

# TRAINING COURSE ON TRADE IN SERVICES NEGOTIATIONS

31 March-1 April 2016

Session 2: Features of preferential liberalization in  
services trade (Economic Integration Agreements)

Dr. Mia Mikic, Chief, TPAS, TIID, ESCAP

[mikic@un.org](mailto:mikic@un.org)

# Basic WTO principles (reminder)

## MFN (Most Favoured-Nation) Treatment

[TRADE TO BE REGULATED BY CUSTOMS DUTY ONLY]

[DUTIES TO BE BOUND]

## NT 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.

# Regional Trade Agreements

Exception to MFN principle

GATT: Article XXIV and Enabling Clause

GATS: Article V

TRIPS: None.

GATT: PTA, FTA, Customs Union

GATS: Economic Integration Agreements

Goods and Services both can be covered under one single agreement in RTAs (CECA, EPA, CEPA etc.)

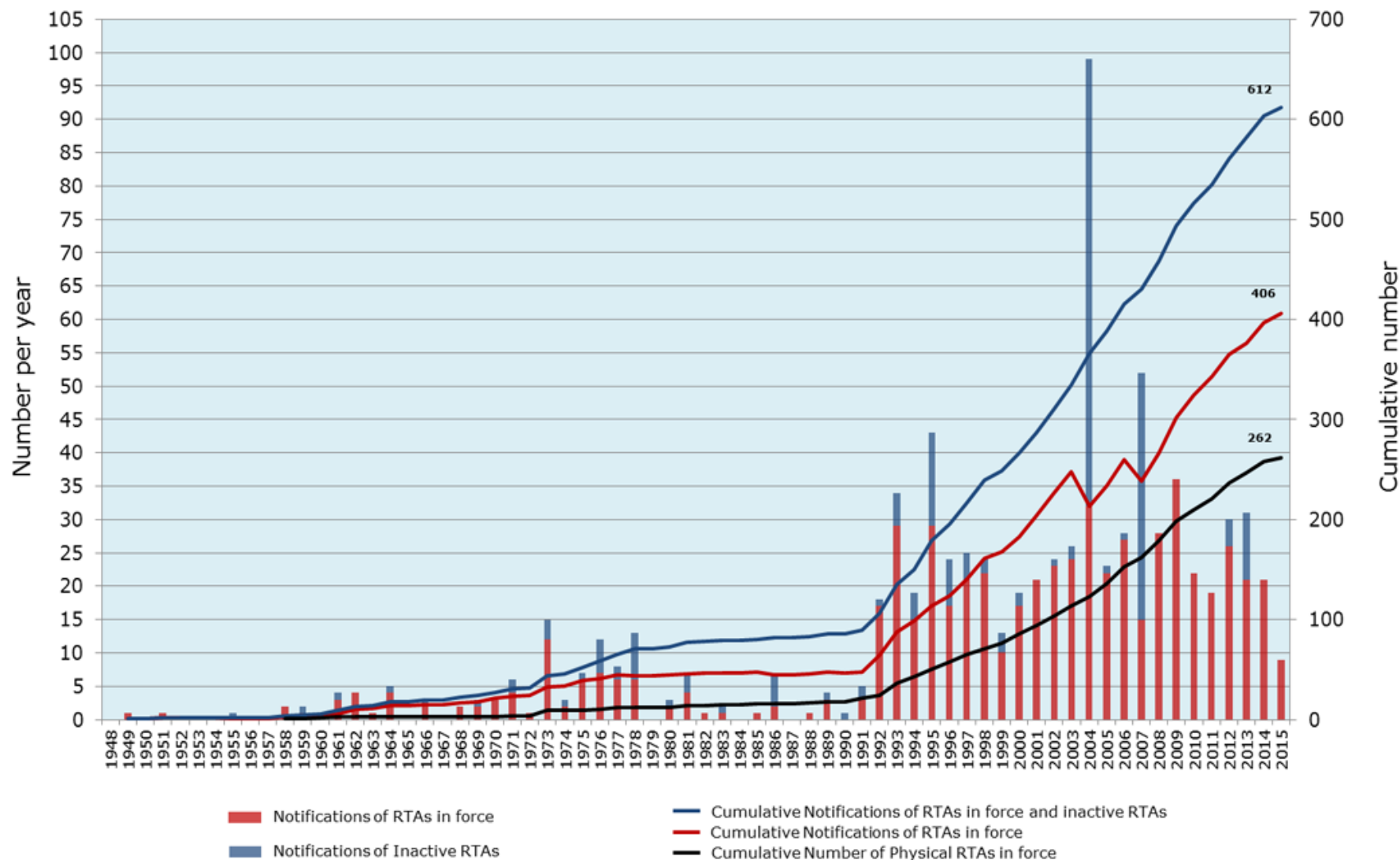
# WTO facts

As of 2015, more than 600 notifications of RTAs (counting goods, services and accessions separately) had been received by the GATT/WTO. Of these, 426 notifications were made under Article XXIV of the GATT 1947 or GATT 1994; 39 under the Enabling Clause; and 147 under Article V of the GATS. Of these 612 RTAs, 406 were in force.

