

# From Free Trade Agreement to Customs Union

**Workshop on Facilitating the Launch of the Arab  
Customs Union**

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# Presentation Structure

- **Regional Trade Agreements : Legality**
- **Free Trade Agreements**
- **Customs Union**
- **Certain facts: Arab Union**
- **Asia-Pacific experiences**
- **Critical Policy Issues**



# **Regional Trade Agreements : Legal aspects**

# GAFTA Members

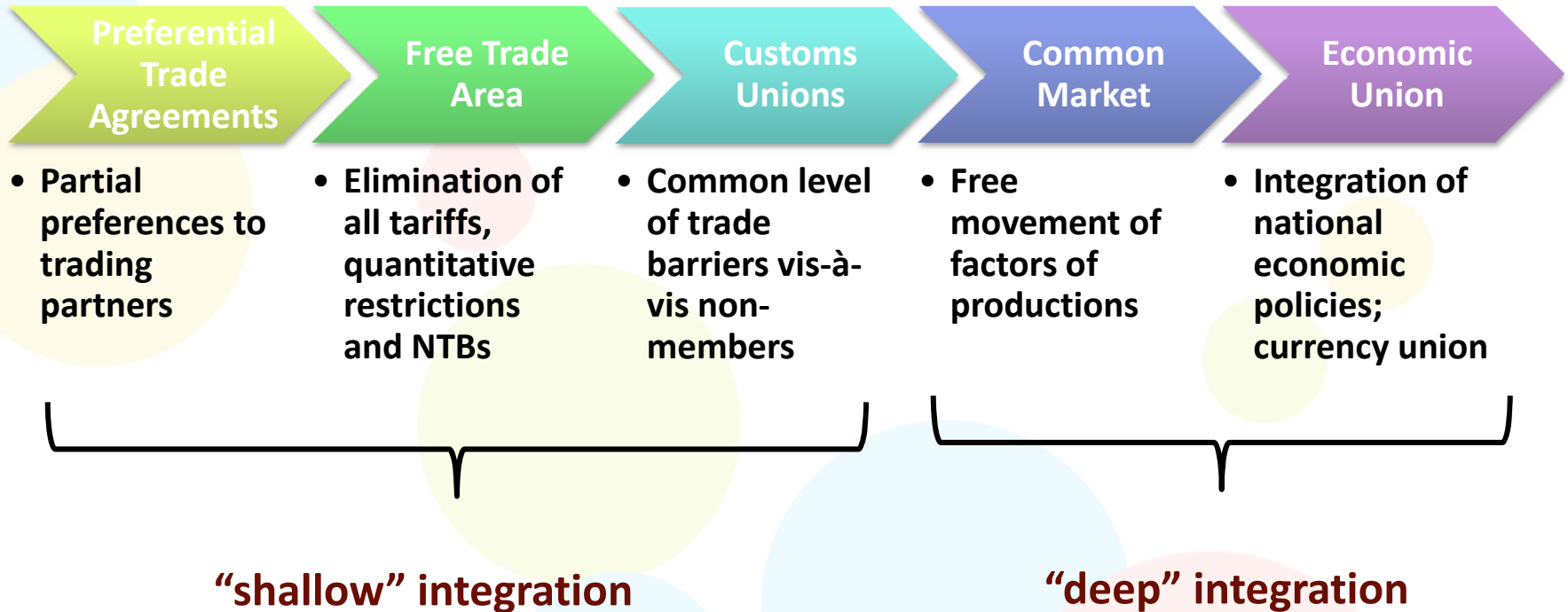
Country	WTO Status
Algeria	Observer
Kingdom of Bahrain	Member
Egypt	Member
Iraq	Observer
The State of Kuwait	Member
Lebanese Republic	Observer
Libya	Observer
Morocco	Member
Oman	Member
Palestine	None
Qatar	Member
Sudan	Observer
Syria	Observer
Tunisia	None
United Arab Emirates	Member
Yemen	Member

# Discussion Points



- **Which rules apply on international trade agreements?**

# Types of trade agreements



# 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.**

# Services in RTAs

- **Article V of GATS**
  - **substantial sectoral coverage (12 sectors – 155 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	GATS V





**Free Trade Agreements – as defined**

# FTA: Article XXIV

- 5 (b) with respect to a free-trade area, or an interim agreement leading to the formation of a free-trade area, the duties and other regulations of commerce maintained in each of the constituent territories and applicable at the formation of such free-trade area or the adoption of such interim agreement to the trade of contracting parties not included in such area or not parties to such agreement shall not be higher or more restrictive than the corresponding duties and other regulations of commerce existing in the same constituent territories prior to the formation of the free-trade area, or interim agreement as the case may be; and
- (c) any interim agreement referred to in subparagraphs (a) and (b) shall include a plan and schedule for the formation of such a customs union or of such a free-trade area **within a reasonable length of time.**

**8 (b) A free-trade area shall be understood to mean a group of two or more customs territories in which the duties and other restrictive regulations of commerce (except, where necessary, those permitted under Articles XI, XII, XIII, XIV, XV and XX) are eliminated on substantially all the trade between the constituent territories in products originating in such territories.**



**Customs Union – as defined**

# **CU: Article XXIV**

**5 (a) ----**

**with respect to a customs union, or an interim agreement leading to a formation of a customs union, the duties and other regulations of commerce imposed at the institution of any such union or interim agreement in respect of trade with contracting parties not parties to such union or agreement shall not on the whole be higher or more restrictive than the general incidence of the duties and regulations of commerce applicable in the constituent territories prior to the formation of such union or the adoption of such interim agreement, as the case may be;**

**6. If, in fulfilling the requirements of subparagraph 5 (a), a contracting party proposes to increase any rate of duty inconsistently with the provisions of Article II, the procedure set forth in Article XXVIII shall apply. In providing for compensatory adjustment, due account shall be taken of the compensation already afforded by the reduction brought about in the corresponding duty of the other constituents of the union.**

**8. For the purposes of this Agreement:**

**(a) A customs union shall be understood to mean the substitution of a single customs territory for two or more customs territories, so that**

**(i) duties and other restrictive regulations of commerce (except, where necessary, those permitted under Articles XI, XII, XIII, XIV, XV and XX) are **eliminated with respect to substantially all the trade** between the constituent territories of the union or at least with respect to substantially all the trade in products originating in such territories, and,**

**(ii) subject to the provisions of paragraph 9, substantially the same duties and other regulations of commerce are applied by each of the members of the union to the trade of territories not included in the union;**

# 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.**



# 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.**

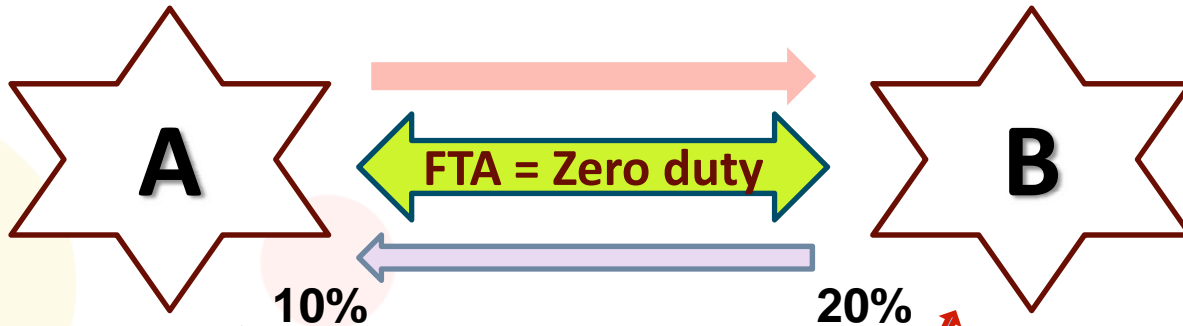
# Is discriminatory liberalization allowed under WTO?

