

# REGIONALISM AND DEVELOPING COUNTRY PERSPECTIVES

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# Regional Trade Agreement (RTAs)

Definition (WTO): ***reciprocal*** trade agreements between two or more partners.

Regional trade exceptions to WTO members:

- GATT Art XXIV
- GATS Art V
- They include customs unions and free trade agreements
  - Customs union: *what is it?*
  - Free trade agreement: *what is it?*

[https://www.wto.org/english/tratop\\_e/region\\_e/rta\\_participation\\_map\\_e.htm](https://www.wto.org/english/tratop_e/region_e/rta_participation_map_e.htm)

# State of RTAs in trade regime

Source: WTO,  
<http://rtais.wto.org/UI/publicsummarytable.aspx>  
(accessed 4 November 2016)

## What observations do you make?

The following table shows all RTAs in force, sorted by Type of Agreement:

	Enabling clause	GATS Art. V	GATT Art. XXIV	Grand total
Customs Union	8		11	19
Customs Union - Accession	1		9	10
Economic Integration Agreement		136		136
Economic Integration Agreement - Accession		6		6
Free Trade Agreement	15		220	235
Free Trade Agreement - Accession	1		2	3
Partial Scope Agreement	16			16
Partial Scope Agreement - Accession	1			1
Grand total	42	142	242	426

The following table shows all physical RTAs in force, sorted by Coverage:

Goods	132
Services	1
Goods and Services	135
Grand total	268

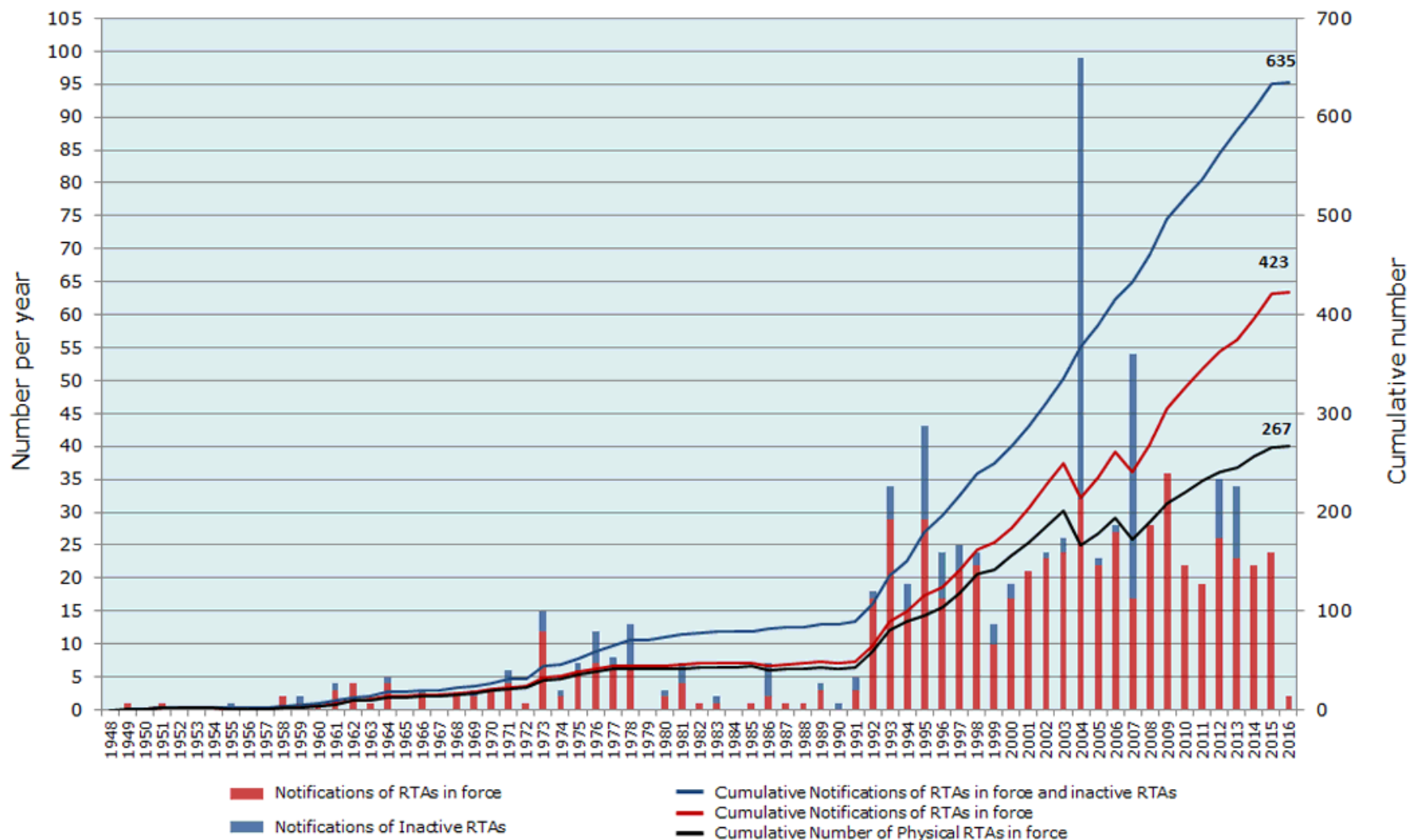
## RTAs (cont'd)