The overall number of RTAs in force has been increasing steadily, a trend likely to be strengthened by the many RTAs currently under negotiations. Of these RTAs, Free Trade Agreements (FTAs) and partial scope agreements account for 90%, while customs unions account for 10%.

In Asia-Pacific there are 155 agreements of which 61 cover Services.

## Evolution of Regional Trade Agreements in the world, 1948-2015



Note: Notifications of RTAs: goods, services & accessions to an RTA are counted separately. Physical RTAs: goods, services & accessions to an RTA are counted together.  
Source: WTO Secretariat.

# Trade policy for goods vs. trade policy for services

Rules on trade in services differ from those on trade in goods:

- ▶ Unlike in goods, positive listing of sectors and modes while undertaking commitments.
- ▶ In goods - control is through border measures (e.g. tariffs), and for services control is through regulations – no tariffs (remember how services are supplied? )

# Memo: Barriers to trade in services

- Restrictions are with the importing country- behind the border barriers, many in form of G regulations (which are often prudent and necessary; examples?)
- Concern exists when regulations are applied in a discriminatory and unnecessarily restrictive manner that limit market access; many come in form of restricting FDI (mode 3) or temporary movement of providers and consumers of services (modes 4 and 2).
- Are there restrictions on mode 1?
- Are there restrictions on exports?



# Effects of barriers

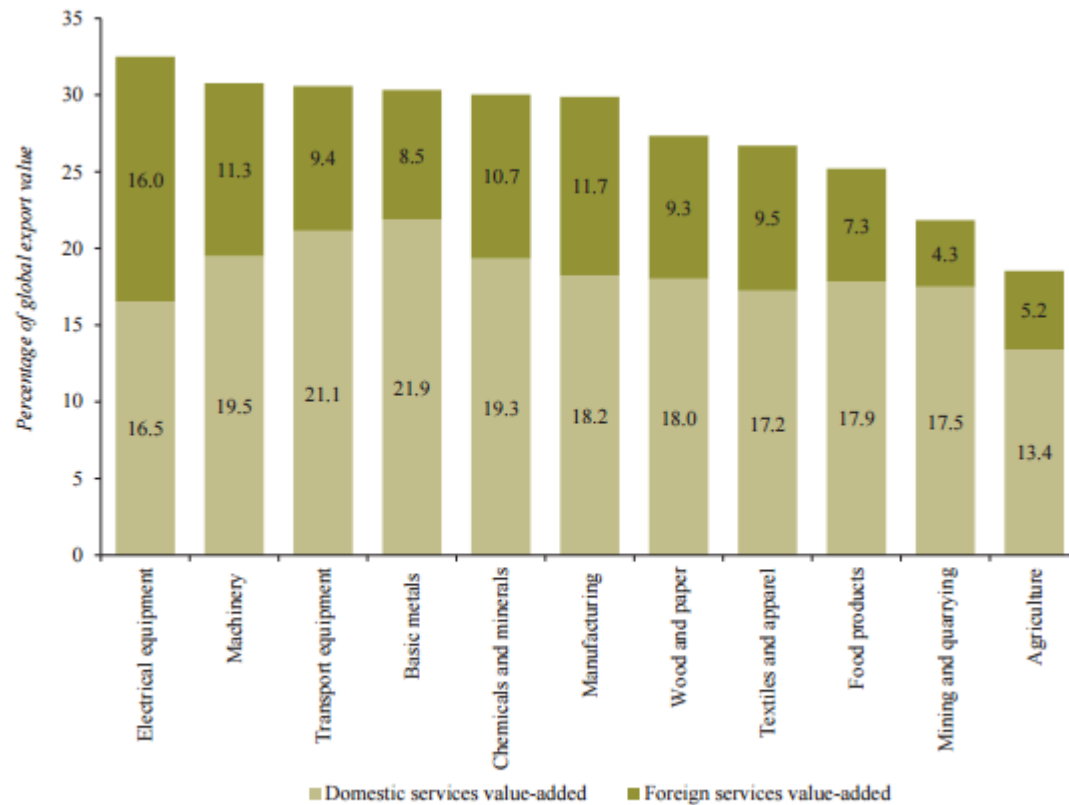
Traditional resource allocation and scale effects

