

Over the last decades, numerous types of arrangements and agreements between countries have been established. The ones with an objective to improve trade relationships between countries are the general focus in this chapter. Therefore, extradition agreements or double taxation regulations are not included, but simple Bilateral Investment Treaties are included.

The trade arrangements and agreements range from informal working groups to Customs Unions and include anything from safe investment guarantees to environmental agreements. Intellectual Property Rights are part of most if not all agreements (and are therefore not regarded a differentiating factor as other elements reviewed in this chapter). The most common, or perhaps well-known, agreements are Bilateral Investment Treaties and Free Trade Agreements. Although the FTAs are the main focus of Origin Management, it is important to understand what other agreements exist and what their characteristics are. In a few cases, the other agreements are a prelude to an FTA and should be monitored as such. This chapter is also written to avoid confusion: not all trade agreements are FTAs and the fact that in some cases even multiple trade facilitations exist between countries does not necessarily imply that duty rate reduction schemas are facilitated. The road to an FTA is usually long and bumpy – a few FTAs are concluded and effective within 3 years of the first round of FTA negotiation rounds, and more than a few of those talks have taken over a decade (Fig. 2.1).

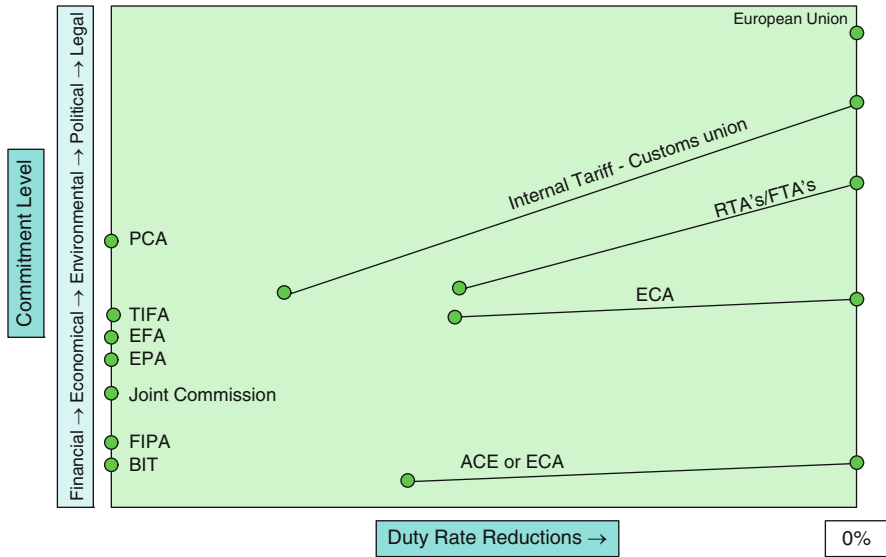
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## 2.1 Agreements Without Duty Reduction Schemas

Many of the Trade Agreements that do not include duty reduction schemas actually are completed with the objective to complete a Free Trade Agreement in the future. In cases where the agreement includes a party/parties that are not a WTO member, it is usually included in the agreement that MFN rates will (continue to) be applied.

– *Bilateral Investment Treaty* (e.g.: Canada–Argentina)

A Bilateral Investment Treaty (BIT) provides investors with various guarantees when investing in the country of the treaty partner. The BIT partners'



**Fig. 2.1** Types and scope of trade agreements

commitment is basically extending security on investing to foreign companies and individuals. BITs are not necessarily an agreement that is the start for further reaching agreements; they are merely common courtesy agreements for financial security. Currently, over 2,000 BITs are in place.

- *Foreign Investment and Protection Agreement* (e.g.: Switzerland–Colombia signed in 2006)

The main provisions of the Foreign Investment and Protection Agreement (FIPA) cover the handling of foreign investments by the host country, the transfer of capital and investment income, compensation for expropriation and procedures for settling disputes.

The agreement between Switzerland and Colombia, for example, sets out the intent to guarantee their investors added legal security and to seek to create a favorable climate for the investment of foreign capital. With Colombia being one of the main recipients for Swiss direct investments in Latin America, it will help strengthen economic relations between the two countries. The agreement can also include double taxation provisions.

- *Joint Commission* (e.g.: CARICOM–Chile)

A Joint Commission (JC) is a forum where members of the JC discuss opportunities to advance cooperation between the members, for example, on economic cooperation, technology, or environmental issues. The Joint Commission can be seen as a working group that nurtures the relationship between countries while they are trying to reach more formal levels of cooperation.

