



**Asia-Pacific
Economic Cooperation**

2017/SOM3/DIA/006

Perspectives from Asia-Pacific About Behind-the- Border Barriers

Submitted by: ESCAP



**Dialogue on Regional Trade Agreements and Free
Trade Agreements
Ho Chi Minh City, Viet Nam
27 August 2017**



Session 2: Trade in Services and Investment in RTAs/FTAs

Perspectives from Asia-Pacific about behind the border barriers

APEC SOM Dialogue on RTAs/FTAs

Ho Chi Minh city, Viet Nam, 27 August 2017

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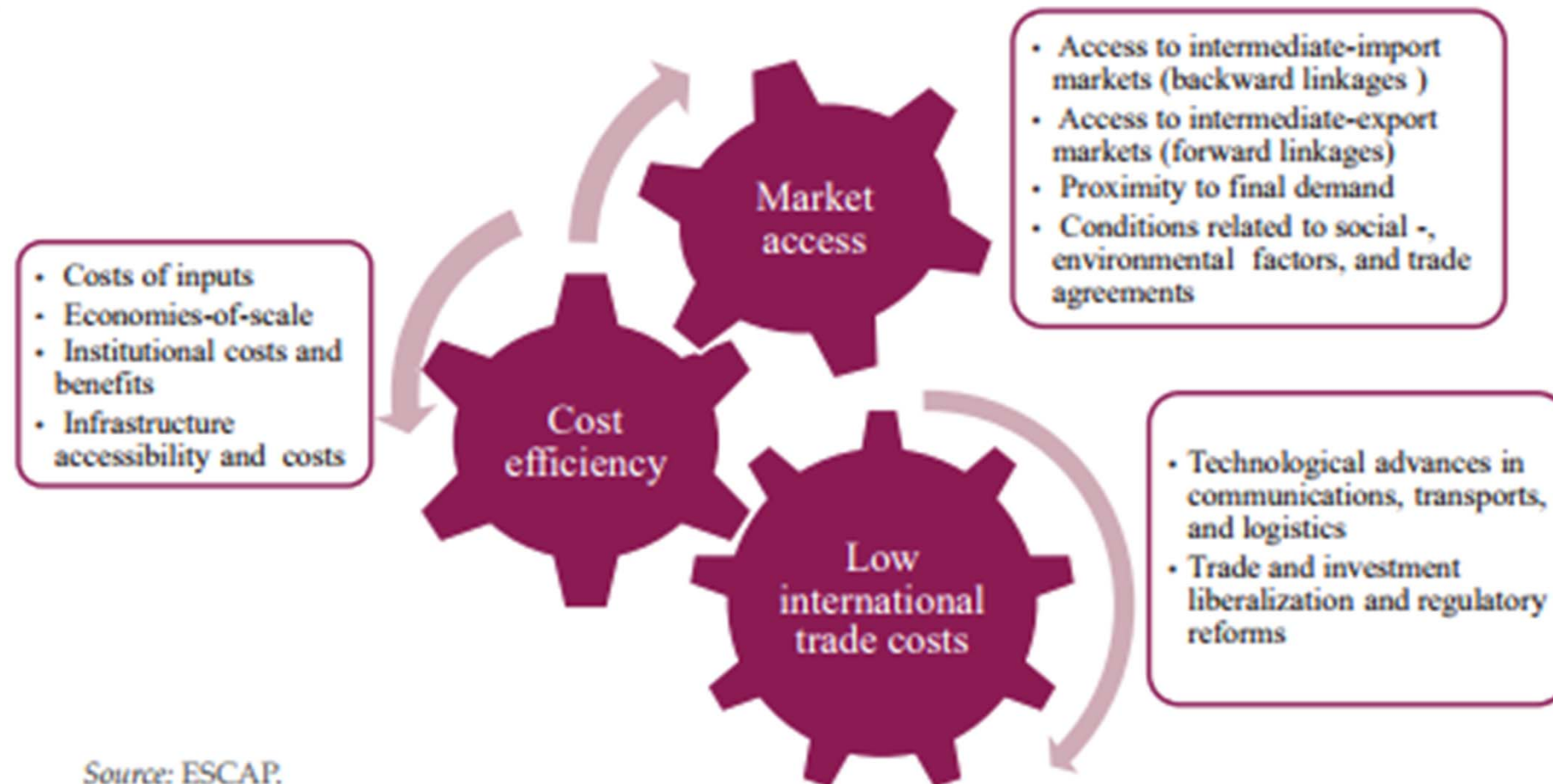
Main points

1. Growing share of trade linked to the productions networks (“factory” concept)
2. Notion of “origin” and “comparative advantage” changed
3. Main factors contributing to GVCs: market access, cost efficiency and low transactional/trade costs
4. Services and investment play major role and thus policies impacting access, quality of supply, prices are very important
5. Barriers in trade in services and investment rules still obstacles in many economies
6. “Next generation” RTAs seen as a solution?
7. Inclusivity/equality/fairness/sustainability concerns + post-adjustment are not addressed.



