

# **TRADE IN GOODS IN FREE TRADE AGREEMENTS**

Date

# HISTORICAL DEVELOPMENT OF INTERNATIONAL TRADE DISCIPLINES

- Tariffs were at peak during the Great Depression.
- US Smoot-Hawley Act
- Post-World War increased in tariffs
- The idea of International Trade Organization never fructify.
- General Agreement on Tariffs and Trade was established in 1947.
- Finally, the WTO came into existence in 1995.

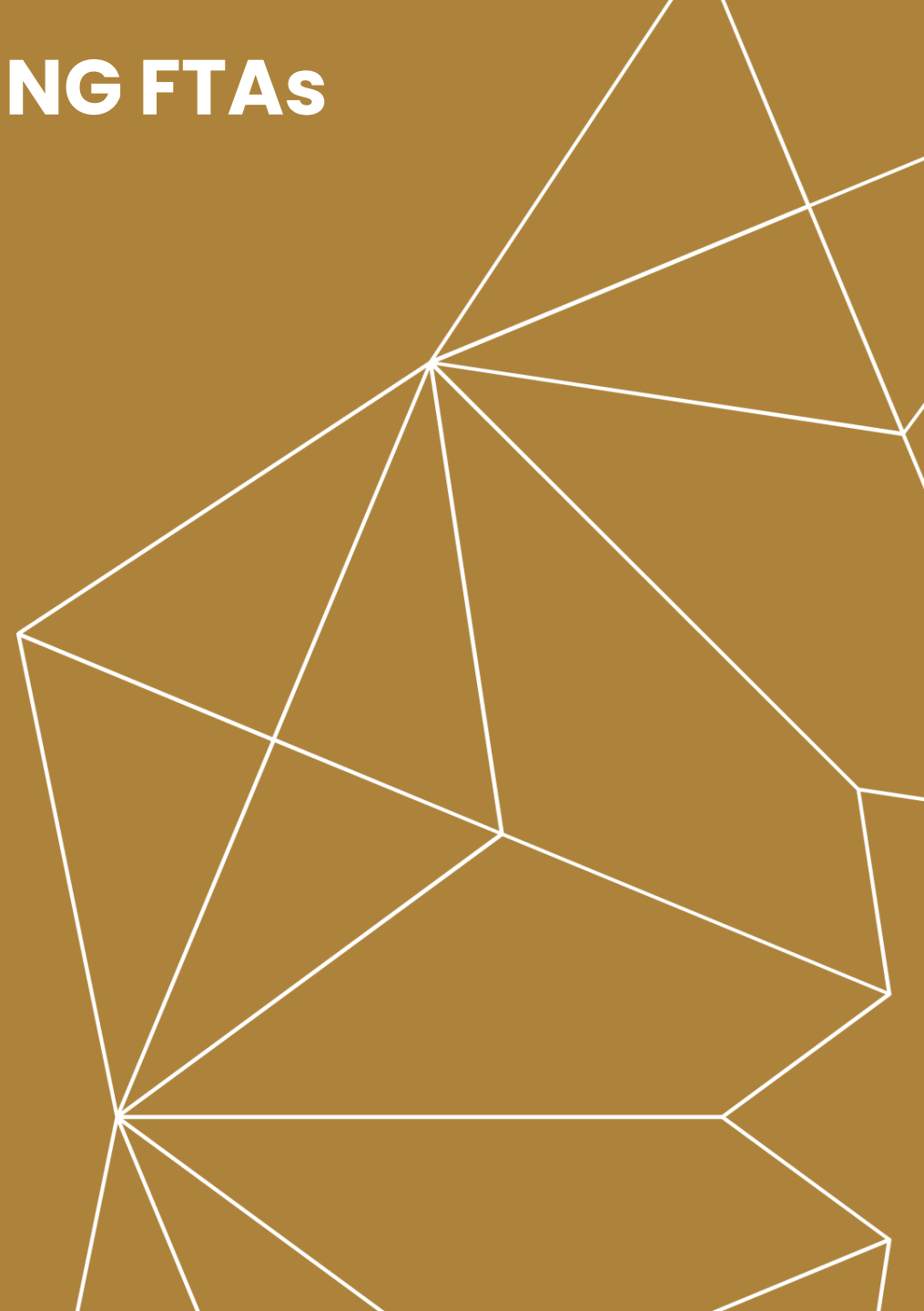


# STRUCTURE OF THE DISCUSSION

- Why do countries enter into FTA?
- Legal Basis of FTA
- Regulation of Tariff Barriers
- Pre-FTA Preparation: Feasibility Analysis
- Methods of Tariff Liberalization
- Process of Tariff Liberalization
- Regulation of Non-Tariff Barriers
- Administrative Mechanism of the Trade in Goods chapter
- Strategies for the Trade in Goods Negotiations
- Conclusion

# REASONS FOR NEGOTIATING FTAs

- Lack of progress and consensus at the WTO.
- Each country specializes in different goods or sector
- FTAs enable countries to build alliances
- Richard Baldwin's Domino Theory
- FTAs promote peace in international relations.
- Creation and Harmonization of Norms.



# LEGAL BASIS OF FTAs

- FTAs are exceptions Most-Favored Nation Treatment under Article I of the GATT.

Goods		Services
Article 24 of the GATT	Enabling Clause	Article V of the FTA

Article 24 of the GATT	Enabling Clause
<ul style="list-style-type: none"> <li>• Deals with Customs Union and FTAs</li> <li>• “duties and other restrictive regulations of commerce are be eliminated in substantially all trade”</li> <li>• Cover trade agreements entered into by all types of countries irrespective of their development status.</li> </ul>	<ul style="list-style-type: none"> <li>• Deals with FTAs.</li> <li>• Trade Barriers can be removed on a limited number of goods.</li> <li>• FTAs by developed countries only are excluded from the scope of the Enabling Clause.</li> </ul>
