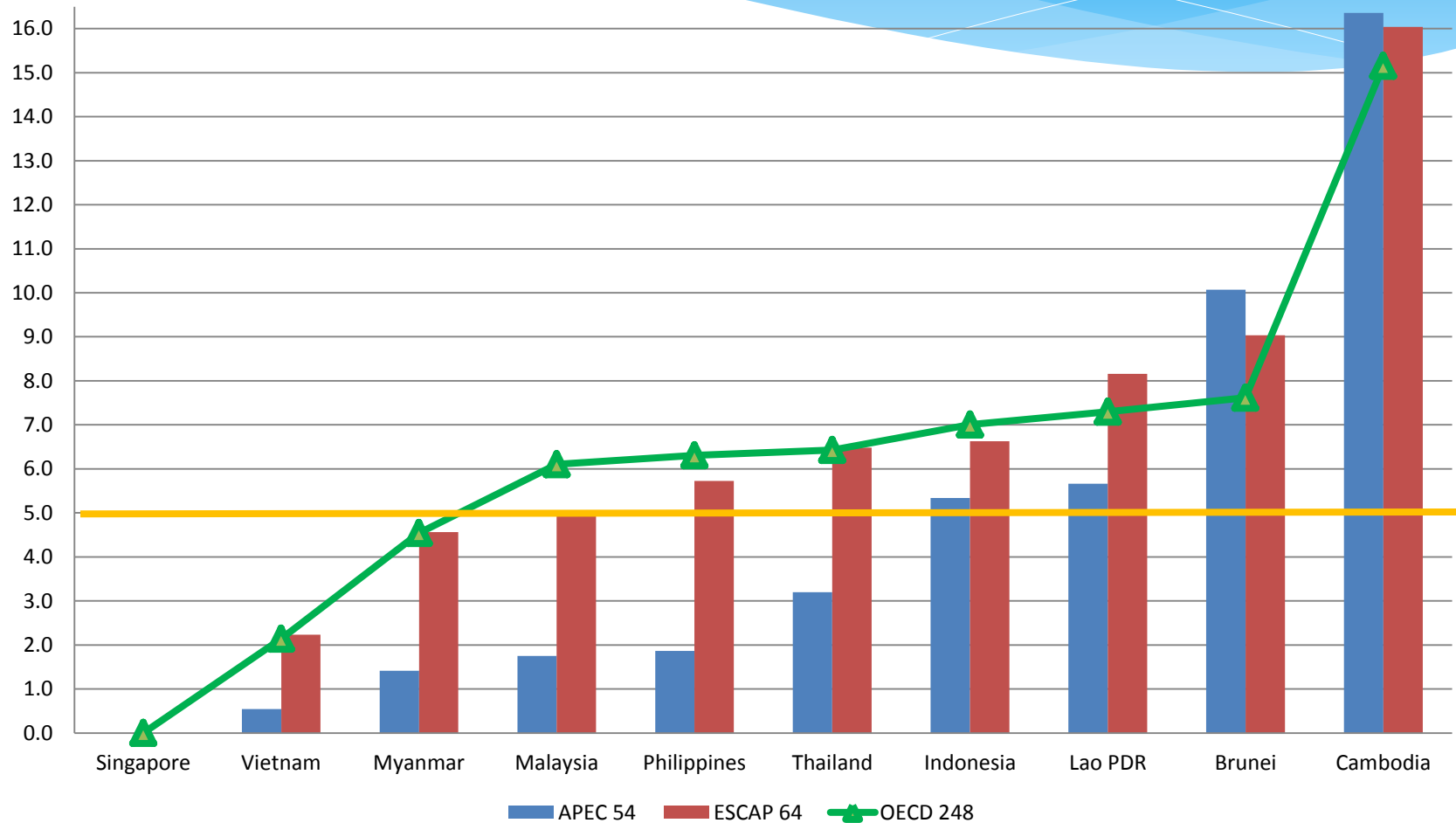
Tariffs

- * Doha Round: Reduction and elimination of EGS being discussed.
- * APEC list of 54 items: Autonomously decided to bring duties to 5% level.
- * In various PTAs/FTAs countries are undertaking commitments to eliminate duties on substantially covered items including environmental goods.
- * NTBs and transfer of technology is an issue....