- **GATT Article XXIV (1947)**
- **The Enabling Clause (1979)**
- **Understanding of the GATT Art. XXIV (1994)**
- **GATS Article V (1994)**
- **Transparency mechanism (2006)**

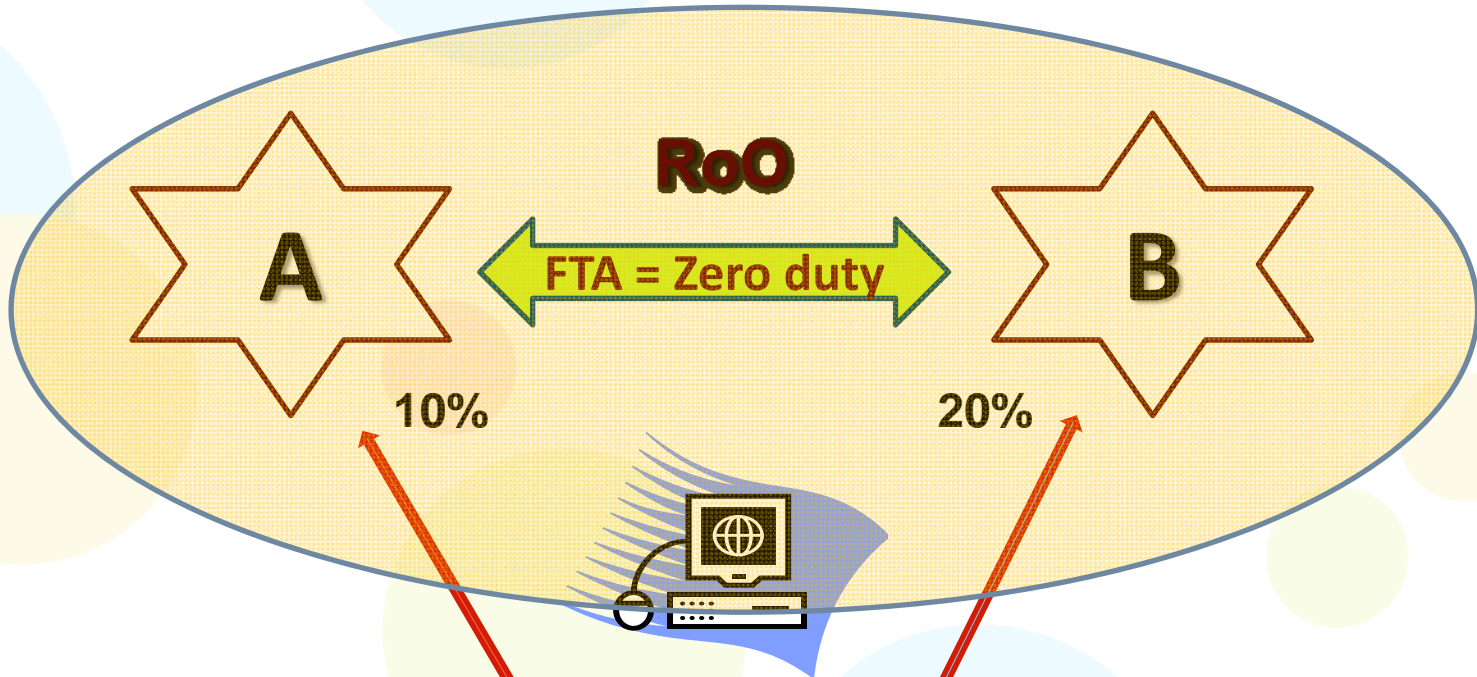
## **WTO JARGON ON TRADE AGREEMENTS SPECIFIC:**

- **FTAs AND CUSTOMS UNIONS (GOODS) = RTAs**
- **PARTIAL SCOPE AGREEMENTS (GOODS)**
- **ECONOMIC INTEGRATION AGREEMENTS (SERVICES)**
- **PREFERENTIAL TRADE ARRANGEMENTS - ONLY FOR NON-RECISPROCAL PREFERENCES**