- As of 1 July 2016, 635 notifications of RTAs had been received by the GATT/WTO. Of these, 423 in force.
  - 435 under GATT XXIV
  - 43 under Enabling Clause
  - 157 under GATS V
- 90% are FTAs or partial scope agreements, while customs unions account for 10%
- Most are bilateral RTAs; currently only 48 plurilateral
- Can be cross-region, which are becoming more common.
- More commonly cover trade in goods or good and services than services (alone)

# Proliferation of RTAs

- 1948-1994: GATT received 124 notifications of RTAs (trade in goods only)
- Since the creation of the WTO in 1995, 400+ additional arrangements have been notified (trade in goods or services)
- Recently, several plurilateral RTAs in negotiation or recently negotiated.

## Evolution of Regional Trade Agreements in the world, 1948-2016



Note: Notifications of RTAs: goods, services & accessions to an RTA are counted separately. Physical RTAs: goods, services & accessions to an RTA are counted together. The cumulative lines show the number of notifications/physical RTAs that were in force for a given year.  
 Source: WTO Secretariat.

- Why has there been a proliferation?

- Effects of RTAs?

# Differences among RTAs

- What are some of the ways they vary?
- Bilateral vs. Plurilateral
- Depth of integration
  - Degree to which “behind-the-border” provisions are included to address domestic policies, such as intellectual property, competition, investment, environment and labor standards, are included
    - Shallow: only “one the border measures”
- Degree of legalization
  - Degree to which RTAs are designed to have legalized mechanisms for resolving disputes and enforcing compliance.



**TABLE 1.** *Institutional options in dispute settlement design*

<i>Treaty provision</i>	<i>Spectrum of legalism</i>		
	<i>More diplomatic</i>	<—————>	<i>More legalistic</i>
Third-party review	None	Access controlled by political body	Automatic right to review
Third-party ruling	Recommendation	Binding if approved by political body	Directly binding obligation
Judges	Ad hoc arbitrators	Ad hoc panelists drawn from roster	Standing tribunal of justices
Standing	States only	States and treaty organs	States, treaty organs, and individuals
Remedy	None	Retaliatory sanctions	Direct effect in domestic law

