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# Legal Review of FTA Tariff Negotiations

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1. Recent state of FTAs in the world
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3. Legalization of FTA market access exchanges
  - ◆ Observation of FTA negotiations
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4. Future of the world trading system

# Regional Trading Agreement and WTO

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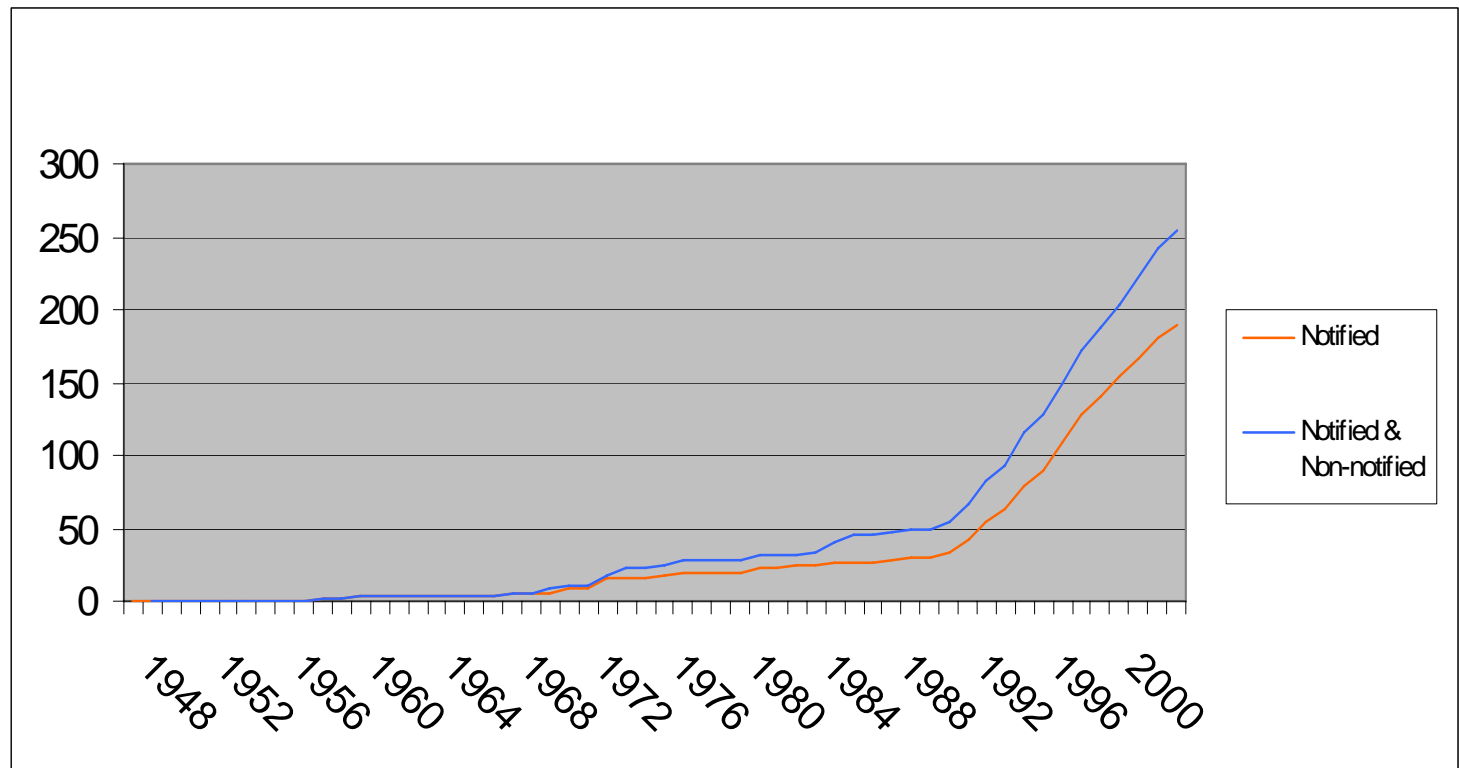
- FTAs are a fundamental departure from the MFN clause, i.e., non-discrimination principle of the GATT.
  - What implications does proliferation of FTAs have on the world trading system?