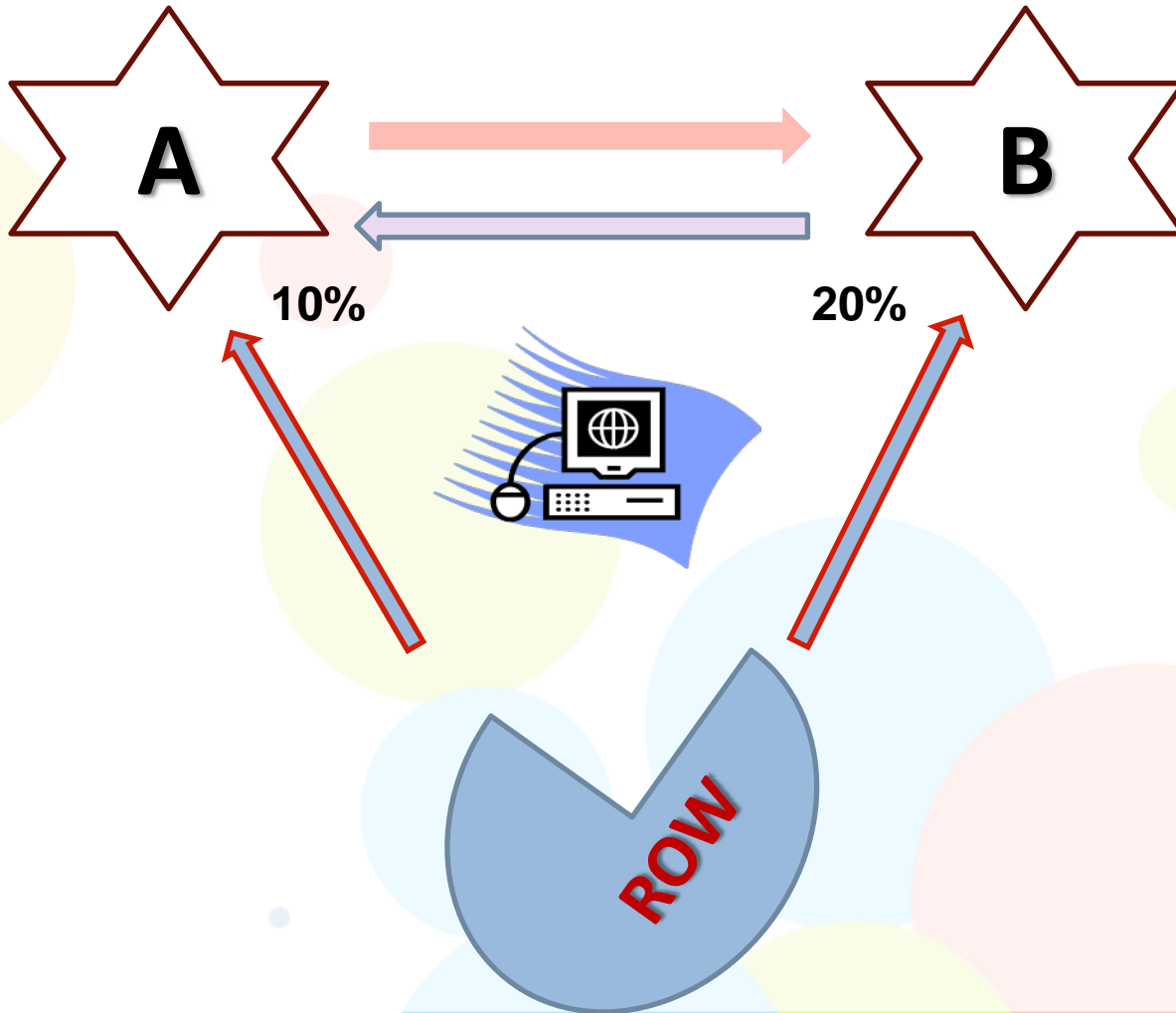
# FTA



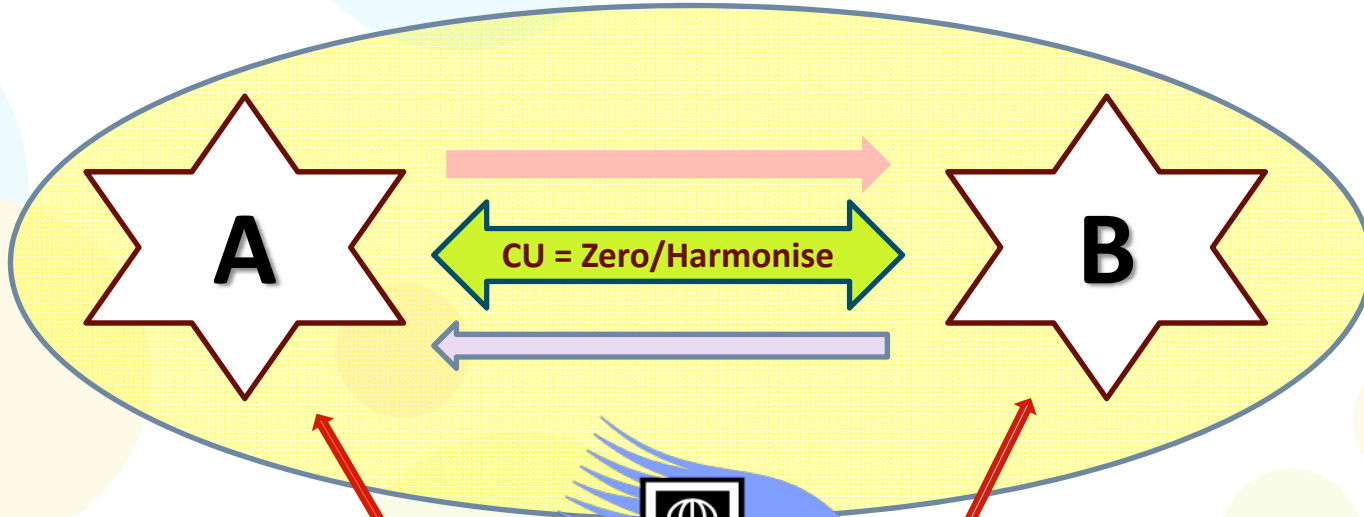
# FTA



# Customs Union



# Customs Union

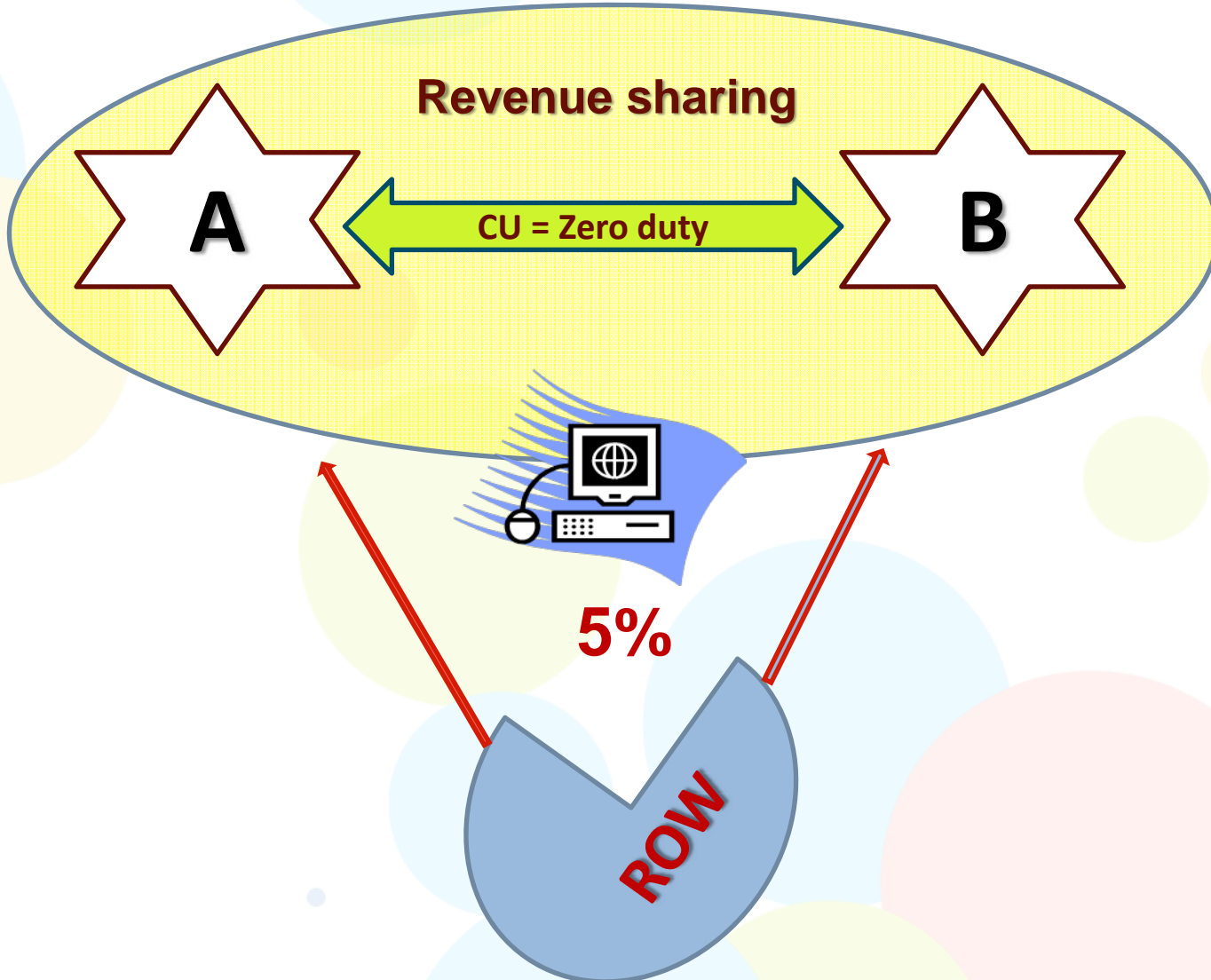



10% ??

20% ??