<p><b>Example:</b> European Free Trade Association-Indonesia FTA; UK-Moldova FTA</p>	<p><b>Example:</b> India-Mauritius Comprehensive Economic Cooperation and Partnership Agreement; Indonesia-Pakistan Preferential Trade Agreement</p>

## **'GOODS' UNDER THE FTAs**

- Prohibited Goods are not dealt under the FTA.
- Exclude dual-use goods and technologies under the Wassenaar Arrangement
- Only Goods meeting the Requirement of Rules of Origin chapter can claim benefit under the FTAs.

## **HARMONIZED SYSTEM OF TARIFF CLASSIFICATION**

- Developed by the World Customs Organization.
- WCO develop such code at the 6 digit level.
- Subsequent classifications are developed by the countries as per their domestic system.
- Codes may change with time due to technological development.

# CUSTOMS DUTY: WHAT IS IT?

- A tax that is levied on imports.
- Raises revenues.
- Safeguards domestic industries.
- Regulate and Control the flow of goods.



## LEGAL DEFINITION OF CUSTOMS DUTIES

**Inclusionary Part:** What constitutes customs duties: Basic Customs Duties + Cess + Levies + Sur-charge

### **Exclusionary Part:**

1. Tax inconsistent with Article III:2 of the GATT i.e. Discriminatory taxes on imported and domestic goods.
2. Fees and other charges pertaining to the importation of goods.
3. Trade Remedial Duties.
4. Fees or premium on TRQs

## TREATMENT OF CUSTOMS DUTY



- At the WTO, the maximum duty that can be imposed is called the Bound Rate, and the current imposed duty is called Applied Rate.
- Applied Rate cannot exceed the Bound Rate
- Duties under the WTO apply on a non-discriminatory basis irrespective of the origin of the imported products.

- Customs Duty under the FTA be applied according to the tariff concessions commitments in the Schedule.
- When the Applied MFN Rate is lower than the Preferential Tariff Rate, Applied MFN Rate applies.



