



**Asia-Pacific
Economic Cooperation**

2022/SOM3/CTI/WKSP/007

Session 1

**Dispute Settlement in Technical Barriers to Trade
and Sanitary and Phytosanitary Measures in
Regional Trade Agreements**

Submitted by: WTO



**Workshop on Current Trends on Dispute
Settlement Mechanisms in Trade Agreements
Chiang Mai, Thailand
25 August 2022**

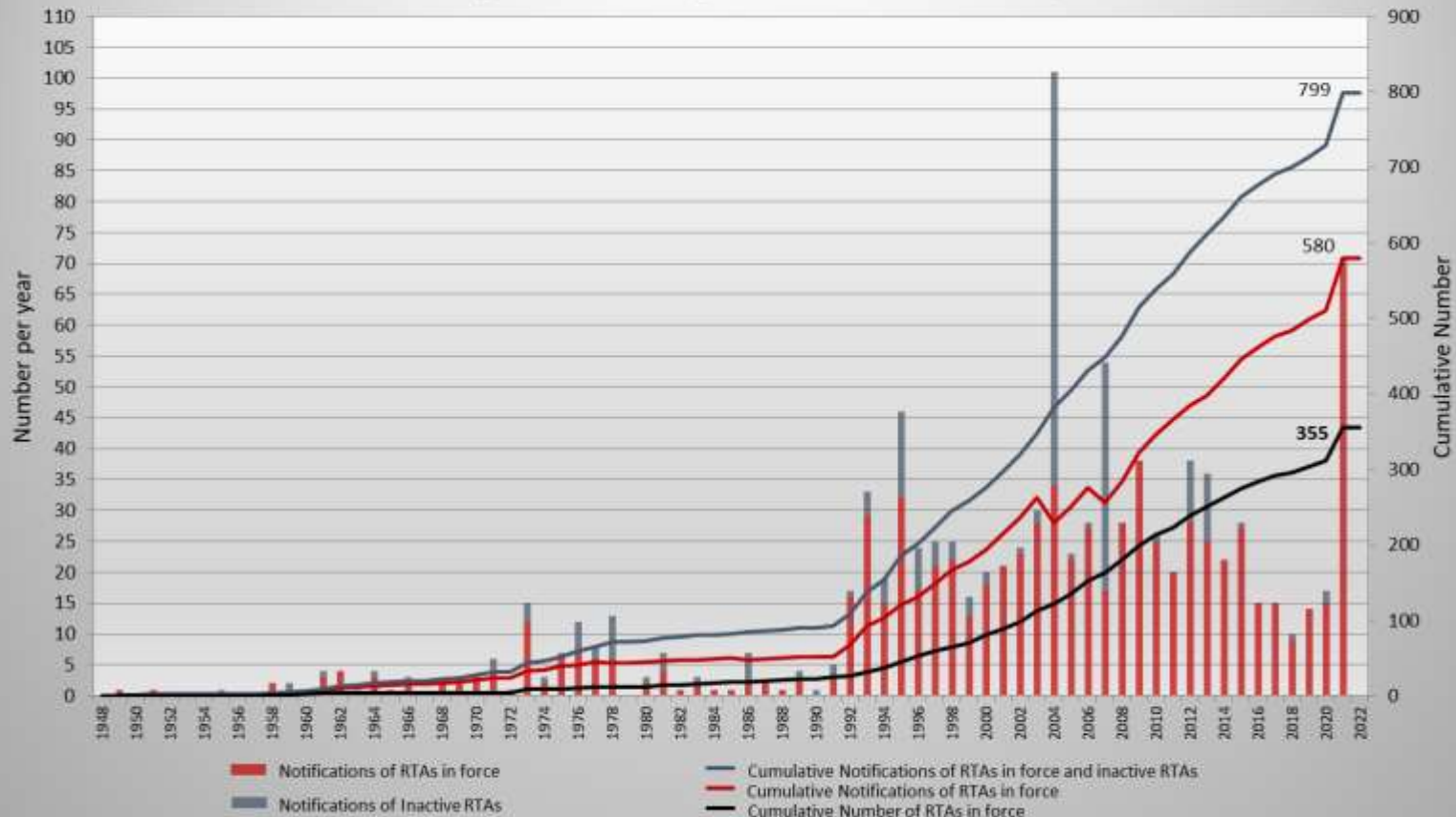


DISPUTE SETTLEMENT IN TBT AND SPS IN RTAS

Rohini Acharya
World Trade Organization
25 August 2022



Evolution of Regional Trade Agreements in the world, 1948-2022



Note: Notifications of RTAs: goods, services & accessions to an RTA are counted separately. The cumulative lines show the number of RTAs/notifications that were in force for a given year. The notifications of RTAs in force are shown by year of entry into force and the notifications of inactive RTAs are shown by inactive year.