Factors behind GVCs

Figure 7.3 Main factors behind GVCs



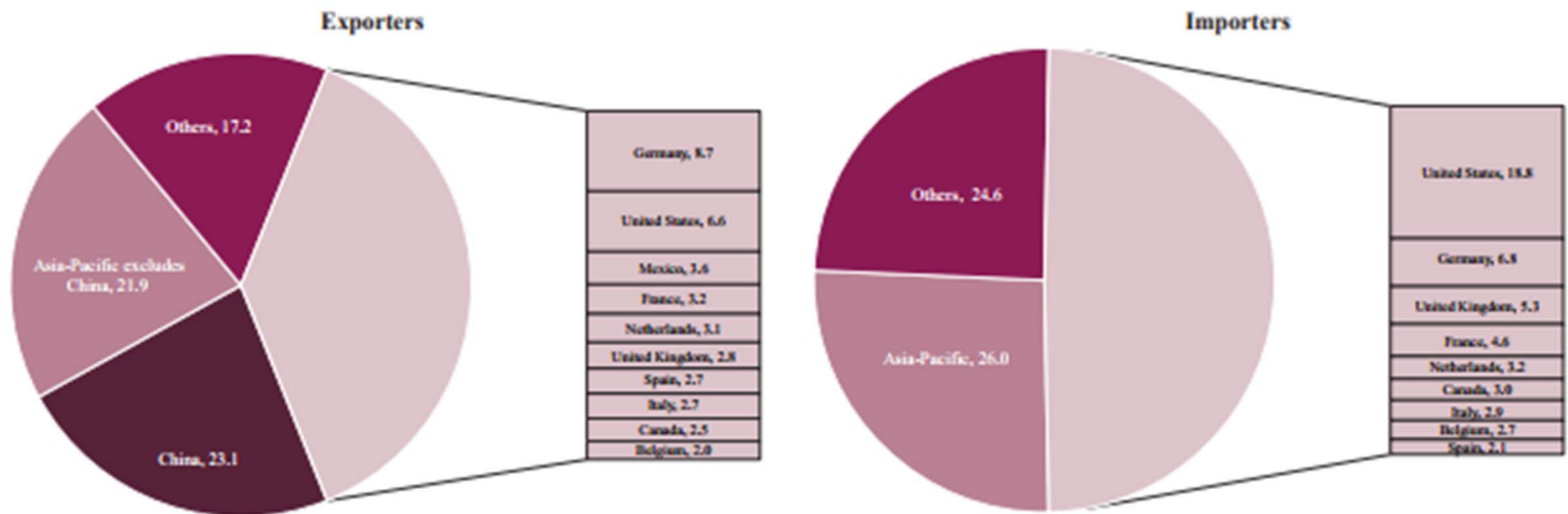
Source: ESCAP.



Who are major exporters of GVC-final goods?

Figure 7.5. Major exporters and importers of GVC-final products, 2013

(Percentage share of total exports and imports)