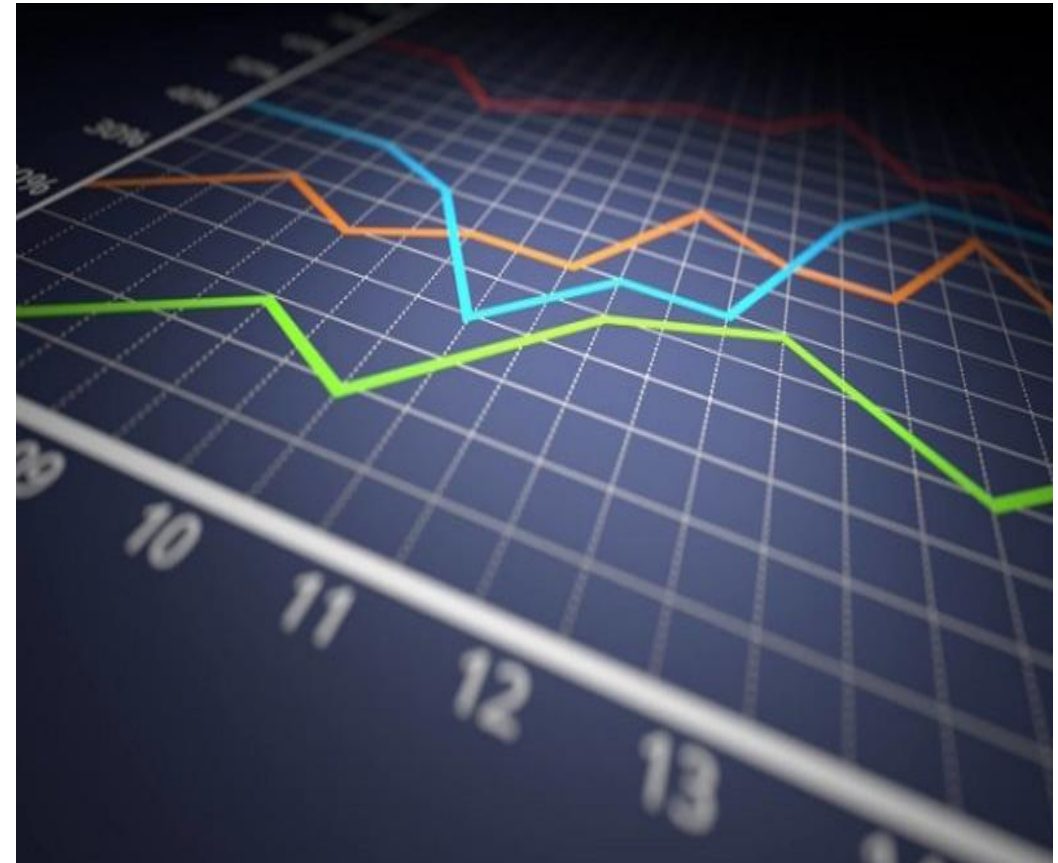


# FEASIBILITY ANALYSIS FOR NEGOTIATING FTAs

- It undertakes a comprehensive analysis of many things before the FTA negotiation starts.
- Assess the viability of entering into the FTA.
- It does the cost-benefit analysis of opening its market for foreign goods and the potential benefit of it.

## ASPECTS OF FEASIBILITY STUDY

- Assessment of trade flow patterns and sectors that may potentially benefit from the tariff reductions.
- Analyse how non-tariff barriers that impede trade flow.
- Finds political will and socio-economic implications such as employment, women participation, SMEs, etc, of the FTA.
- Administrative Capacity to implement the FTA
- Analyse the environmental and social impacts of the FTA.



# ECONOMIC MODELS FOR FEASIBILITY ANALYSIS

## General Equilibrium Model

- Provide a comprehensive view of the entire economy
- All the factors are changed

## Partial Equilibrium Model

- Focuses on specific markets or industries in isolation.
- Some factors are kept constant

## TRADE DATA: WHERE TO FIND THEM?

- World Bank Integrated Trade Solution or WITS
- Integrated Data Base
- Direction of Trade Statistics

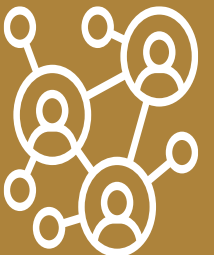
## Computable General Equilibrium Model

- Assesses the interactions among various economic sectors, factors of production, and households
- Useful to identify the impact of FTA on production, consumption behaviour and employment