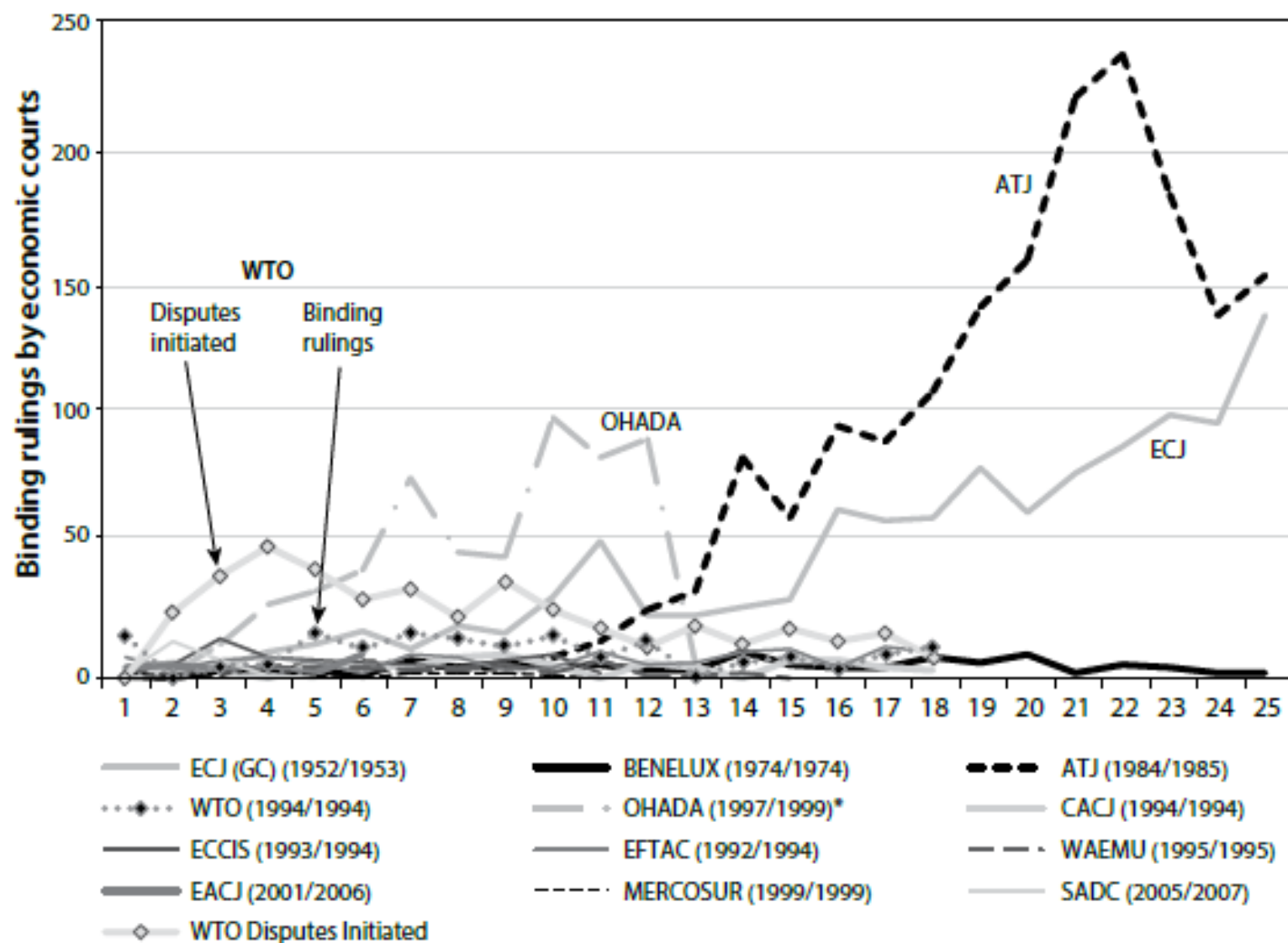
Source: James McCall Smith (2000). *The Politics of Dispute Settlement Design: Explaining Legalism in Regional Trade Pacts*. *International Organization*, vol. 54(1), p. 143

FIGURE 3.4: Regional distribution of ICs (year IC became operational)

	Europe	Latin America	Africa	Panregional
<b>International Economic Courts</b> 16 ICs	European Court of Justice (1952) BENELUX court (1974) Economic Court of the Commonwealth of Independent States (ECCIS) (1993) European Free Trade Area Court (1992)	Andean Tribunal of Justice (ATJ) (1984) Central American Court of Justice (CACJ) (1992) Caribbean Court of Justice (CCJ) (2001) Southern Common Market (MERCOSUR) (2004)	West African Economic and Monetary Union (WAEMU) (1995) Common Court of Justice and Arbitration for the Organization for the Harmonization of Corporate Law in Africa (OHADA) (1997) Court of Justice for the Common Market of Eastern and Southern Africa (COMESA) (1998) Central African Monetary Community (CEMAC) (2000) Court of Justice of the East African Community (EACJ) (2001) Economic Community of West African States Court of Justice (ECOWAS CJ) (2002) Southern African Development Community (SADC) (2005)	World Trade Organization Appellate Body (1994)

Source: Alter, K. 2014, *The New Terrain of International Law*. Princeton University Press

FIGURE 3.15: Evolutionary perspective on litigation in economic courts



1= first year court issued a ruling. \*OHADA data declines due to instability in the court's host country of Cote d'Ivoire.

# Overlapping Jurisdictions: WTO and RTA

- WTO DSM has “compulsory and exclusive jurisdiction” over WTO law (Art. 23 of DSU)
- RTAs often have choice of forum clauses
- Have seen some instances of forum shopping or like cases arising in more than 1 forum
  
- Should we be worried?
  - Disadvantages of overlap
  - Advantages of overlap

# Developing Countries in WTO

Preferential Trade Agreements (PTAs) (or special and differential treatment)

- Definition (WTO): ***non-reciprocal (unilateral)*** preferential schemes
- WTO law allows for PTAs
  - Generalized system of preferences for developing countries
    - Enabling Clause (1979 Decision on Differential and More Favorable Treatment, Reciprocity and Fuller Participation of Developing Countries)
    - Or by waiver from WTO General Council (e.g., Canada with Caribbean nations)
- <http://ptadb.wto.org/SearchByCountry.aspx>