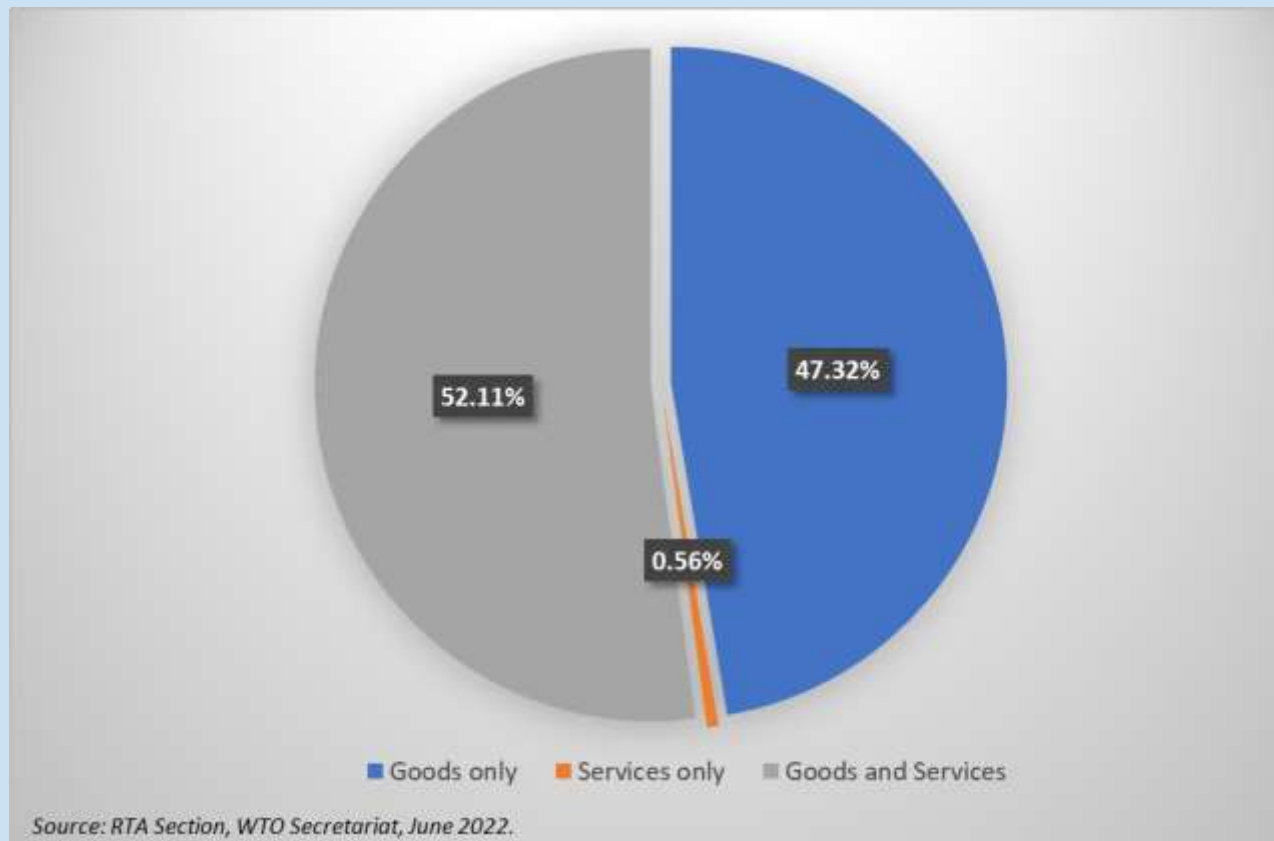
Source: RTA Section, WTO Secretariat, June 2022.

As of 15 August 2022, 354 RTAs had been notified to the WTO. These correspond to 578 notifications (goods, services, accessions) of RTAs that are currently in force.