# Customs Union





**Certain facts: Arab Union**



Country	WTO Status	WTO member since	Simple Average Bound			Simple Average MFN applied (year)		
			Total	Agriculture	Non-Agriculture	Total	Agriculture	Non-Agriculture
Algeria	Observer					18.8(2015)	23.2(2015)	18(2015)
Kindom of Bahrain	Member	01.01.1995	34.8	39	33.8	4.7 (2015)	5.4(2015)	4.6(2015)
Egypt	Member	30.06.1995	36.8	98.3	27.5	16.8(2015)	60.5(2015)	9.5(2015)
Iraq	Observer							
The State of Kuwait	Member	01.01.1995	97.8	100	97.5	4.7(2015)	5.1(2015)	4.6(2015)
Lebanese Republic	Observer					5.6(2015)	15.1(2015)	4.1(2015)
Libya	Observer							
Morocco	Member	01.01.1995	41.3	54.4	39.3	11.5(2015)	27.6(2015)	8.9(2015)
Oman	Member	09.11.2000	13.8	28.1	11.6	5.5(2015)	10.9(2015)	4.7(2015)
Palestine	None							
Qatar	Member	13.01.1996	15.6	26.2	14	4.7(2015)	5.4(2015)	4.6(2015)
Sudan	Observer					21.2(2013)	30.3(2013)	19.7(2013)
Syria	Observer					16.5(2013)	24.0(2013)	15.3(2013)
Tunisia	None		57.9	116	40.8	15.5(2015)	33.0(2015)	12.6(2016)
United Arab Emirates	Member	10.04.1996	14.4	25.6	12.7	4.7(2015)	5.4(2015)	4.6(2015)
Yemen	Member	26.06.2014	21.2	25	20.6	7.5(2015)	10.4(2015)	7.0(2015)