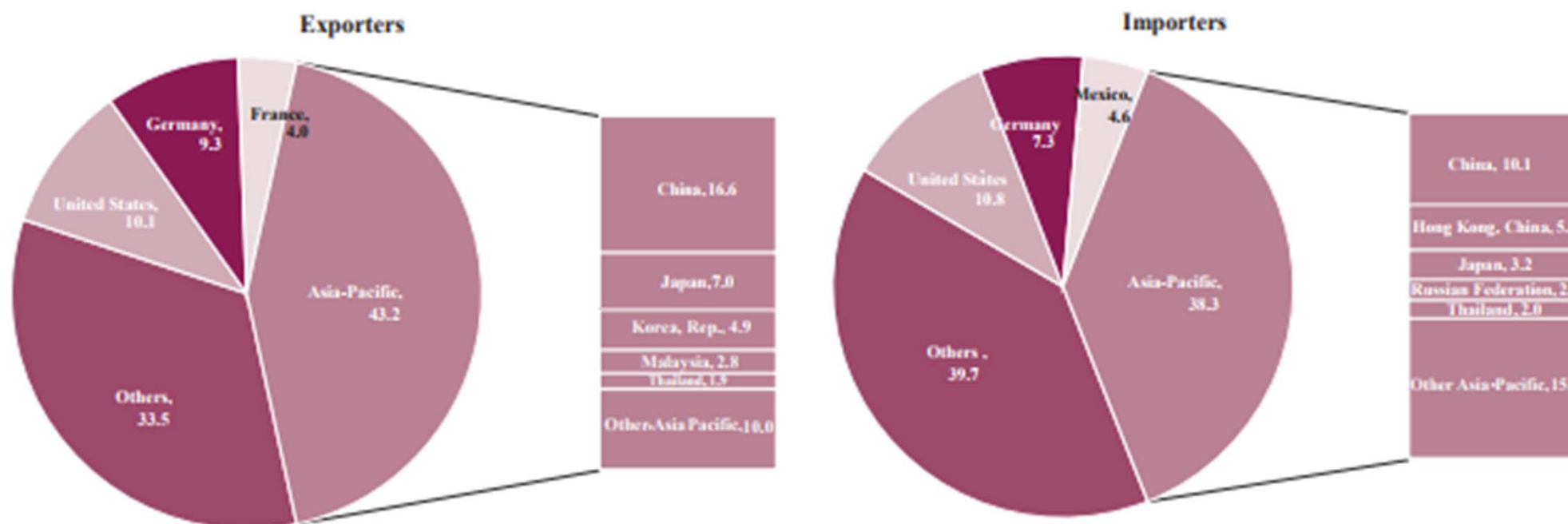
Source: ESCAP calculation based on data from the United Nations Comtrade database.
 Note: See online appendix A for product list.



Major exporters GVC-intermediate goods

Figure 7.6. Major exporters and importers of GVC-intermediate products, 2013

(Percentage share of total exports and imports)



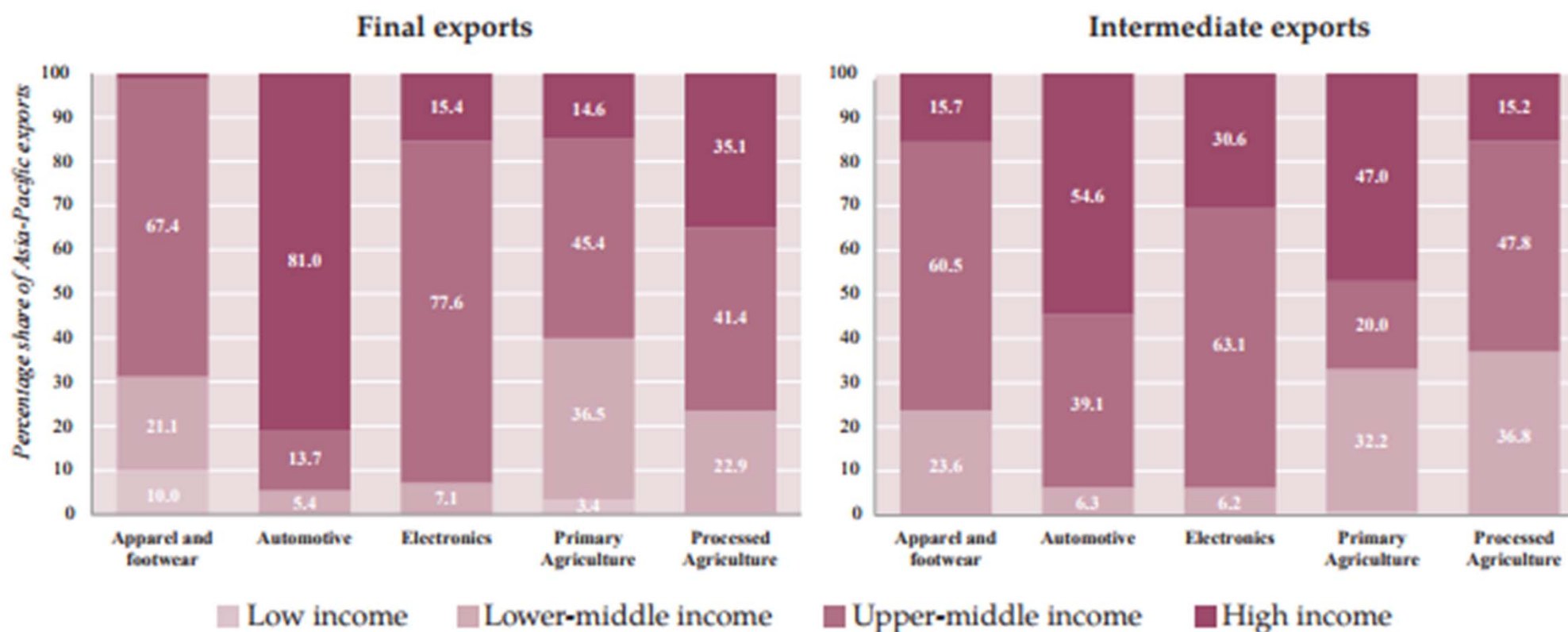
Source: ESCAP calculation based on data from the United Nations Comtrade database.