Types of RTAs

Most RTAs today include provisions in goods and services

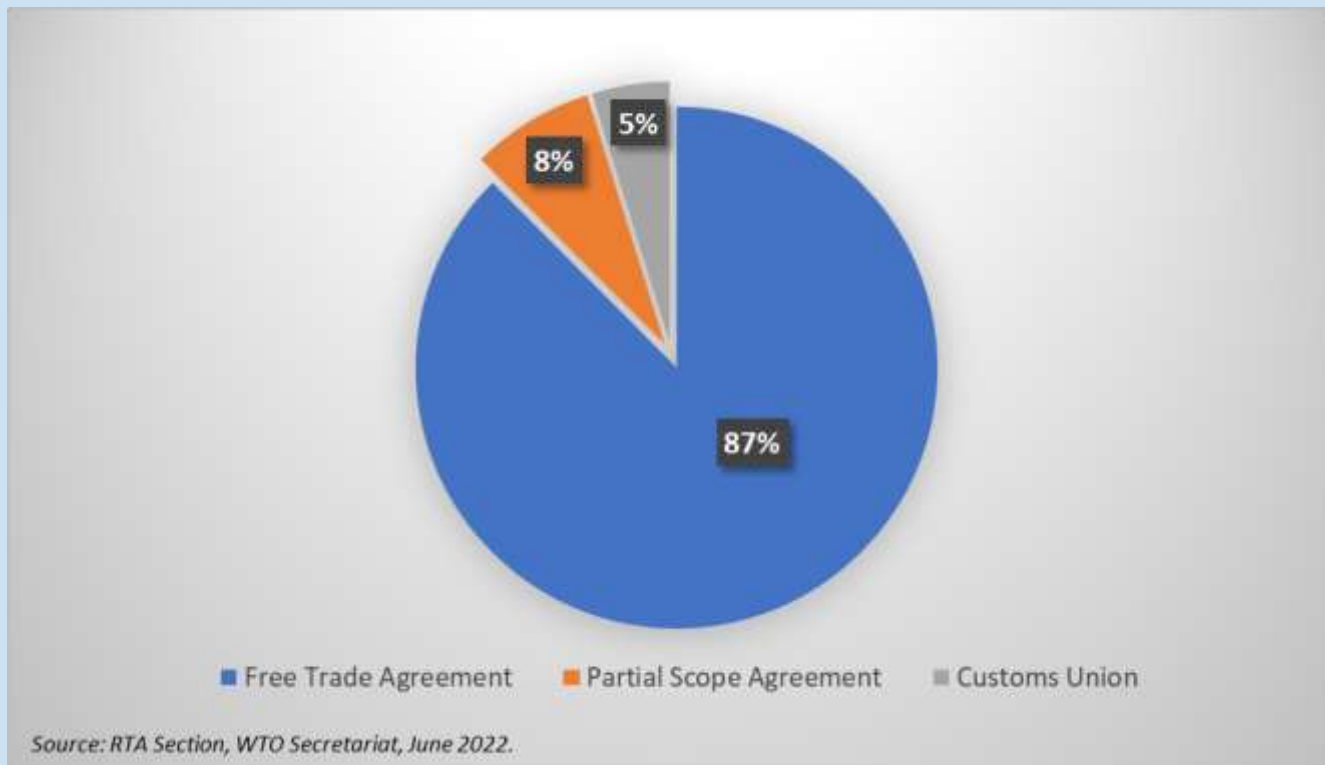


Types of RTAs



- FTAs account for the great majority of RTAs notified and in force.