More recent barriers (related to digital trade and data flows) include forced “localization” of trade (e.g. requiring locally based servers or no transfer of own data)

- has to be weighted against need to protect privacy for citizens, security, and similar

When thinking of barriers, think about role of services as intermediates in industrial and agricultural exports, not only about services as final (consumer) “good”

# Services content in gross exports of Asia-Pacific economies, by industrial sector, 2009



Source: ESCAP calculation based on the OECD-WTO TiVA database (accessed in March 2015).

Source: APTIR 2015

# Services in RTAs: Legal aspects

## Article V of GATS

- Article V:1: 'This Agreement shall not prevent any of its Members from being a party to or entering into an agreement liberalizing trade in services between or among the parties to such an agreement, provided that such an agreement: (a) has substantial sectoral coverage, and (b) provides for the absence or elimination of substantially all discrimination, in the sense of Article XVII ...'
- 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 not 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 to non-Parties.

# FTAs/RTAs gaining importance

- Slow progress of multilateral negotiations led to proliferation of FTAs /RTAs
- New age FTAs includes services along with liberalization of goods, investment, trade facilitation
- WTO plus provisions – special provisions for Mode 4, cooperation and capacity building, mutual recognition agreements
- FTAs/RTAs are north-north, north-south and south-south
- Expected to increase inter-regional trade
- Different scheduling approach from GATS: positive and negative list
- More comprehensive than WTO – government procurement, standards

# So how many agreements on services are there?

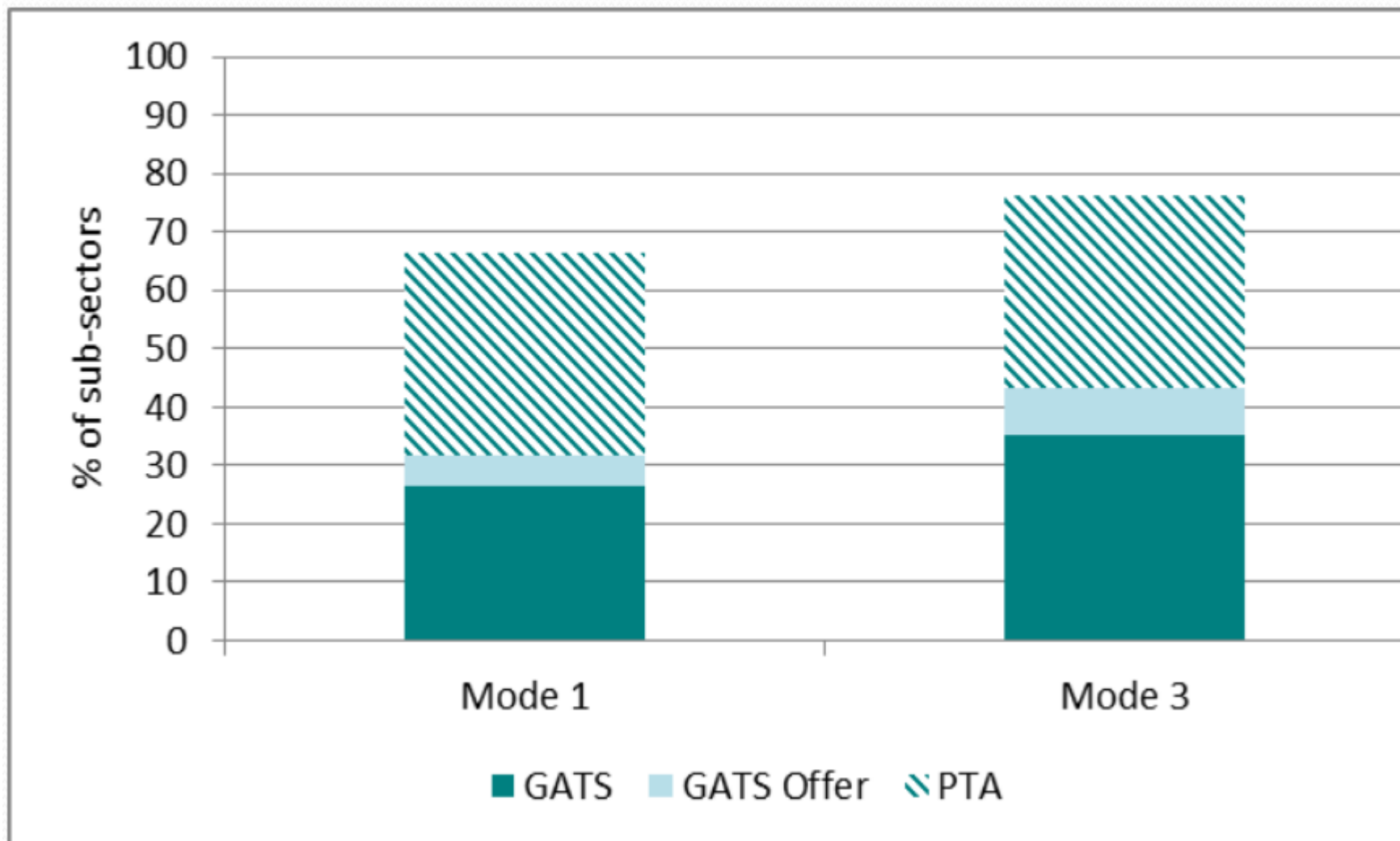
The following table shows all RTAs in force, sorted by Type of Agreement as of 29 March 2016):