## Gravity Model

- Focuses specifically on bilateral trade flows
- Apart from the economy's size, also focuses on the distance between the two countries

**Do you know that WITS provide a tool called 'SMART' which is based on the Partial Equilibrium Model?**



# METHODS OF TARIFF LIBERALIZATION AND RELATED CONCEPTS

- It begins after countries exchange their trade data of a mutually agreed time period (for example, trade data for past three years).
- FTA Parties decide upon the base rate. The MFN Applied Rate of any of the years of the trade data exchanged by the parties, is taken as the base rate.

## Methods of Tariff Liberalization

### Elimination

- Generally used for non-sensitive products.
- Duty is reduced to zero.

### Exclusion

- Used for sensitive products.
- Products in the Exclusion List are not subject to tariff concessions at all.

### Reduction

- Used for sensitive products.
- Duty is reduced, but not to zero.

### Tariff Rate Quota

- Used for sensitive products.
- Only fixed quantity of products are accorded preferential tariff rate, and then higher duty applies

### TIP FOR

### NEGOTIATORS

*Be cautious of the Standstill Clause as it prohibits a country from increasing tariffs even on products in the Exclusion List.*

**The tariff concessions in any form the above form may occur immediately after Entry into Force of the FTA or in phases as decided by the Parties.**

# DUTY-FREE TREATMENT OF GOODS

REPAIRED GOODS	TEMPORARY ADMISSION OF GOODS	COMMERCIAL SAMPLES OF NEGLIGIBLE VALUE AND PRINTED ADVERTISING MATERIALS
<ul style="list-style-type: none"> <li>• when a good is imported for the first time into the importing country, the requisite duty is paid.</li> <li>• Now good is exported for repair, and re-imported. If there is no FTA, duty is to be paid on value addition.</li> <li>• If there is an FTA, then no duty to be paid on value addition.</li> </ul>	<ul style="list-style-type: none"> <li>• Builds upon Article 10.9 of the WTO Agreement on Trade Facilitation, and ATA Carnet.</li> <li>• Cover essential professional equipment; and goods designated for display and sports-related items.</li> <li>• Time limit for temporary admission is decided in accordance with the domestic laws of the Party.</li> <li>• Port of Entry and port of exit need not be the same.</li> <li>• Also deal with duty free entry of shipping containers.</li> </ul>	<ul style="list-style-type: none"> <li>• Essential for the solicitation of orders for goods.</li> <li>• Cannot carry more than one copy of each advertising material.</li> <li>• Commercial Samples of Negligible Value: Maximum value be 1 Dollar (Article 2.1, USMCA)</li> </ul>

The duty-free treatment under all these Articles apply regardless of the origin of the product.