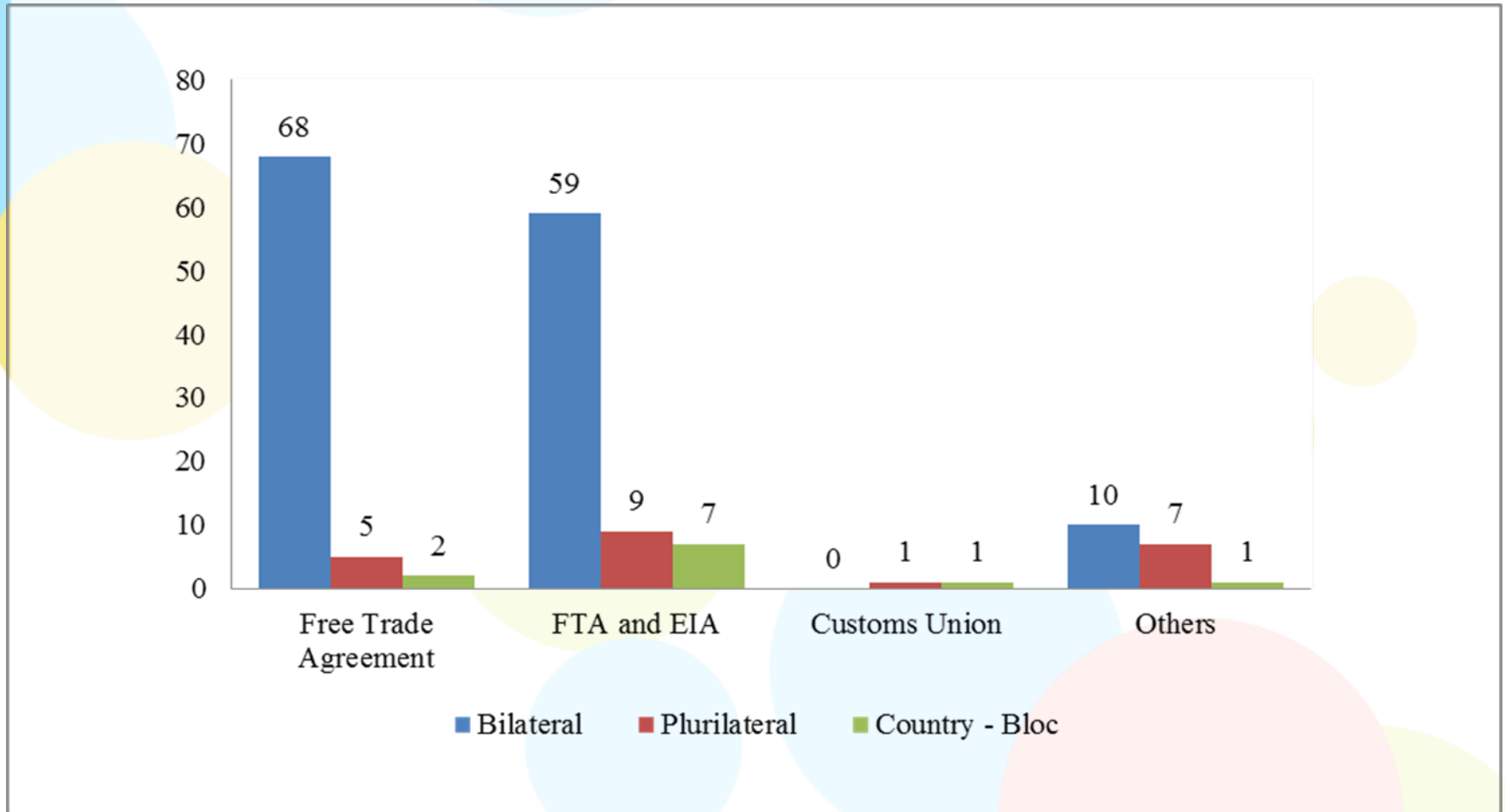


**Asia-Pacific experiences**

# Asia-Pacific RTAs

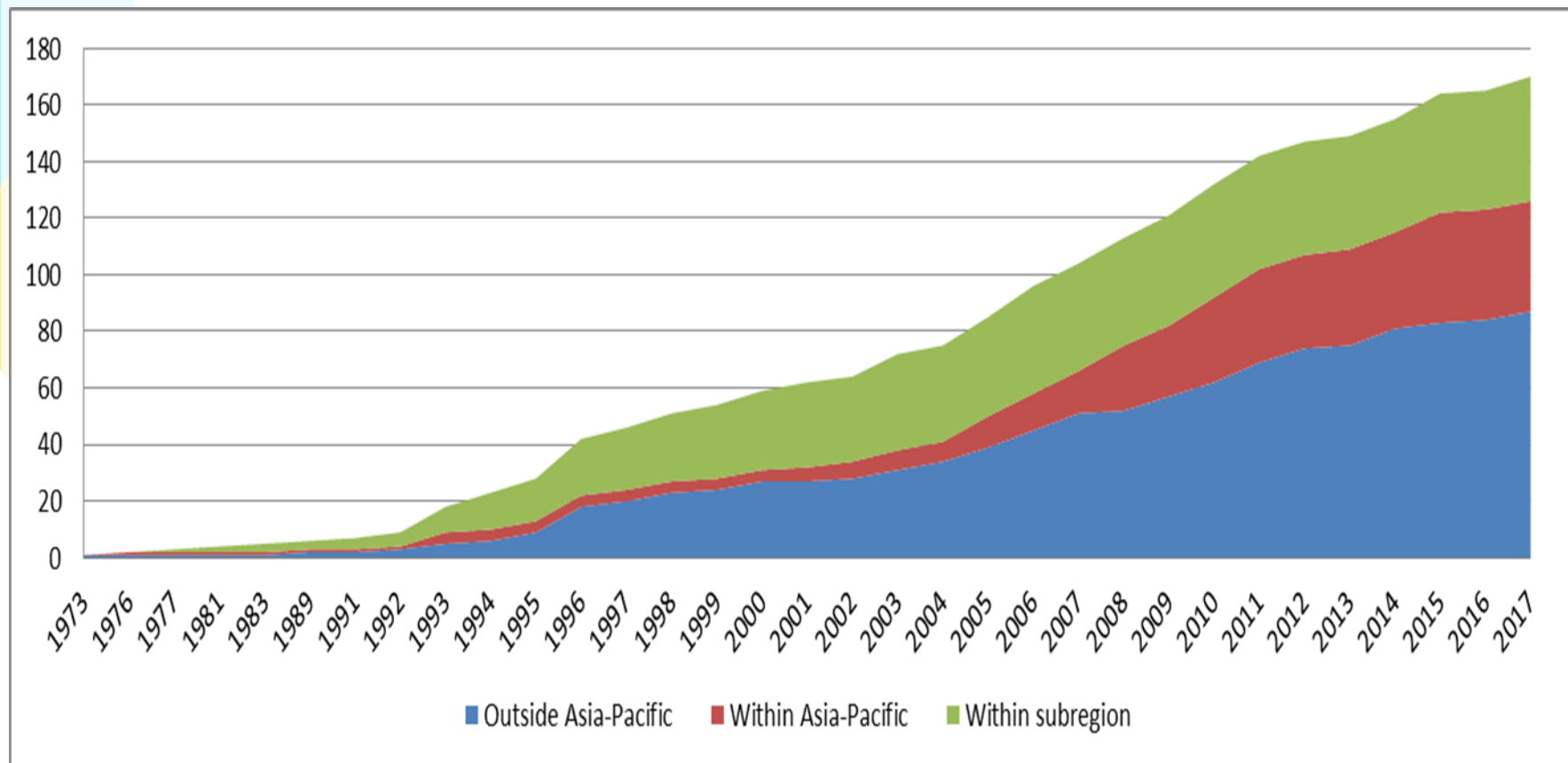
- As of May 2017, there were 257 RTAs in Asia-Pacific region which are either in force, signed or being negotiated.
- Globally 274 “physical” RTAs in force, and 170 (66%) are from AP
- 15 - signed but not implemented
- 72 - under different stages of negotiations.
- 88.2% - cover FTAs, and FTAs and EIAs (having equal share now).
- 10.6% of the PTAs in force are PSAs
- Only 1.2% of agreements are classified as customs unions.

# PTAs in force, by type and scope (as of 31 May 2017)



Source: ESCAP calculation based on APTIAD data

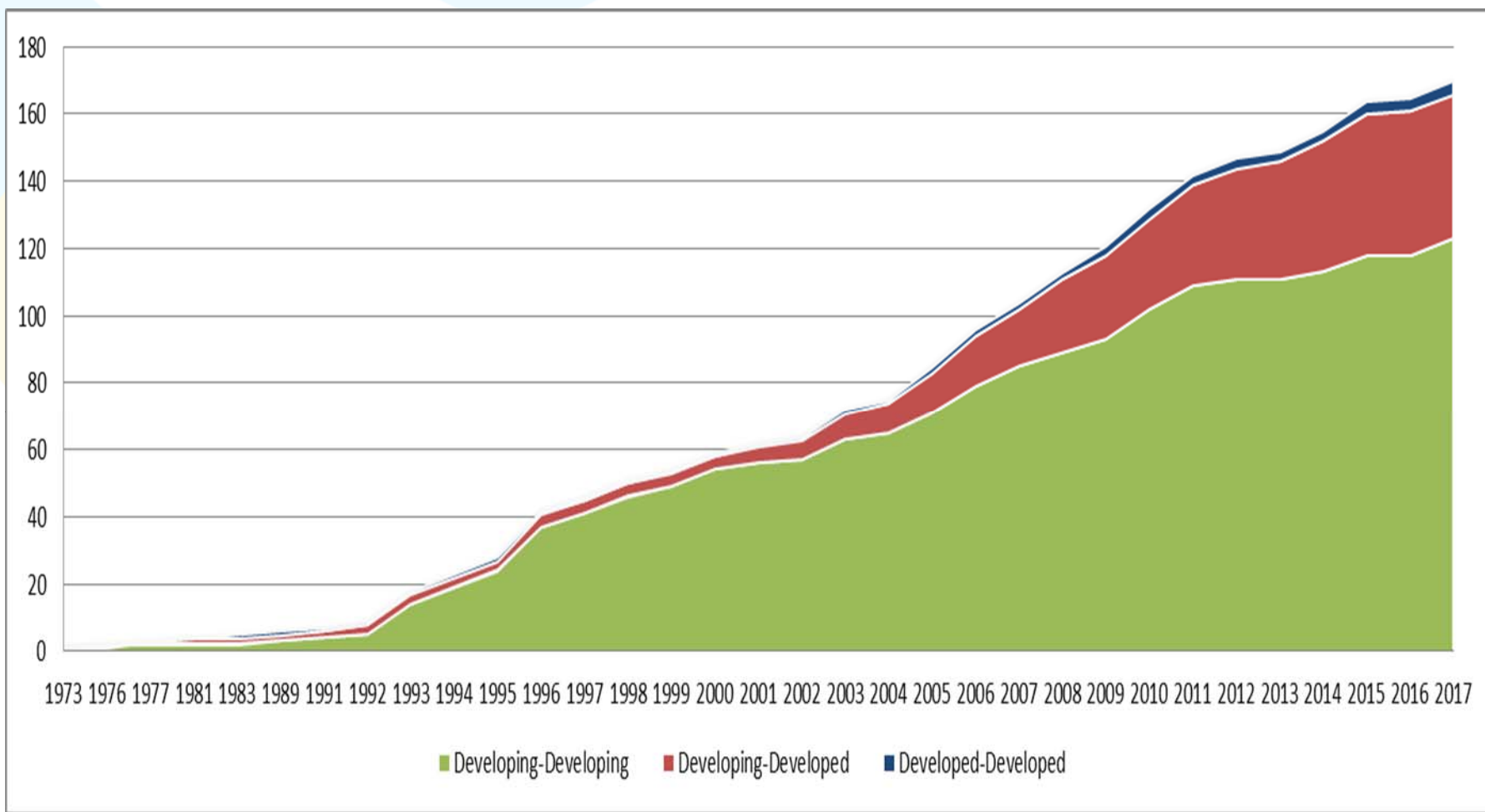
# Cumulative number of PTAs (notified and non-notified to WTO) put into force by Asia-Pacific economies, by geographical region, 1971-May 2017