	Enabling clause	GATS Art. V	GATT Art. XXIV	Grand total
Customs Union	8		11	19
Customs Union - Accession	1		9	10
Economic Integration Agreement		133		133
Economic Integration Agreement - Accession		6		6
Free Trade Agreement	15		223	238
Free Trade Agreement - Accession	0		2	2
Partial Scope Agreement	16			16
Partial Scope Agreement - Accession	1			1
Grand total	41	139	245	425

and physical RTAs in force:

Goods	138
Services	1
Goods and Services	132
Grand total	271

# Key Trends: Sectoral Coverage

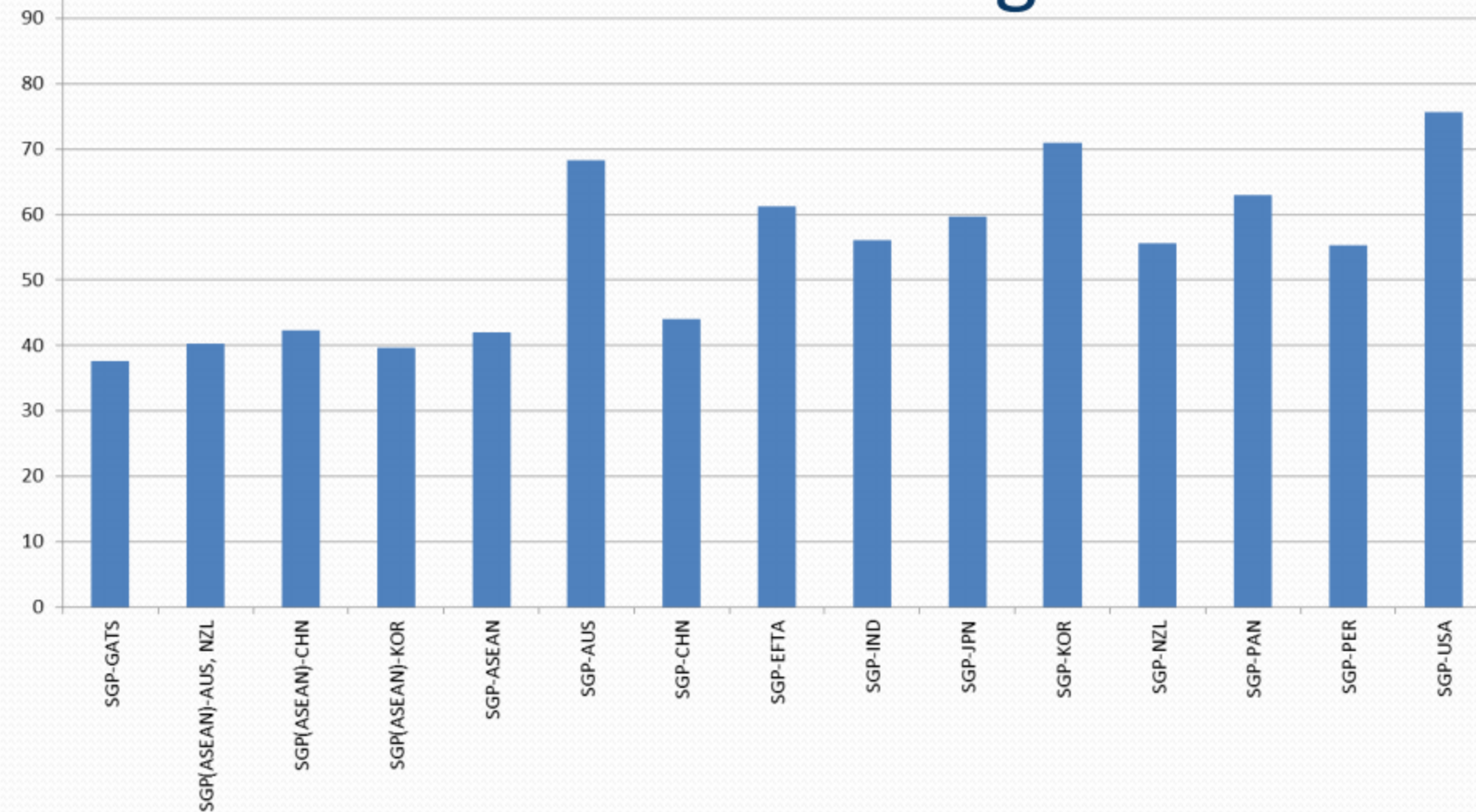


Source: Roy (2011), updated from Roy, Marchetti and Lim (2007)

# Mode 1: New and Improved Sub-sectors



# Index: Variations across Agreements



Source: Roy (2011), updated from Marchetti and Roy (2008) on the basis of expanded dataset.



# Rationale for pursuing regional liberalization

Regional integration

Attract FDI and technology

Efficiency and competitiveness of local service providers

Expand export base

Creation and advantage of economies of scale or economies of scope

Opportunities for business complementation

Domestic reforms which are not easy otherwise

Security of access for services exporters

Political considerations

# Critical policy issues

- Approach in scheduling (what will be liberalized): GATS based positive list (bottom -up / negative list (top-down) [see session 4] {special attention is on new services}

- Rules of Origin (who will benefit): Juridical persons definition  
Circumvention/Deflection

Preferential Safeguard (policy space)

Multiple chapters: Financial, Telecom, e-commerce, Business Persons, Government Procurement, IPRs, Investment, etc. (are all modes covered in all?)

Multiplicity of RTA partners – need for consistency

Level of ambition: Only WTO (GATS) plus or autonomous liberalisation level plus obligations

- what is a meaning of WTO (or GATS) minus? – “reflects that existing GATS commitments were downgraded in the RTA from full to partial commitments or to unbound.”

# EIA / EPA negotiations

## Legal issues

- Complementarities with WTO