Note: See online appendix A for product list.



Least developed economies not very much involved

Figure 7.7. Shares of Asia-Pacific economies by income groups in GVC export sectors, 2013

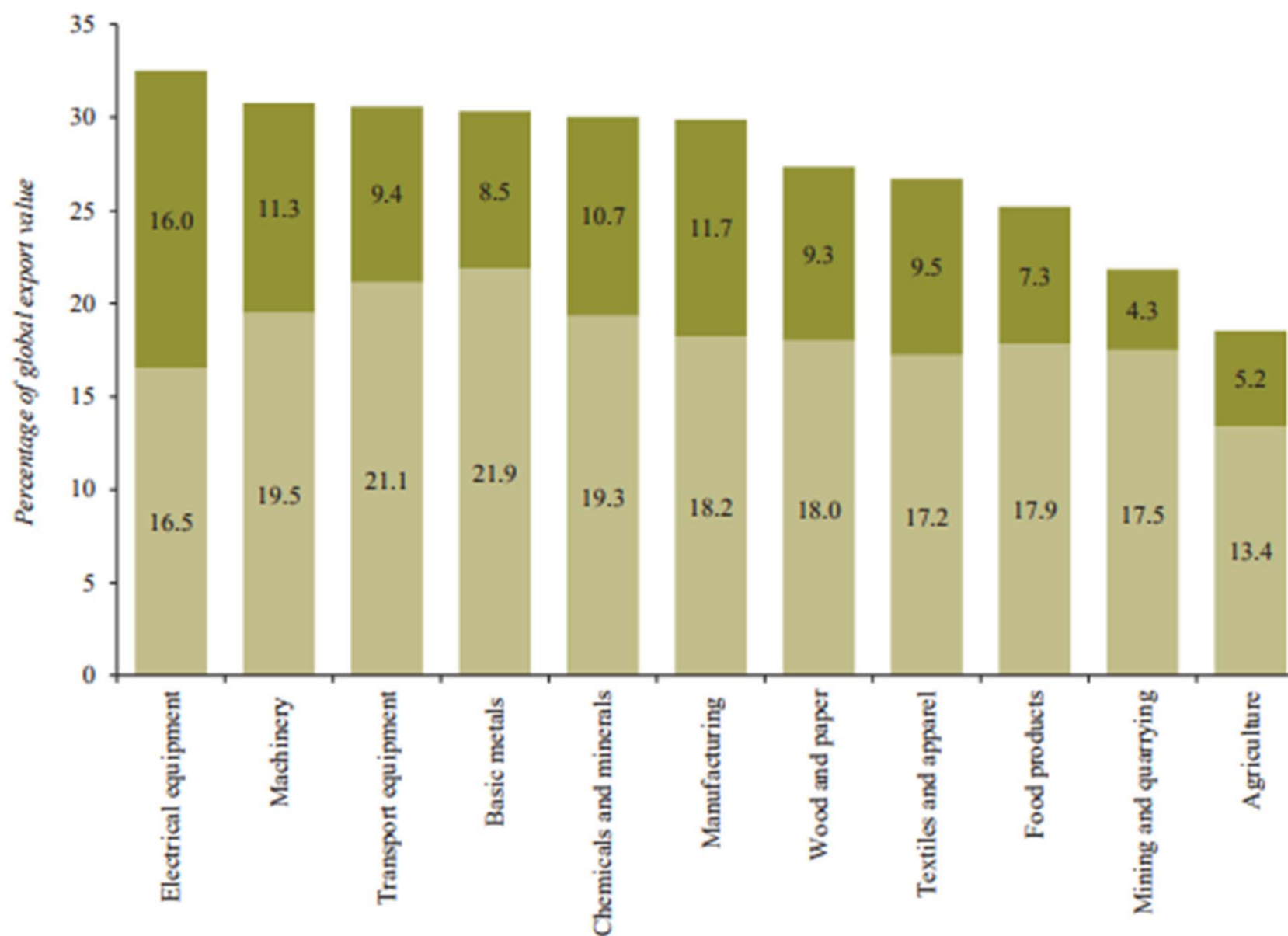


Source: ESCAP calculation based on data from the United Nations Comtrade database.
 Note: See online appendix B for country list.