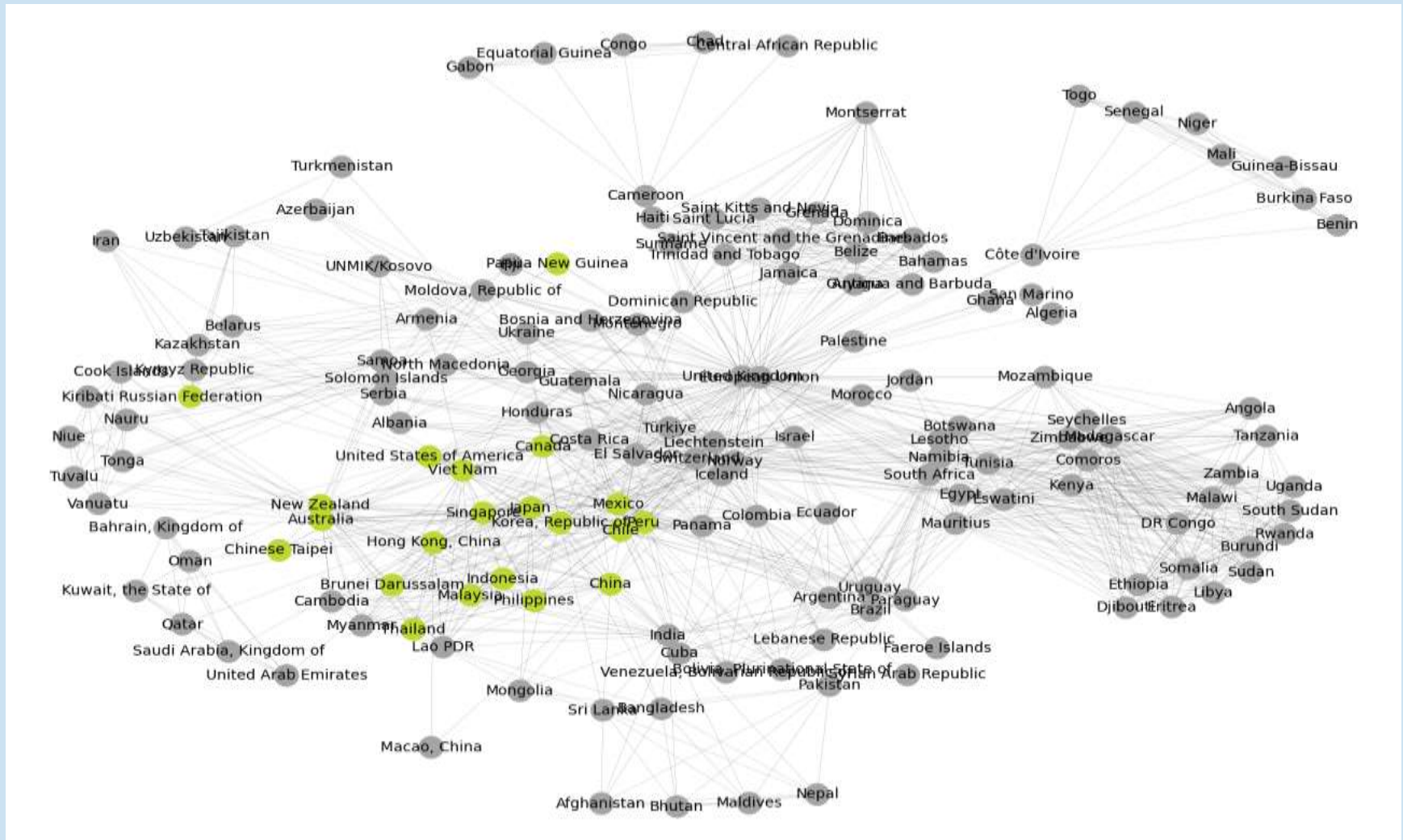
Notified RTAs in force



RTAs with SPS provisions



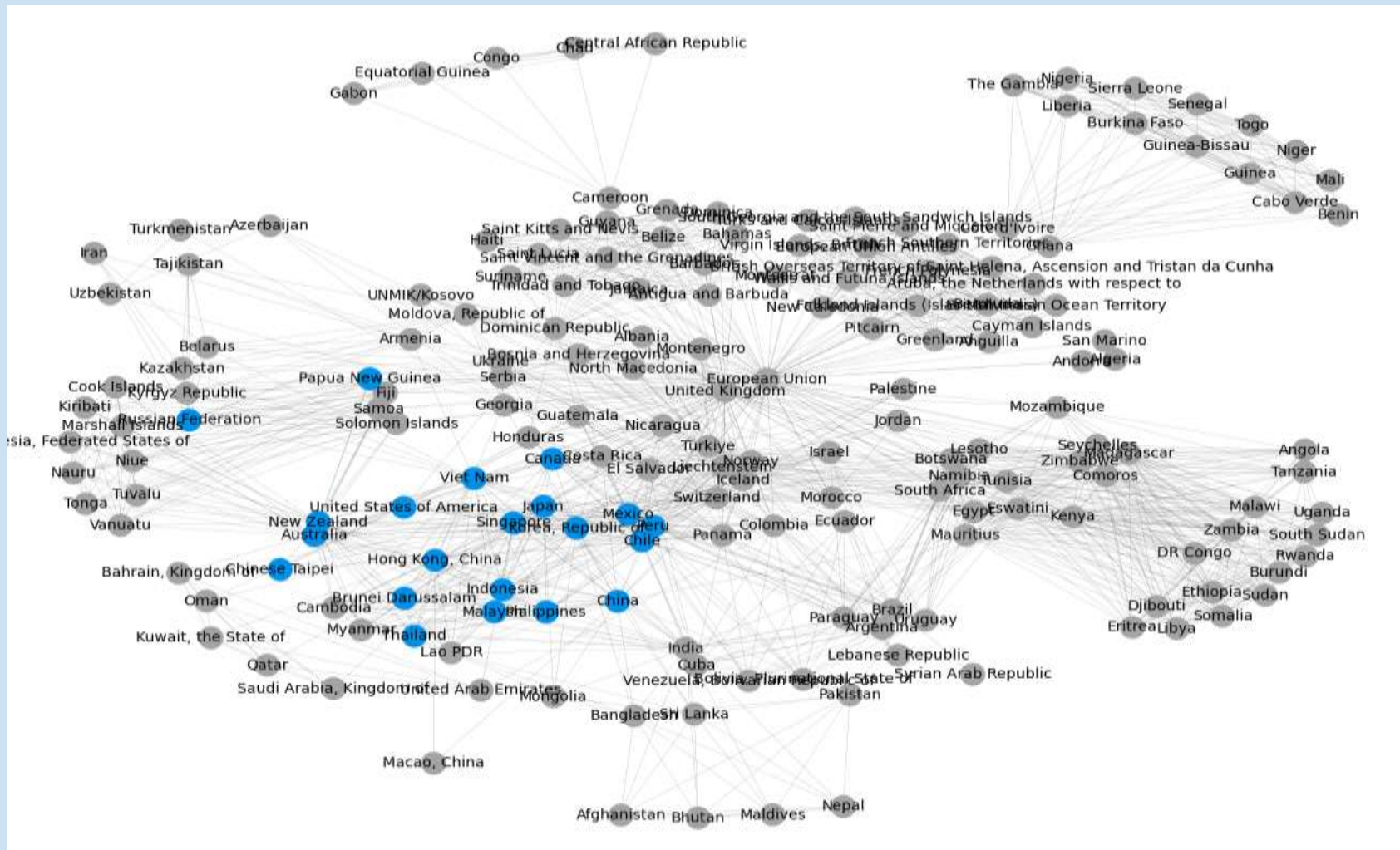
Around 83% of RTAs have provisions on sanitary and phytosanitary measures