- Complementarities with other agreements

- Texts

## Factual issues

- Coverage of trade (goods and services)

- Rules of origin

- Areas of interest – SPS/TBT/TF etc.

- Other issues: Investment, Economic cooperation, GP, CP, Customs and TF, Labour, Environment etc.

# Issues for negotiations

Proper information about the import export regime/regulations (TPRM).

Article V or beyond

Reciprocity or less than full reciprocity

**Substantially all sectors**

➤ *Value and/or modes & sectors*

**Progressive liberalisation**

# Pre – negotiation step

Cost benefit analysis: Study

- Patterns of trade

- Modeling

- Identify gains and losses

- Vulnerable sectors

Evaluation of maximum gain:

- PTA or FTA or CECA?

Wide consultations: stakeholders

- Strengths and weaknesses

- Sensitive sectors

- Market access benefits

# Negotiations

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

Issue – reciprocity or non-reciprocity

# EIA: Final Outcome

Objectives and Preamble

Definitions

Coverage: Modes, GP and subsidies

Text

Commitments:

- Market Access

- National Treatment

Coverage of Disputes

Cooperation areas

Other chapters: Telecom, Finance, Labour, Visa etc.

# Opportunities and challenges

Brings opportunities for exploring new markets

Within ASEAN: ASEAN Services Integration Report

[http://www.asean.org/storage/images/2015/November/asean-services-integration-report/ASEAN\\_Services\\_Integration\\_Report.pdf](http://www.asean.org/storage/images/2015/November/asean-services-integration-report/ASEAN_Services_Integration_Report.pdf)

From AFIS to ATISA.....

Beyond ASEAN:

- WTO negotiations

- FTAs under negotiation



# Trade in Services Agreement (TiSA)

- an agreement to liberalise trade in services
- involves 23 WTO members, including the EU, who together account for 70% of world trade in services
- open to other WTO members and compatible with WTO / GATS
- could be made part of the WTO once enough WTO members join
- 16 rounds of talks by march 2016
- no set deadline to end the talks

Thank you!  
Q&A