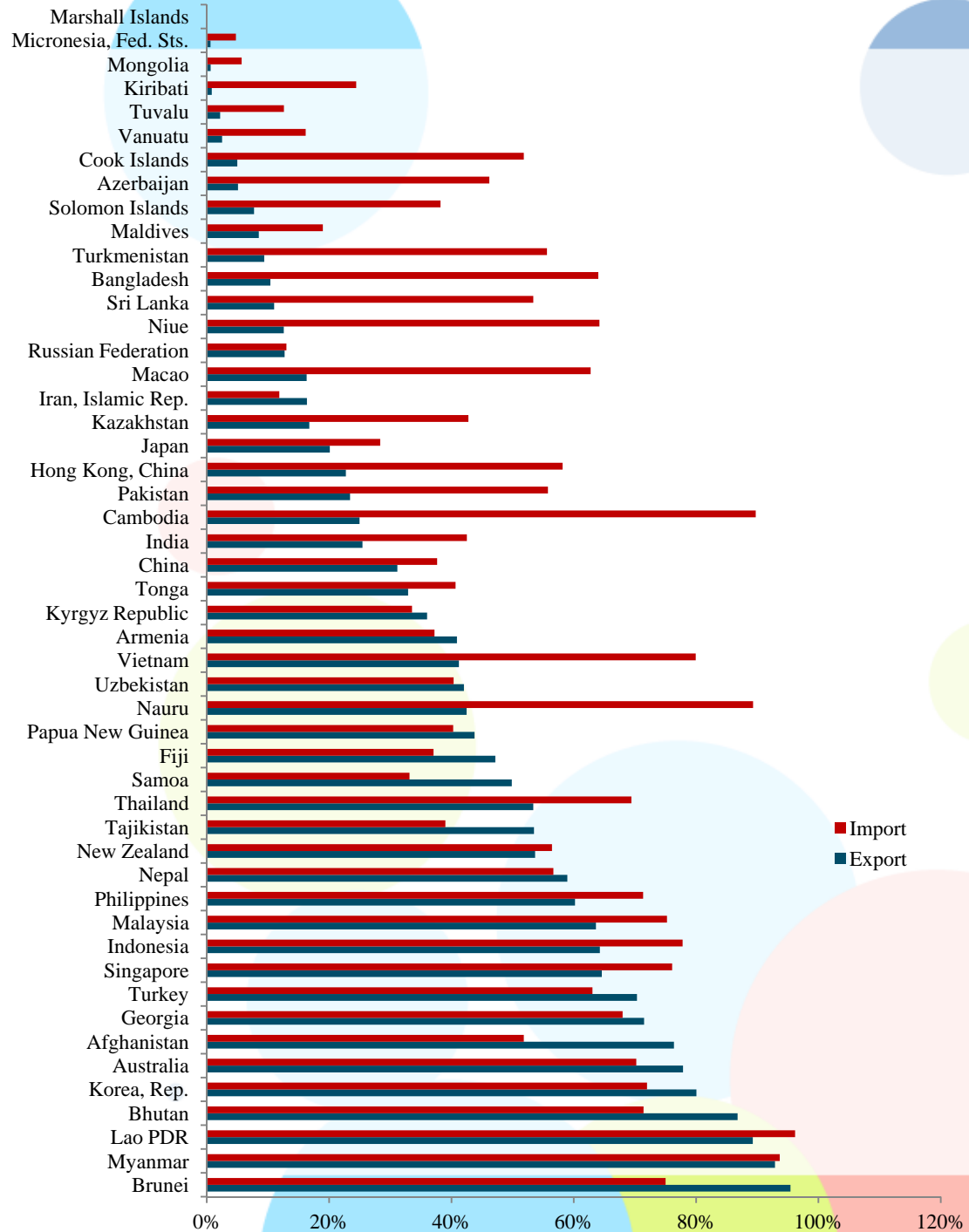
•Asia-Pacific members of ESCAP are grouped into five sub-regions: East and North-East Asia (ENEA); North and Central Asia (NCA); South-East Asia (SEA); South and South-West Asia (SSWA); and the Pacific.

•source: ESCAP calculation based on APTIAD data

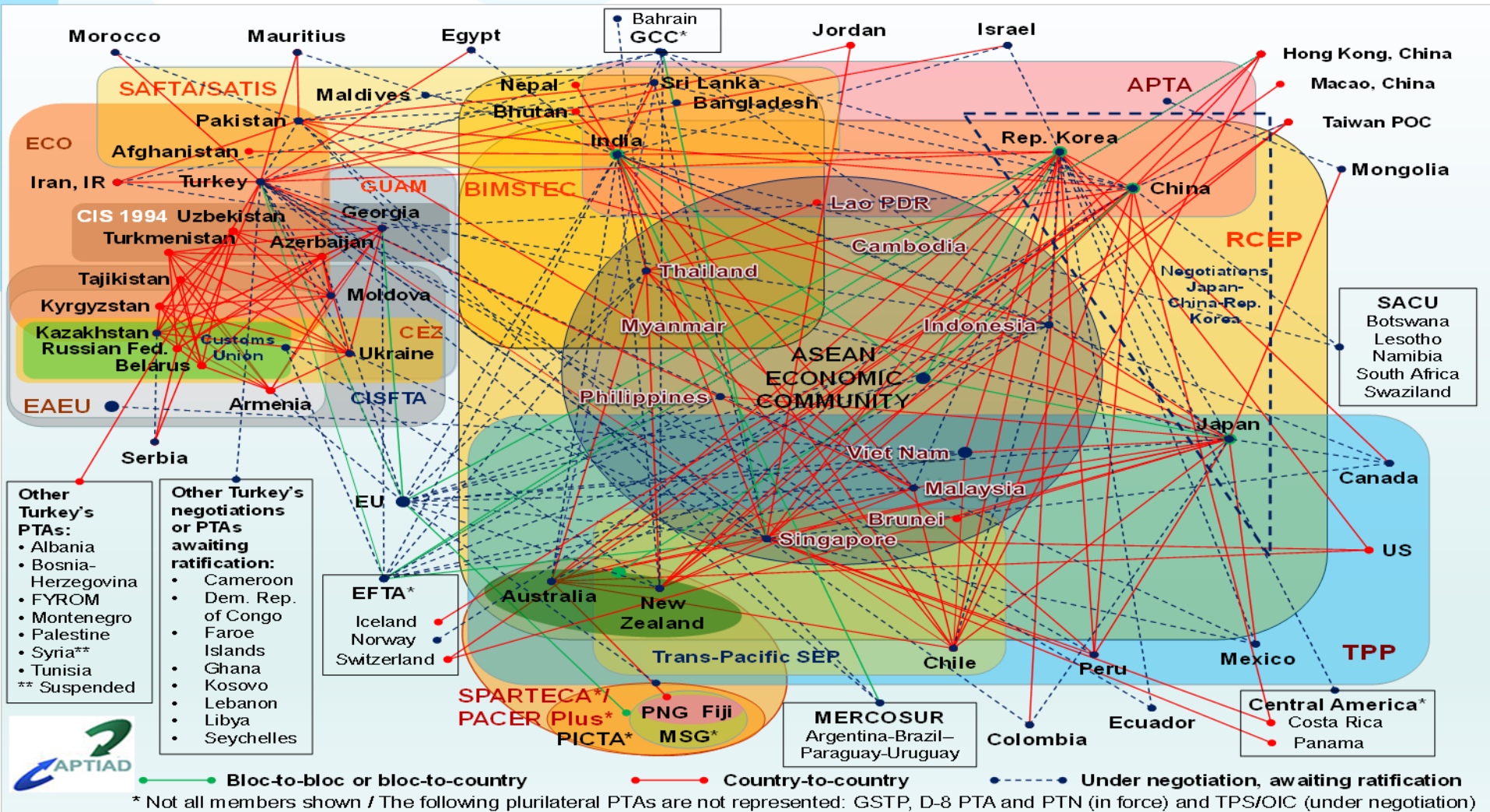
# Cumulative number of PTAs (notified and non-notified to WTO) put into force by Asia-Pacific economies, by level of development of parties, 1971-May 2017)