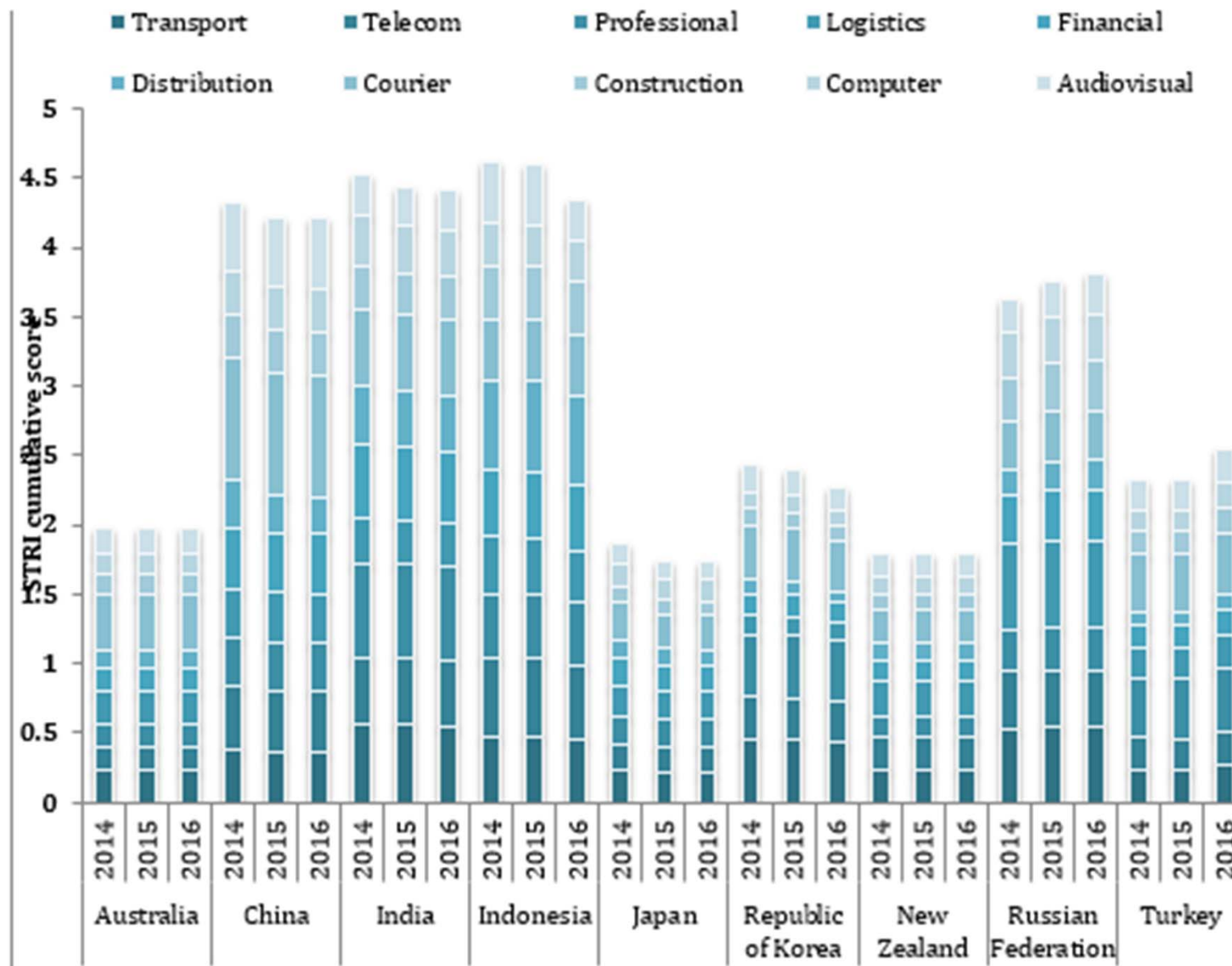
Contribution of services to gross exports