# Recent State of FTAs: Main Trends Identified

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- The drive towards the conclusion of FTAs continues unabated.
  - If the current trend continues, we estimate that 300 FTAs will be in force in 2007.

# RTAs notified to the GATT/WTO (1948-2003) in force and non-notified RTAs

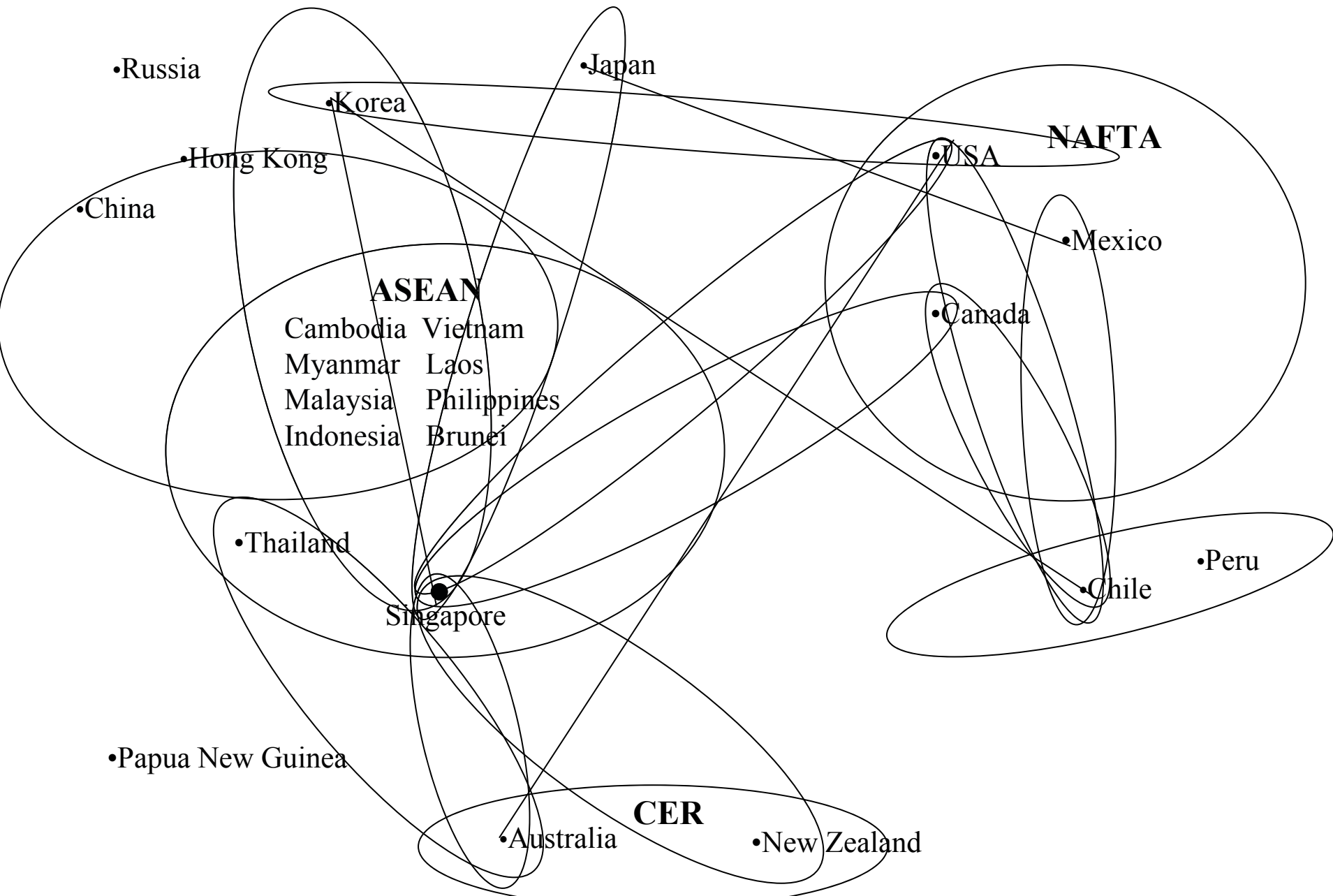


# Greater Activities in Asia Pacific Region

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- The greatest concentration of RTAs is in Europe, where over 100 RTAs are in force.
- The main focus of RTA activity has shifted away from Europe in the last two years towards Asia Pacific.
- APEC members, in particular, have been among the most active participants in RTAs.