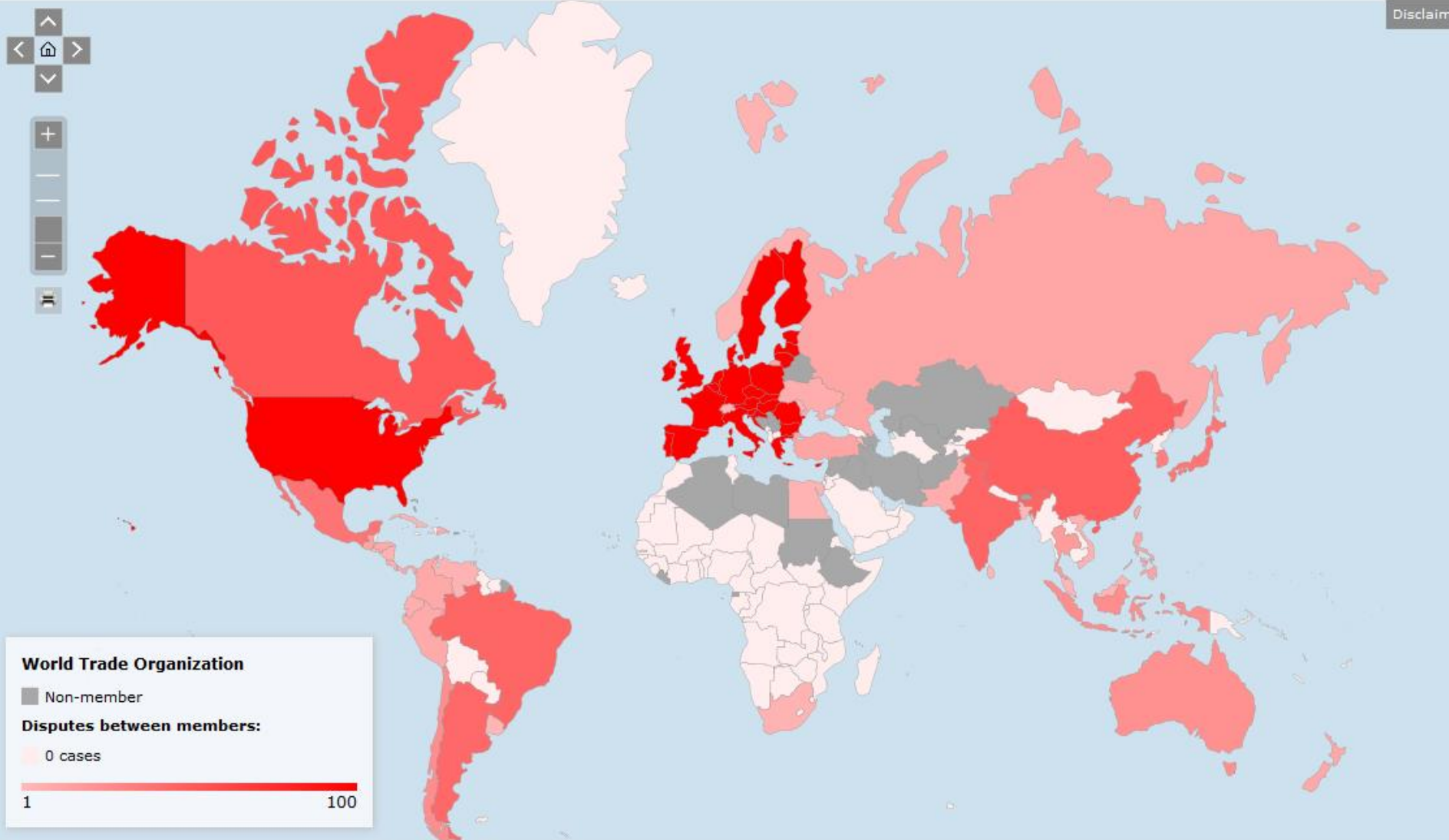
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# Barriers for Developing States to Participate in WTO

- What are the barriers to the participation of developing countries in **WTO trade negotiations**?
- Who participates mostly in the WTO dispute settlement system? What are the barriers to the participation of developing countries in **WTO dispute settlement system**?
- **Possible remedies?**

# Disputes between members



[https://www.wto.org/english/tratop\\_e/dispu\\_e/dispu\\_maps\\_e.htm?country\\_selected=ATG&sense=e](https://www.wto.org/english/tratop_e/dispu_e/dispu_maps_e.htm?country_selected=ATG&sense=e)