RTAs with TBT provisions



Almost 87% of RTAs have provisions on technical barriers to trade and standards



Dispute settlement in RTAs

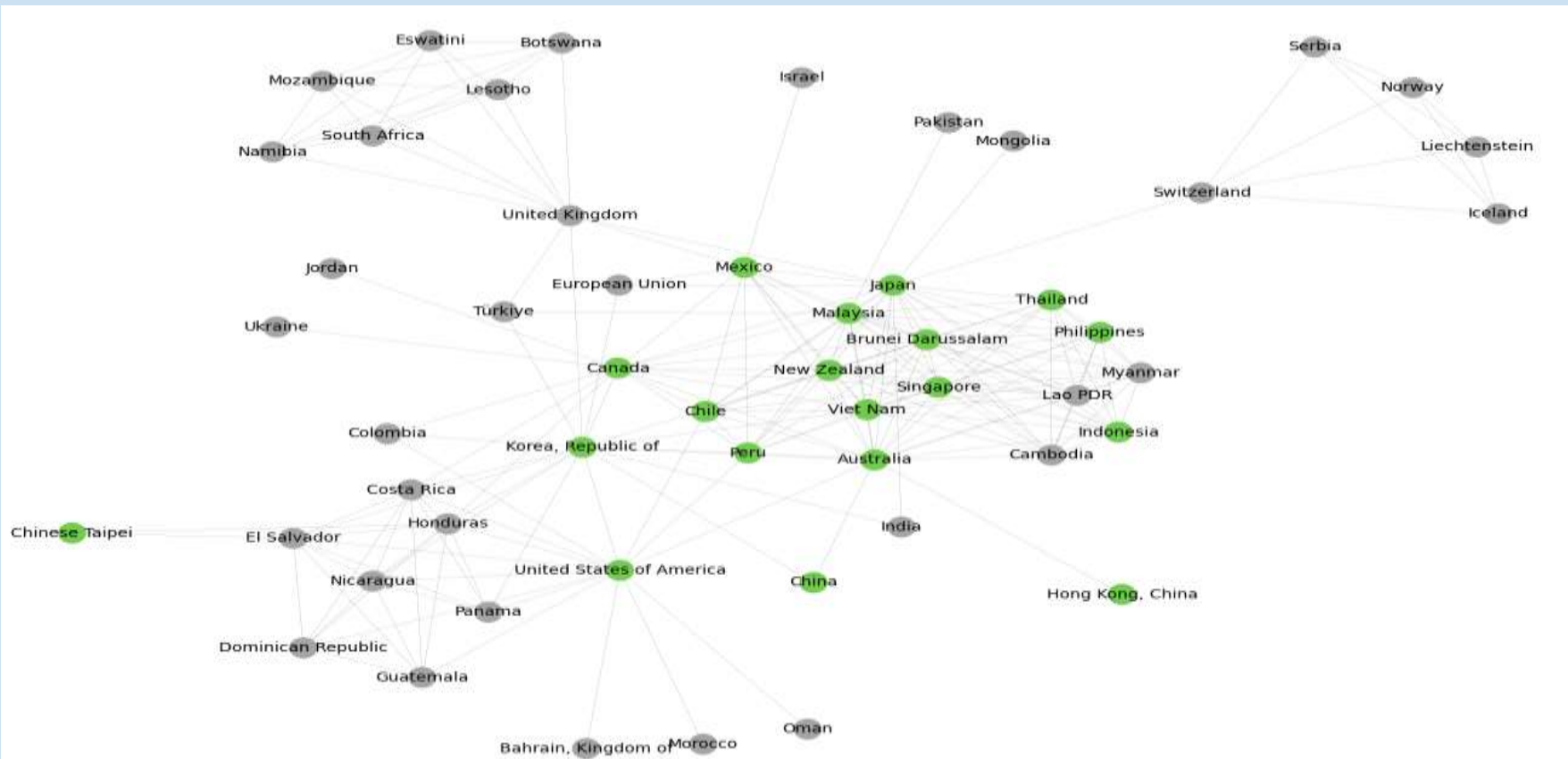


- **Structure of dispute settlement in RTAs:**
 - **In general:**
 - Consultations in a Joint Committee or Committee relating to an individual chapter of the Agreement
 - To be followed by Ad hoc adjudication (for the most part)
 - Appeal process
 - **Additional features:**
 - Fork in the road and forum choice provisions (over 50% of RTAs)
 - Some chapters are specifically excluded from dispute settlement under the Agreement