- *Economic Partnership Agreement EPA or Comprehensive Economic Partnership CEP* (e.g., African Economic Community, Japan–ASEAN)

The EPA/CEP agreements are comprehensive in scope, covering such fields as trade in goods, trade in services, investment, and economic cooperation. For example, the objectives of the ASEAN–Japan CEP are to (1) strengthen the economic integration, (2) enhance the competitiveness of ASEAN and Japan in the world market through strengthened partnership and linkages, (3) progressively liberalize and facilitate trade in goods and services, as well as create a transparent and liberal investment regime, (4) explore new areas and develop appropriate measures for further cooperation and economic integration, and (5) facilitate the more effective economic integration of the newer ASEAN Member States and bridge the development gap among the ASEAN Member States.<sup>1</sup>

– *Trade and Investment Framework Agreement* (e.g.: Australia–Egypt)

A Trade and Investment Framework Agreement (or TIFA) is a trade pact that establishes a framework for expanding trade and resolving outstanding disputes between countries. TIFAs are mostly negotiated with countries that are in the beginning stages of opening up their economies to international trade and investment, because they either were traditionally isolated or had closed economies. Although TIFAs are nonbinding, they can result in direct benefits as they can target specific trade issues and assist the TIFA members in developing the experience, institutions, and rules that advance integration into the global economy. A successful TIFA can create a level of trade liberalization that can lead to a Free Trade Agreement (FTA).

– *Economic Framework Agreement* (e.g.: Australia–China EFA)

An Economic Framework Agreement is typically an agreement that highlights cooperation and promotion at various levels and in various areas. The Agreement can and usually does include a section on the objective to create an FTA feasibility study. Typical areas included in the agreement are: trade facilitation (inspection, quarantine, cooperation, promotion).

The Australia–China EFA, for example, stipulates the following elements<sup>2</sup>:

- Cooperation to achieve balanced and comprehensive trade and investment facilitation and liberalization
- Promotion of strategic cooperation in key sectors with outstanding potential
- The development of business communities
- Enhancement of trade and investment partnership and strengthening cooperation on issues of mutual interest
- Undertaking of a feasibility study into a possible bilateral Free Trade Agreement (FTA) negotiation

– *Partnership Cooperation Agreement* (e.g.: EU and Russia)

The aim of the Partnership and Cooperation Agreement (PCA) is to encourage political, commercial, economic, and cultural cooperation. The EU–Russia PCA

<sup>1</sup>Framework for Comprehensive Economic Partnership between Japan and the Association of South East Asian Nations (2003).

<sup>2</sup>Australia–China Economic Framework Agreement (2003). This EFA may evolve into an FTA, with the 14th round of negotiations completed in March 2010.

turned into more of a visionary commitment from both sides. It covers trade, commercial, and economic relations and institutes political communication up to the highest levels. With attention for human rights and democratic processes, the PCA moves beyond many other trade agreements, which is emphasized by the range of topics covered: it stretches from the exchange of best practice and know-how on the management of postal systems, to the conservation and preservation of sites and monuments.

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## 2.2 Agreements with Duty Reduction Schemas

Agreements with duty reduction schemas vary both in range of duty rate reduction and scope outside duty rate reductions. Within the type of agreements, the level of reductions and scope can also vary (see Fig. 2.1). The presence of duty reductions implies that the agreement addresses Rules of Origin – as preferential rates will only be applied to goods that qualify, the qualification criteria must be properly defined (see Chap. 5).

These types of agreements include:

- *Economic Completion Agreement* or *Acuerdo de Complementación Económica (ACE)*

The ACE/ECA is typically bilateral and covers only specific sectors/products. Partial or full duty reductions are the main components of the agreement. ACEs can be regarded as a partial FTA or a partial preferential agreement and are very common in Latin America.