Source: ESCAP calculation based on APTIAD data



# Asia-Pacific Noodle Bowl





# Customs Unions

<b>Eurasian Economic Community (EAEC)</b>	<b>Belarus; Kazakhstan; Kyrgyzstan; Russian Federation; Tajikistan</b>	<b>Terminated</b>	<b>Plurilateral</b>	<b>Customs Union</b>	<b>1997/2014</b>
<b>Eurasian Economic Union (EAEU)</b>	<b>Armenia; Belarus; Kazakhstan; Kyrgyz Republic; Russian Federation</b>	<b>Entry into Force</b>	<b>Plurilateral</b>	<b>Customs Union &amp; EIA</b>	<b>2015</b>
<b>Kazakhstan-Russian Federation-Belarus</b>	<b>Belarus; Kazakhstan; Russian Federation;</b>	<b>Entry into Force</b>	<b>Plurilateral</b>	<b>Customs Union</b>	<b>1997</b>
<b>Turkey-European Union (EU)</b>	<b>EU; Turkey</b>	<b>Entry into Force</b>	<b>Country - Bloc</b>	<b>Customs Union</b>	<b>1996</b>

Source: ESCAP calculation based on APTIAD data

# Kazakhstan

- **Kazakhstan has been negotiating World Trade Organization (WTO) membership since 1996. Eurasian Customs Union membership has further complicated negotiations over WTO accession.**
- **By joining the ECU, Kazakhstan effectively adopted the tariff profile of the Russian Federation (with some exceptions). As a result of its membership in the ECU, Kazakhstan has increased the tariff rate on some 5,400 tariff lines. Likewise, the number of tariff lines with zero tariffs dropped from 1164 in 2009 to 641 in 2012.**
- **However, around 40% percent of tariff lines were already identical for all three members prior to the customs union. Kazakhstan also uses tariff-rate quotas (TRQs) for imports of beef, poultry, and pork, as is now required by the ECU.**
- **While the impact of these changes was not uniform across sectors, overall there was a noticeable increase in the level of tariffs as reported by the WTO, leading to a delay in its accession to WTO.**

# ASEAN

- **The goal of free flow of goods is a key element within the AEC's first pillar. The region has progressed significantly since the agreement to establish the ASEAN Free Trade Area (AFTA) was signed in 1992. Adoption of the AEC Blueprint in 2007 and the signing of the ASEAN Trade in Goods Agreement (ATIGA) in 2009 marked important milestones towards this goal.**