RTAs excluding SPS from DS



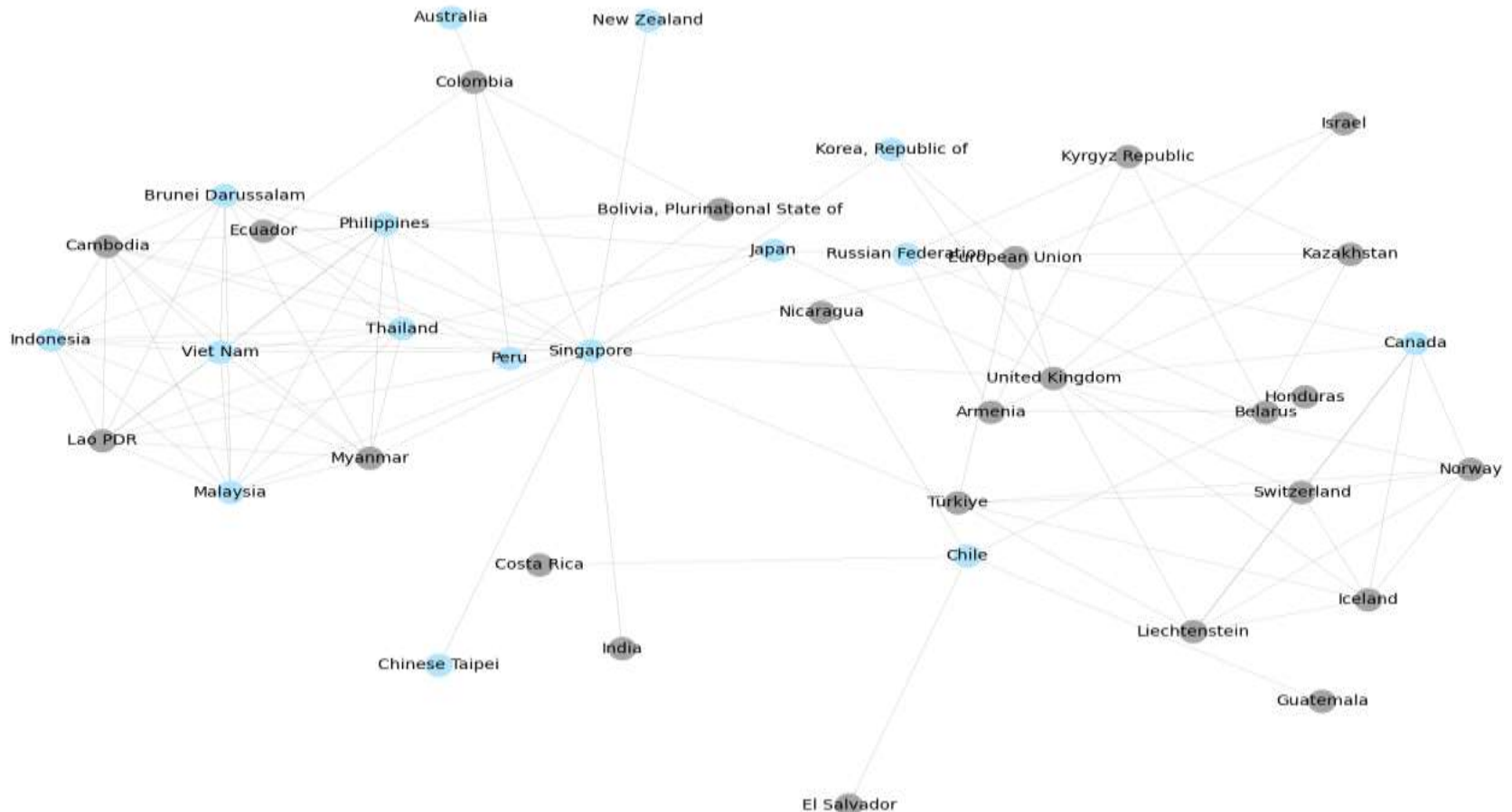
About 21% of RTAs with SPS provisions exclude some or all provisions from the Agreement's dispute settlement mechanism. Most involve Australia, Canada, Japan (but not all SPS provisions in the CPTPP), US (except USMCA) and to some extent the EU and the UK (thus WTO DSM only option)