Figure 8.1. Services content in gross exports of Asia-Pacific economies, by industrial sector, 2009



But STRI still high in developing economies

Figure 3. Cumulative service trade restrictiveness index scores of selected Asia-Pacific countries



Source: ESCAP calculation based on OECD STRI dataset, accessed July 2017





Role of services EIAs

- Services create a significant value in the process of manufacturing, distribution and marketing of goods in GVCs.
- Liberalization of trade in services and investment could help facilitate participation in GVCs.
 - Commercial presence
 - Movement of natural persons
 - Communication services
 - Financial services
 - Other services
- Asia-Pacific exporters may lose their competitive edge in the GVC-related exports if they start lagging in logistics and customs procedures.





Exports in GVCs are highly sensitive to rules and obstacles of doing business in importing economies.

Reforms of trade and investment policies, especially trade facilitation and infrastructural investment, are the sine qua non for these economies to become a major player in GVCs.

Investing in technologies and enhancing market integration to facilitate upgrading process within a value chain.





Treaties with investment provisions

- Investment issues are usually handled in Bilateral Investment Treaties (BIT). However, other methods also exist.
- Treaties with investment provisions are economic agreements other than BITs that include investment-related provisions, including:
 - investment chapters in economic partnership agreements and free trade agreements,
 - regional economic integration agreements and framework agreements on economic cooperation.

While there is no comprehensive investment framework, there are some scattered disciplines which have implications for foreign investment in some multilateral trade agreements.



Examples of other international agreements that impact Investment

- Agreement on Trade-Related Investment Measures (TRIMS): prohibits a number of trade-related measures that could be imposed on foreign investors in a discriminatory bases (e.g. local content and trade balancing requirements);
- General Agreement on Trade in Services (GATS): recognizes commercial presence (i.e. FDI) as one of the four modes of services trade;
- Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS): sets minimum standard for Intellectual Property Rights (IPR); and
- Energy Charter Treaty (ECT): extends World Trade Organization (WTO) trade rules to energy products and equipment and accords investment protection at levels normally found in higher end BITs.



Relationship between IIAs and FDI

- Empirical evidence has remained ambiguous as to the overall benefit of IIAs in driving FDI.
- FDI inflows from developed economies into developing economies, BITs appear to have a positive impact on FDI inflows (UNCTAD 2009; Berger et al. 2010) .
- Although most BITs would not change the key economic determinants of FDI, they are shown to have marginal impact that could improve several policy and institutional determinants. Those developing economies that engage in BIT programmes tend to receive more FDI (UNCTAD 2009).





Investment and PTAs

- However, this impact is not limited to BITs. There is evidence that investment provisions or chapters in wider regional trade or economic partnership agreements actually have a larger impact on investment flows than bilateral investment treaties (Leshner and Miroudot 2007).
- This could be attributed to the informational effects, that trade agreements institutionalize commitments to liberal economic policies, hence making these commitments more credible and thus boost FDI (Büthe and Milner 2008).



Rising importance of these provisions in PTAs

Besides the main determinants for FDI, such as general political, economic and social stability and the ease of doing business among others, IIAs add a number of important elements to the determinants of FDI (UNCTAD, 2009) including:

- Create beneficial conditions for investors by liberalizing, facilitating, promoting and protecting cross-border FDI.
- Contain commitments to a business-supportive and investment-friendly environment
- Contain positive steps towards unifying their national investment regimes that now govern domestic as well as foreign investment, giving domestic as well as foreign investors the same protection provisions, which increases the attractiveness of doing business.





Rise of IIAs, especially BITs can lessen clarity

- Investors can struggle with the overwhelming overlaps between treaties, while host States are confronted with the risks of the multilayered regulations of FDI. S
- Since investors have a variety of investment choices available to them due to the multilayered IIAs, governments might have to deal with numerous claims (Alschner, 2014).
- The jurisdictional overlap of these treaties can lead to investors being able to bring the same claim to a center of arbitration under a BIT, and if unsuccessful, bring it to an arbitrator under another agreement, such as the ACIA (Alschner, 2014).





Concluding thoughts

- Tremendous growth in investment related agreements in the region
 - Risk creating parallel noodle bowl to PTAs
- Increasing pressure put on agreements to cover complex and cross cutting issues.
- Another example of the need for an inclusive approach to rule making – at both the domestic and international level.
- Or some other solution?





Thank you

Q&A

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