# AEC

**Free flows of goods**

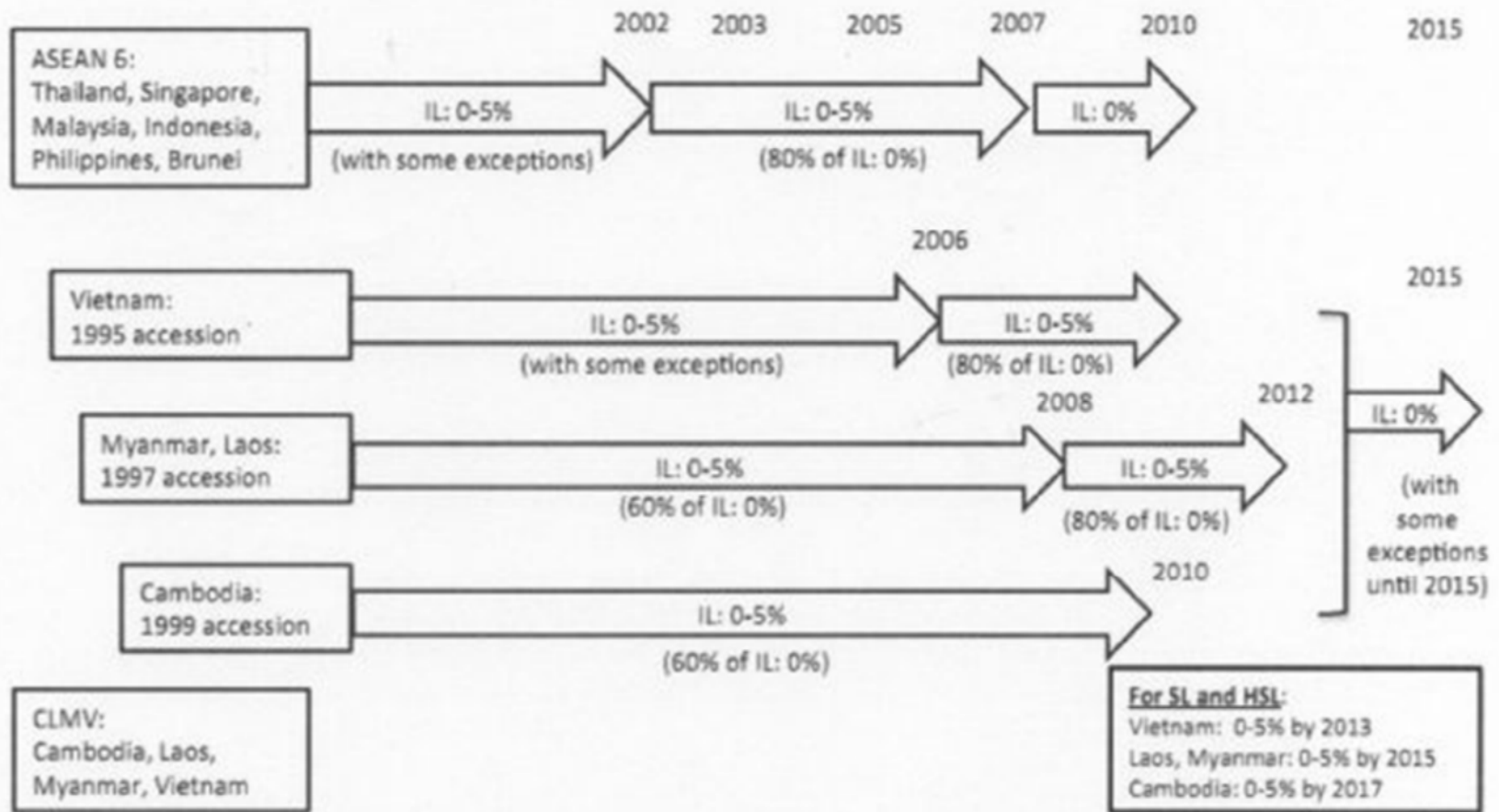
**Free flows of services**

**Free flows of capital**

**Free flows of investment**

**Free flows of skilled labor**

## Tariff Schedule under the AFTA-CEPT



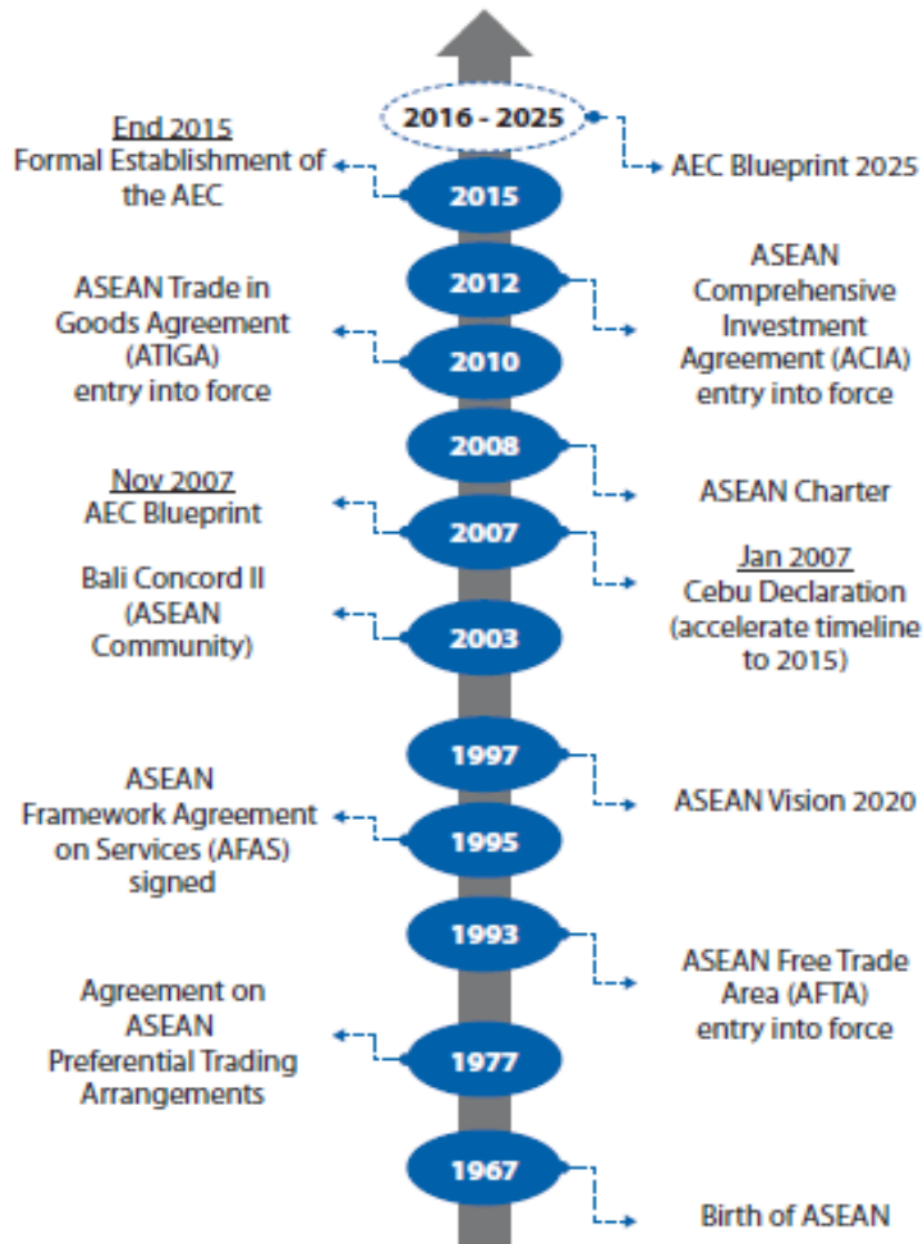
Note: IL = Inclusion List; SL = Sensitive List; and HSL = Highly Sensitive List

Source: Ngov (2011)

# Key provisions of ATIGA

- **Creation of an ASEAN Trade Repository and the ASEAN Single Window**
- **Tariff liberalization and removal of quantitative restrictions on importation**
- **Rules of Origin**
- **Non-tariff measures**
- **Sanitary and Phytosanitary Measures**
- **Trade facilitation**
- **Standards, technical regulations and conformity assessment procedures**
- **Trade remedy measure**
- **Special treatment of rice and sugar**

## AEC Milestones



# SAARC

- **South Asian Association for Regional Cooperation (SAARC) was established in 1985 as a grouping of seven countries, namely, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka.**
- **Afghanistan acceded in 2007.**
- **South Asia has great economic strength in terms of its market potential (one third of humanity resides in this area) and in terms of the rich natural resources and capable human resources.**



# SAARC: Economic agenda

- A trade block among SAARC members was formed with the signing of SAARC Preferential Trading Arrangement (SAPTA) in April, 1993.
- Intra-regional trade not significant, remained below 5%.
- The decision to convert SAARC into a Free Trade Area (FTA) was taken in the 9<sup>th</sup> SAARC Summit in May 1997 in Male.
- The SAFTA Agreement was signed in January 2004 and was implemented with effect from January 01, 2006, though the tariff liberalisation started from July 01, 2006.

# Declaration of the Fourteenth SAARC Summit

3 - 4 April 2007, New Delhi:

**18. The Heads of State or Government emphasized the need to develop, at an early date, a roadmap for a South Asian Customs Union and a South Asian Economic Union in a planned and phased manner.**

# Is CU possible?

Country	WTO Bound Rate		MFN Agriculture	
	Agriculture	Non-Agriculture	Agriculture	Non-Agriculture
Afghanistan (2013)	-	-	7.1	5.7
Bangladesh (2013)	192	37.3	16.8	13.4
Bhutan	-	-		
India (2013)	113.5	34.6	33.5	10.2
Maldives	48.1	35.1	-	-
Nepal (2013)	41.5	23.6	13.8	12
Pakistan (2013)	95.5	54.8	15.4	13.2
Sri Lanka (2012)	50	19.7	25.7	7.5

Source: WTO Tariff Profiles

# Economic Integration in SAARC

- **Step 1: Duties in SAFTA to be ZERO.**
- **Step 2: Harmonisation of Standards**
- **Step 3: Liberalise Services and Investment**
- **Step 4: Move towards Customs Union**
  - ✓ Harmonise the duties
  - ✓ Solve the issues of Rules of Origin
  - ✓ Harmonise the SPS and TBT
- **Step 5: Form an Economic Union**

# Problems in Asia- Pacific

- While FTAs or FTAs and EIAs are very common in Asia-Pacific region, the Customs Union is not.
- Most of the initiatives are driven by geo-political agenda.
- Many countries are competing for the world market on similar sectors.
- They compete for FDI inflows.
- Some, especially the Central Asian economies have very limited number of sectors to trade.
- Overlapping PTAs – especially the bilateral ones, will need to be dropped if a CU is formed.
- Loss of national policy space to negotiate a trade and investment agreement.
- Protection of sensitive sectors.



# Critical Policy Issues

# Critical Policy Issues

- **Trade interest and reasons for integration**
- **Sensitive/Negative List : Protection to domestic industry**
- **Trade Defence Measures : in cases of surge in imports**
- **Multiplicity of RTA partners – need for consistency**
- **Services Negotiations**
- **WTO plus obligations**

# Current issues related to regionalism

- Too many overlapping bilateral RTAs
- 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



# Selected sources

## ESCAP:

- Asia-Pacific Trade and Investment Report  
[www.unescap.org/tid/ti\\_report2016/home.asp](http://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](http://www.unescap.org/tid/uptiad)

## OTHERS SOURCES:

- WTO, World Trade Report 2011  
[https://www.wto.org/english/res\\_e/publications\\_e/wtr11\\_e.htm](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](https://www.wto.org/english/tratop_e/region_e/region_e.htm)



# Thank You