- *Economic Cooperation Agreement* (e.g.: SPARTECA, BIMSTEC)

An Economic Cooperation Agreement typically includes duty rate provisions and also supports language with regard to trade facilitation and increased levels of cooperation between signees. The SPARTECA ECA, for example, includes provisions for:

- Duty-free and unrestricted access to the markets over as wide a range of product as possible
- Acceleration of development of Forum Islands, in particular, through expansion and diversification of exports
- The elimination of trade barriers
- The promotion of investments
- Greater market penetration of Forum Island exports through cooperation in marketing and promotion of Forum Island goods
- The promotion and facilitation of economic cooperation, including commercial, industrial, agricultural, and technical cooperation

- *Free Trade Agreement/Regional Trade Agreement*

Free Trade Agreements or Regional Trade Agreements are agreements between two or more countries that regulate duty reduction schemas, the conditions under which the duty reduction can be applied, and often times include additional agreements regarding trade facilitation. A detailed review of the content of the FTA text is included in Chap. 4.

– *Common Internal/External Tariff*

A common internal tariff is set up when countries that signed a particular agreement set up a single tariff for shipments originating in and destined for countries party to the agreement. In other words, an internal tariff is a tariff that only applies for shipment between parties to the agreement (Fig. 2.2).

A common external tariff means shipments from nonagreement countries into agreement countries are classified in the same external tariff and the duty rates applied are identical notwithstanding into what agreement country the import takes place. Typically, common external tariffs are in place where Customs Unions are established. It also implies that once a product is imported into the Customs Union, it can move around freely within the Customs Union countries without further payment of customs duties.

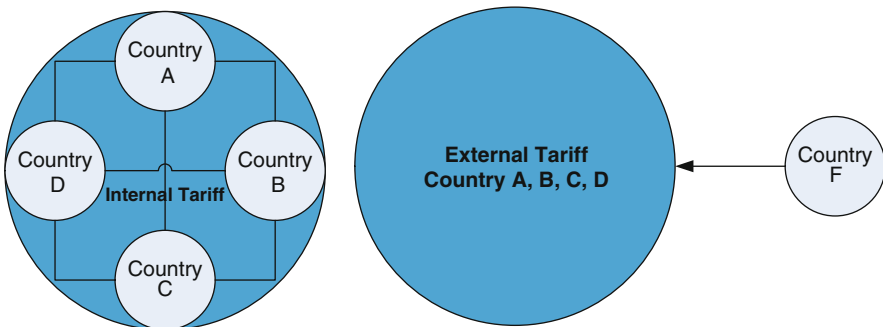
Various agreements, like ASEAN and MercoSur, have led to the establishment of a common internal or external tariff. Malaysia, for example, applies the ASEAN Harmonized Tariff Nomenclature (AHTN) for intra-ASEAN shipments and another HS code External Tariff for shipments coming in from other countries.

If well executed, the establishment of a single common tariff will simplify both “intra-agreement” shipments and shipment into the agreement countries. If executed poorly, the confusion on what tariff (HS code) to apply, what rates to apply, and how to administer for the various differences can quickly reach the point where importers and exporters are utterly confused.

Individual External Tariffs are the tariffs as applied by a single country (the most commonly known tariff) (Tables 2.1 and 2.2).

– *Customs Union*

Customs Unions share a common (external) tariff (see before – Common Internal/External Tariff). In addition, Customs Unions can have far-reaching agreements on legal, financial, environmental, and economical areas. Even telecommunication, movement of labor, and currencies can be directed at a centralized level.



**Fig. 2.2** Internal versus external tariff

**Table 2.1** Overview internal and common external tariffs (2010)

	Internal tariff	Common external tariff	Individual external tariff
European Union <sup>a</sup>		☑	
CARICOM		☑	
Central American Customs Union		☑	
Community West African States – ECOWAS			☑
Russia, Belarus, Kazakhstan		☑	
East African Community		2010	☑
South African Customs Union		☑	
ANDEAN		☑	
Gulf Cooperation Council		☑	
WAEMU		☑	
CEMAC		☑	
MercoSur	☑		☑
Israel–Palestinian Territories			
ASEAN <sup>b</sup>	☑		☑

<sup>a</sup>The European Union also has Customs Union agreements with Turkey and smaller countries like Andorra and San Marino.

<sup>b</sup>The application of preferential duty rates in ASEAN is based on the reciprocal principle, i.e., the importing country is allowed to apply regular MFN rates in case the imported product (originating in an ASEAN country) would not benefit from preferential duty rates in case it was a vice versa shipment.