# RTAs in Effect in the APEC region, 2007



# Causes behind FTA proliferation

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- Exclusionary effect drives outsiders to conclude FTAs.
  - The export price of goods exported by non-members to member countries are reduced. (Study of Mercosur)
  - Multilateral tariffs on goods mostly traded under FTAs are maintained higher than similar products imported only from non-FTA partners.



# WTO Consistent FTAs

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- Departure from MFN principle is allowed under GATT Article XXIV
  - If tariffs are eliminated on substantially all trade of goods and
  - If FTAs do not result in greater barriers to non-party imports.

# Substantially All Trade under GATT Article XXIV

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- GATT Article XXIV:8(b) permits formation of a free trade agreement when duties and regulations of commerce in substantially all trade are eliminated.
- However, there is no agreement as to the meaning of “substantially all trade.”
  - A threshold level of 95 percent of all HS tariff lines at a six-digit level has been proposed by Australia.
- The practice by countries in the coverage of tariff elimination in their FTAs varies widely.

# Departure from MFN also allowed under the Enabling Clause

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- FTAs between less developed countries relies on “Enabling Clause” to satisfy GATT consistency.
  - Enabling clause permits derogation from Article I when FTAs are concluded between less developed countries.
  - Enabling Clause permits tariff reduction as an alternative to tariff elimination.



# Observations on FTA negotiations

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- Tariff elimination negotiation appears to be a process of reaching an agreement where the balance in the exchange of market access benefits is achieved.
  - Each party should be better off with the agreement as compared to the position without the exchange of benefits.

# Observations on FTA Negotiations: Paradox

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- Mercantilist approach to negotiations
  - Benefits are measured in terms of increased market access while cost is measured in terms of access to your own market granted to the partner
- The above negotiating posture is in contradiction to the economic rationale for launching FTAs.

# Protection of Expected Benefits: Reciprocal Tariff Reduction

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- GATT Article XXIV and GATT Article I in combination implicitly require reciprocal tariff reduction between FTA parties.
  - Unilateral tariff reduction to a preferred party is prohibited under GATT Article I.
  - Article XXIV requires that duties and other restrictive regulations of commerce are eliminated on substantially all trade between the parties.

# Reciprocity provision

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- Explicit product-by-product reciprocity provision in China-ASEAN FTA
  - When a party excludes a tariff line from concession to its partner, a reciprocity condition provides that the party would not receive tariff concessions for its exports from its FTA partner on that same tariff line.

# Protection of Expected Benefits: Most Favored Nation Clause

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- FTA non-discrimination clause
  - EFTA-Singapore FTA
    - Enables a party to receive the same benefits its counterpart affords to its future FTA partners.
- Product specific MFN clause
  - US-Morocco FTA
    - In the event that Morocco grants any other trading partner in its future FTAs market access better than that granted to the United States under the FTA, Morocco is under obligation to grant the same treatment to the United States.



# Protection of Expected Benefits: Counter Measures against Third Party Imports

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- Subsidized imports from a non-party undermines the improved market access obtained through FTA.
  - Then, the exporting party can request consultation with the importing party with a view to agreeing on specific measures importing party may adopt to counter the effects of subsidized imports.

# Future Prospects

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- The mercantilist nature of FTA negotiations and the resulting FTA provisions do not bode well for the world trading system.
  - Trade in Goods agreement of FTA protects the benefits obtained from FTAs, thereby increasing the exclusionary effects.
  - As FTAs become more “entrenched”, countries fully benefiting from existing FTAs would see less merit in negotiating a multilateral free trade round.

# Thank you!