RTAs excluding TBT from DS



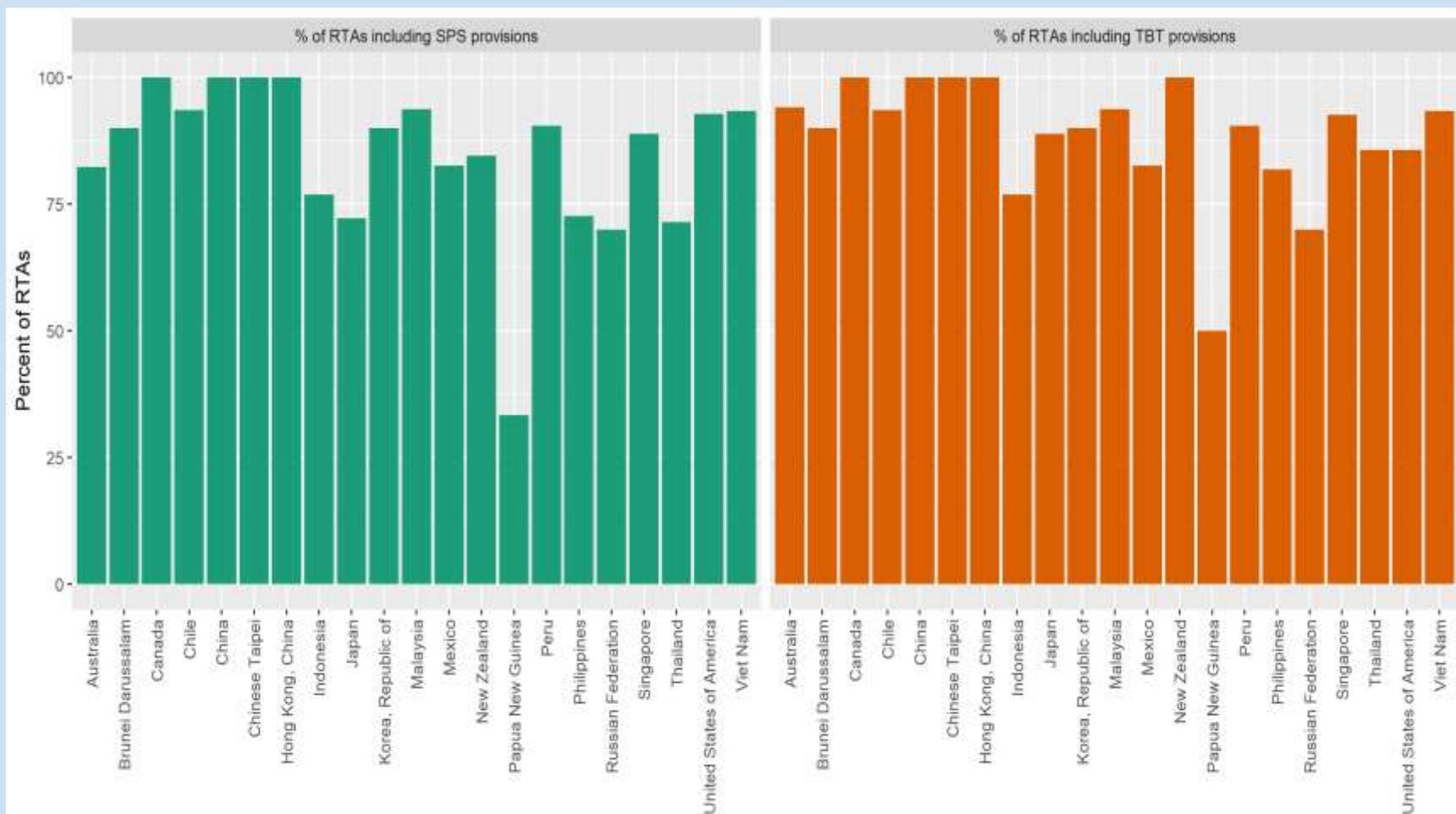
Around 12% of RTAs exclude some or all TBT provisions from the Agreement specific dispute settlement mechanism. Most involve Japan, Canada (including provisions in CPTPP), EFTA, US (including provisions in USMCA) and to some extent EU and UK.