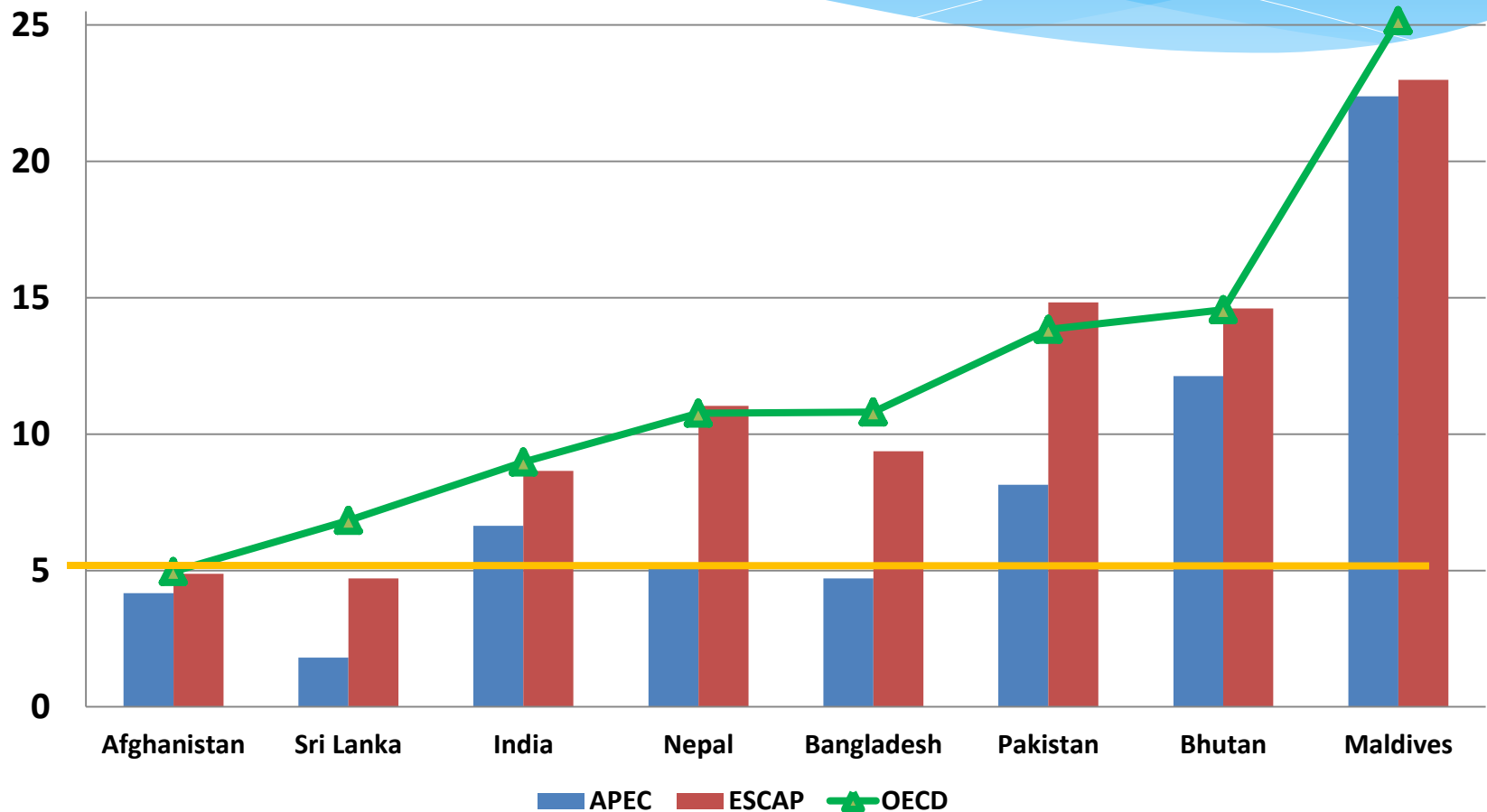
APEC Average MFN Tariff



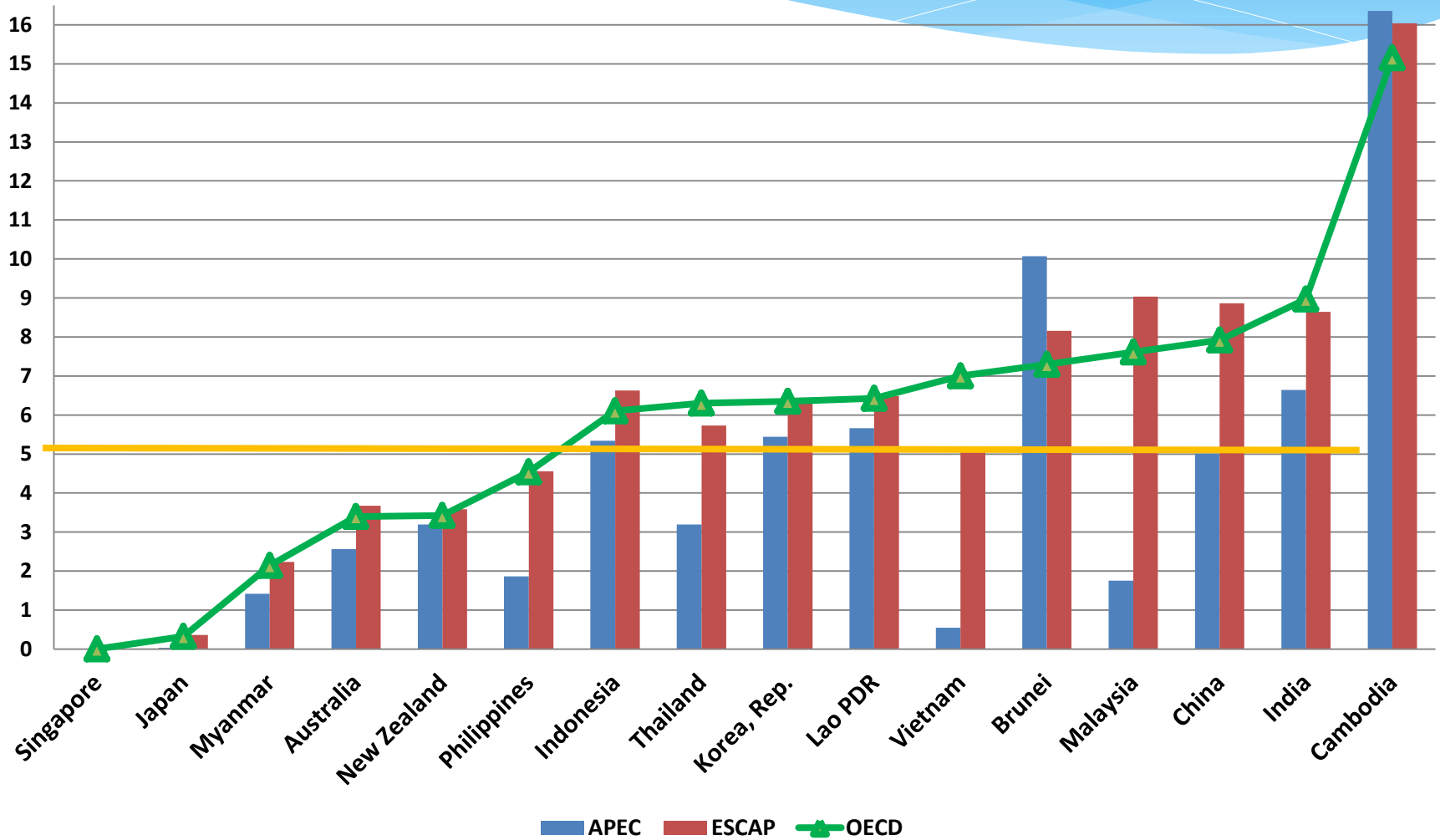
ASEAN Average MFN Tariff



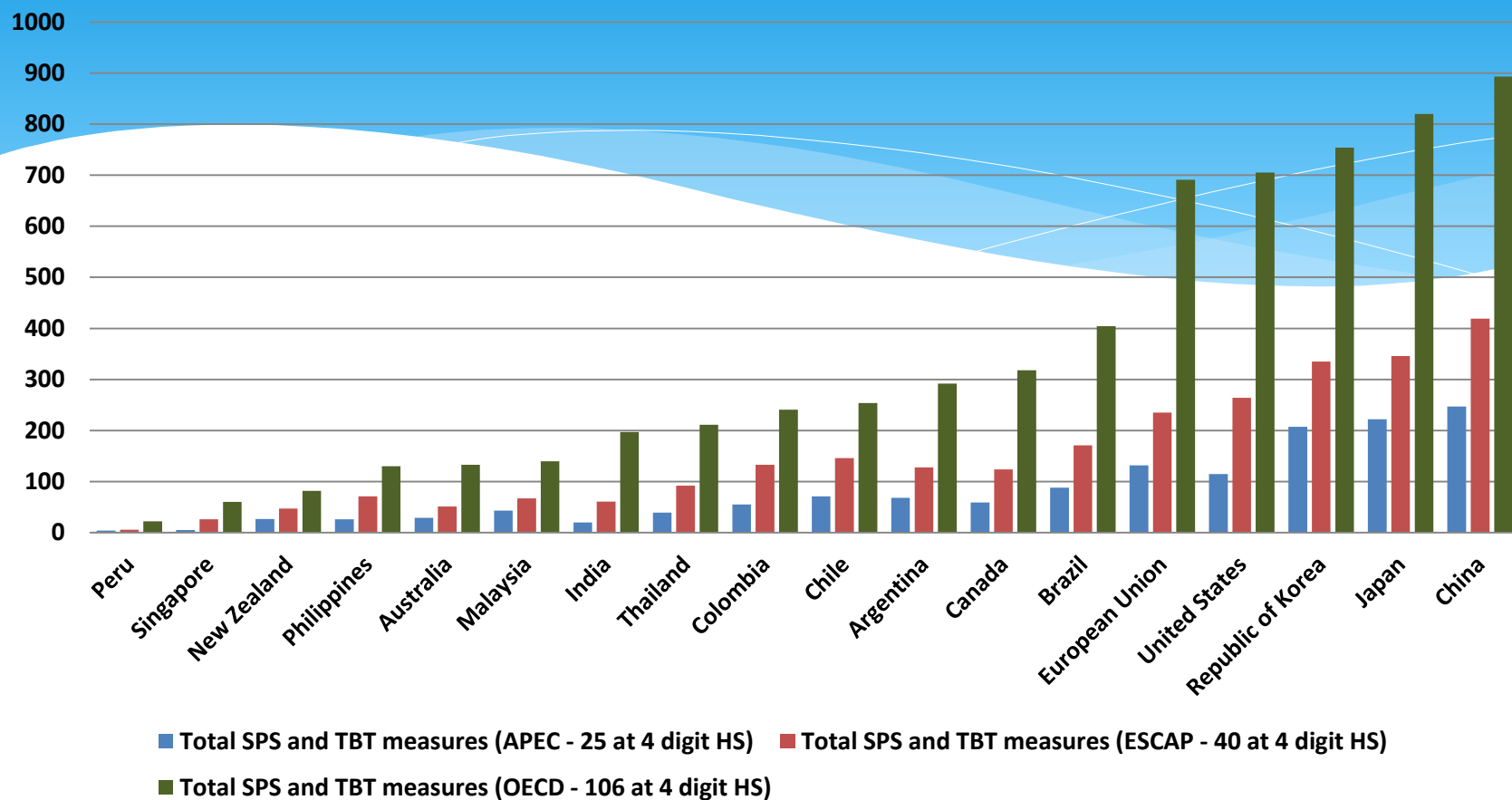
SAARC Average MFN Tariff



RCEP Average MFN Tariff



WTO: Notified SPS and TBT measures



Source: Compiled on the basis of Centre for WTO Studies, India database on SPS and TBT

WAY FORWARD

The background is a solid blue gradient. At the bottom, there is a white wavy line that separates the blue area from a white area below it. The wavy line has several peaks and valleys, creating a sense of movement or a horizon line.

Directly and indirectly trade-related SDGs



- * The SDGs put significant emphasis on the role that trade can play in promoting sustainable development. There are direct references to WTO activities in many of the SDGs, including:
 - * **SDG 2** on hunger, food security, nutrition and sustainable agriculture
 - * **SDG 3** on healthy lives and wellbeing
 - * **SDG 8** on economic growth, employment and work
 - * **SDG 10** on inequalities within and among countries
 - * **SDG 14** on oceans, seas, and marine resources.
- * **SDG 17** on strengthening the global partnership for sustainable development contains a separate section on trade, including a commitment to promoting a “universal, rules-based, open, non-discriminatory and equitable multilateral trading system” under the WTO.

Lessons

- * Tremendous potential exist for production and export of CSGT in Asia Pacific.
- * Even MFN tariffs on these items are lower.
- * Countries are liberalizing these items in PTAs/FTAs. But needs to be established if this is as a conscious policy to liberalise CSGT or in general.
- * Non-tariff issues are not yet addressed, especially standards maintained due to environmental reasons.
- * Technology transfer on these items need to be facilitated as market access is not the only solution.

Way forward...

- * Asia Pacific need to take steps to reduce emissions in GHG emissions without compromising on its development objectives.
- * Technology transfer and FDI inflows: especially from China, Japan and RoK who are leaders in Asia Pacific.
- * Regional or sub-regional developing/setting of environmental standards or labeling.
- * South-South cooperation Agreement?

THANK YOU