**Table 2.2** Malaysia ASEAN harmonized tariff nomenclature and Malaysia external tariff (2008)

Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included	
8471	
HS code	AHTN code <sup>a</sup>
	Portable automatic data processing machines, weighing not more than 10 kg, consisting of at least a central processing unit, a keyboard and a display
8471.30.000	
	Handheld computers including palmtops and personal digital assistants (PDAs)
8471.30.10.00	
8471.30.20.00	Laptops including notebooks and subnotebooks
8471.30.90.00	Other
	Other automatic data processing machines; comprising in the same housing at least a central processing unit and an input and output unit, whether or not combined
8471.41.000	
	Personal computers excluding portable computers of subheading 8471.30
8471.41.10.00	
8471.41.90.00	Other
	Other automatic data processing machines; other, presented in the form of systems
8471.49.000	
	Personal computers excluding portable computers of subheading 8471.30
8471.49.10.00	
8471.49.90.00	Other

<sup>a</sup>AHTN uses the HS description for subheadings.

Where a common market space is established, a Customs Union can be an integrated part of such agreement and may span a monetary union (single currency or at least pegged currencies and a centralized bank function) and an economic union (clear economic plans at Community level). As explained previously, the characteristics of a Customs Union include a common external tariff and free circulation of the goods in the Customs Union territory once cleared for import.

A common market, monetary union, economic union, or even integration at the legal level does not imply all is the same throughout Member States. For example, in the European Union the penalties for not complying with customs legislation continue to be defined at local level as is the organization of customs and the practical execution of customs procedures.

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## 2.3 Unilateral, Bilateral, and Multilateral Agreements

Unilateral trade agreements are trade incentives an importing country offers in order to encourage the exporting country to engage in international economic activities that will improve the exporting country's economy. Typically, unilateral initiatives are offered to developing countries or countries that are encouraged to steer away from export of illegal drugs. The incentives typically include reduced duty rates, for which the exporting country will qualify if certain thresholds are met (see Chap. 5.). The most common program is the General System of Preferences,<sup>3</sup> an almost global program where the developed/wealthier countries provide trade incentives, including duty rate reductions, to the developing countries.<sup>4</sup>

Bilateral or multilateral agreements are reciprocal treaties where the benefits are reaped by exporters and importers from all parties to the agreement. When governments decide whether to negotiate a bilateral or multilateral agreement or to install trade incentives unilaterally, a number of elements are reviewed. These elements include the economic status of the partner country, the natural resources the country has, current import and export volumes, location, and many more. For purposes of Rules of Origin, documentation, and sustaining of origin claims, requirements set forth in unilateral agreement barely distinguish themselves from

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<sup>3</sup>Although GSP is a global initiative, importing jurisdictions are known to exclude certain product/country combinations from the product lists that receive duty rate reductions. Also, the list of GSP countries is usually divided in groups, with the group of poorest countries receiving the most benefits/incentives.

<sup>4</sup>Clearly, less noble arguments can apply when opting for a unilateral versus free trade agreement. In unilateral agreement, the importing country has to option to unilaterally exclude specific products from the scope of the arrangement, which may be much more difficult to do in a bi- or multilateral agreement. Also, it is much easier to implement tariff or absolute quota restrictions in a unilateral agreement setting. Lastly, the duration and level of general control on the requirements and application of the agreement is generally in the hands of the importing country, providing them with a significant level of control.

the ones in bilateral or multilateral agreements. It is therefore that GSP and other unilateral programs will fall under the same header when it comes to managing origin.

Free trade agreement versus unilateral agreement	
<i>Similarities</i>	
Lowers duty rates	
Rules of Origin are set forth	
Documentation required to claim preferential origin	
Claims are subject to audits	
<i>Differences</i>	
Free trade agreement	Unilateral agreement
Cumulation only for FTA signees	Cumulation usually allowed amongst all beneficiaries, at least at regional level or unilateral agreement type level
Reciprocal	Not reciprocal
Set up to encourage bilateral trade	Set up to support developing economies
Scope includes non-duty considerations	Scope typically limited to duty rate reduction <sup>5</sup>

2.4 The Order of Trade Agreements: Recap

Although a wide variety of trade agreements exist, in relation to Origin Management FTAs/RTAs are of most importance. These types of agreements include duty reduction schemas and the conditions under which duty reductions can be obtained. Chapter 3 focuses on these FTAs and their background.

<sup>5</sup>Various other tools are to the disposal of the developed countries to support developing countries in other ways – these are usually listed under “Foreign Aid” or similar headers and not part of Unilateral Agreements that encourage trade through lowering of duty rates. Unilateral agreements can be viewed as a component of Foreign Aid packages.



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