APEC: A closer look at TBT and SPS



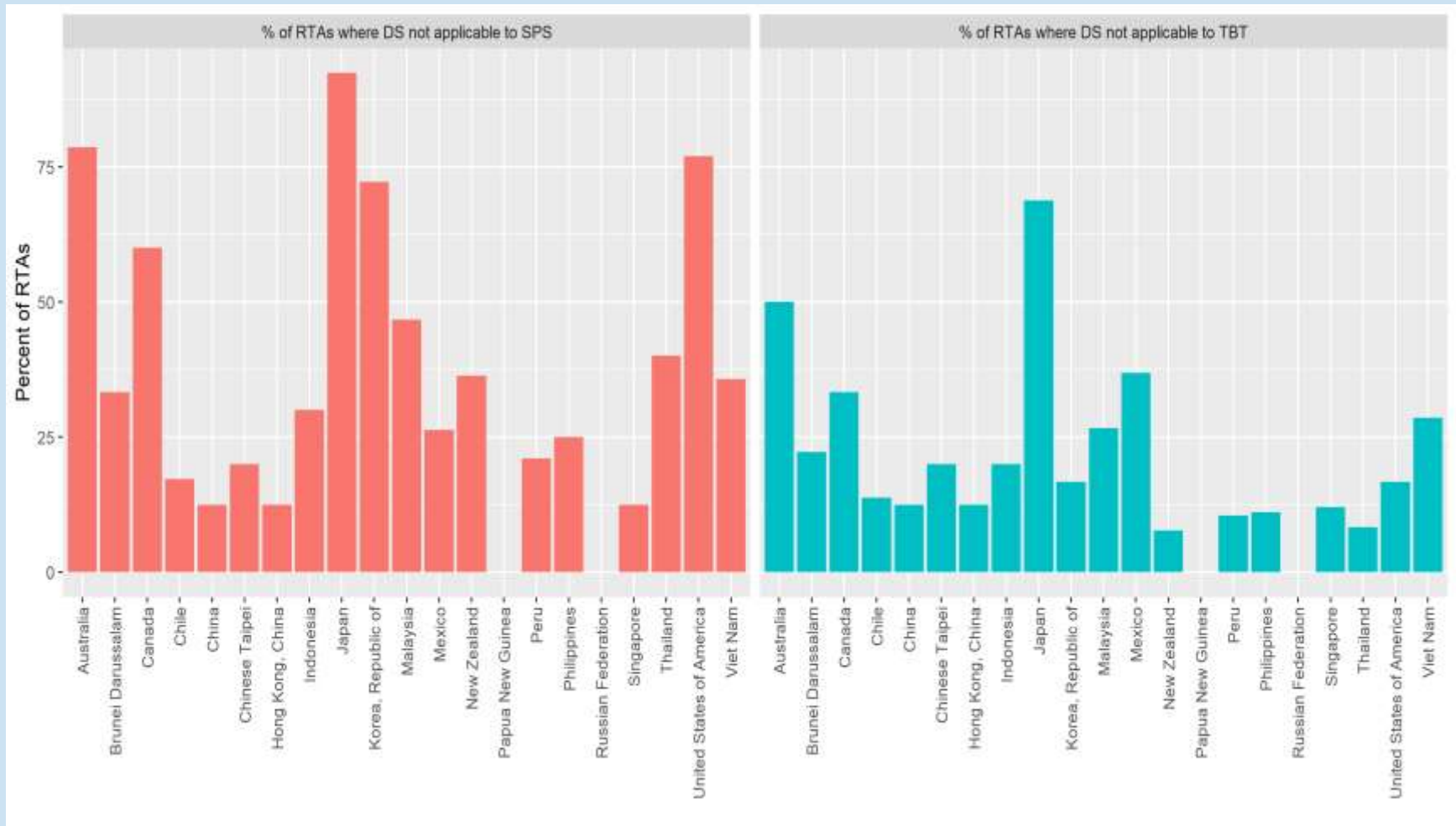
Close to all RTAs involving APEC members have TBT and SPS provisions



APEC: exclusion of TBT and SPS from DS



And a number exclude (entirely or partly) SPS and TBT provisions from the dispute settlement mechanism of the Agreement.



TBT and SPS provisions and DS



- **Main features:**

- Majority of RTAs with TBT and SPS provisions subject to Agreement specific DS (potential conflict with WTO DSM)
- For such agreements, a majority specify avoiding conflicts between Agreement specific and WTO DS.
 - Forum selection (usually by complaining party) to the exclusion of the other
 - No parallel (but recently permitting subsequent) proceedings in both fora
 - Some restrict forum selection to the “same” or “similar” issues
 - Deviation from forum selection is permitted in some RTAs if parties agree
 - Some allow deviation for particular issues (eg environmental and conservation related disputes in Canada’s RTAs).
- A small number of RTAs subject TBT to specific DS provisions

Exclusion of TBT and SPS from DS



- Some agreements exclude only parts of the Chapter from DS
 - Eg equivalence and/or risk assessment (EU and UK agreements, CPTPP)
- In some cases where provisions are excluded, Chapter specific mechanisms are established by some RTAs:
 - Cooperative technical consultations in CPTPP for both and as a first step before DS for SPS
 - Ad hoc working group in AANZFTA for TBT
- Even if TBT or SPS provisions are not excluded from DS additional mechanisms are established:
 - Technical consultations in Peru-Australia for TBT
 - Ad hoc technical working group in CETA
 - Technical discussions in USMCA as a first step before DS for SPS
 - Impairment or nullification provisions mainly in RTAs in the Americas



THANK YOU

Rohini Acharya

RTA Section

Trade Policies Review Division, WTO

rohini.acharya@wto.org