# CUSTOMS VALUATION

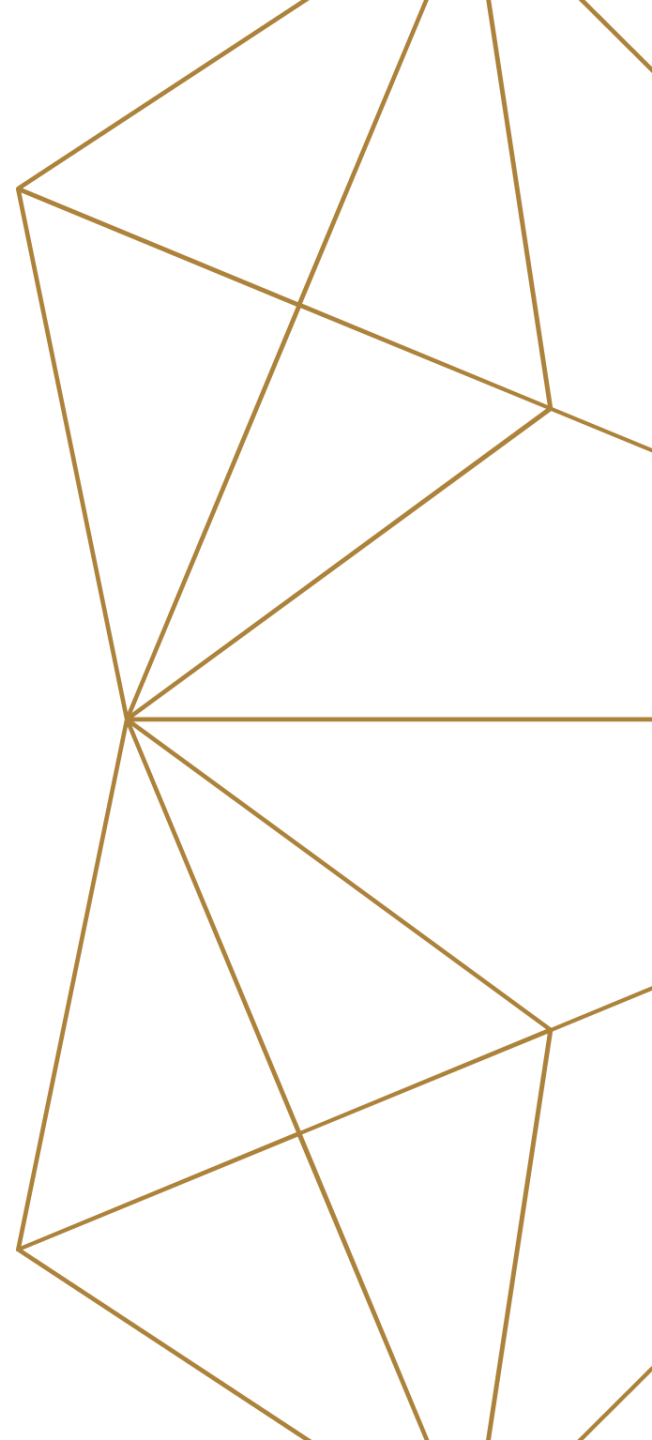
- Prevents arbitrary determination of customs value of through by providing methods for the WTO.
- Such methods are provided under the WTO Customs Valuation Agreement.
- FTA provisions merely incorporate the WTO Customs Valuation Agreement.
- FTA provisions also provide for consultation mechanism for matters pertaining to the valuation.

**The methods of valuation under the Customs Valuation Agreement are Transaction value Method, Transaction value of identical goods, Transaction value of similar goods, Deductive Method, Computed method and Fall-back method**



# FEES AND CHARGES

- Imposed as part of international trade transactions.
- A trader has to pay fees for customs inspections, license, statistical services, etc.
- This Article in FTAs builds upon Article VIII of the GATT.
- Article 8, among other things, primarily provides that such fees or charges “shall be limited in amount to the approximate cost of services rendered and shall not represent an indirect protection to domestic products or a taxation of imports or exports for fiscal purposes”.
- This Article in FTA also prohibits consular transactions which is WTO-plus.
- Some FTAs like EU-Chile FTA prohibit the imposition of fees and charges on an ad valorem basis.
- EU-Chile FTA also provides an illustrative list of the instances where such fees or charges may be imposed.





## NON-TARIFF BARRIERS



- Barriers or restrictions to the international trade of goods that do not involve tariff-related measures.
- Non-tariff barriers may take the form of restrictions, prohibitions, and regulatory measures including technical regulation and sanitary and Phyto-sanitary measures.

## IMPORT AND EXPORT RESTRICTIONS

- FTA Article builds upon Article XI of the GATT titled “Quantitative Restrictions”.
- Deals with prohibition and restrictions.
- The WTO-plus provisions in the FTA includes voluntary restraint agreement (e.g. *EU-Viet Nam FTA*); minimum price requirement (e.g. *EU-New Zealand FTA*); performance requirements (e.g. *EU-Viet Nam FTA*)



# LICENSING PROCEDURES

- Ensure that only authorised goods can be imported or exported, as the case may be.

Import License	Export License
<ul style="list-style-type: none"><li>• Builds upon the WTO Agreement on Import Licensing Procedures.</li><li>• There are Automatic and Non-Automatic Import Licenses.</li><li>• Automatic Import Licenses are those where approval of the application is granted in all cases. Rest all are Non-Automatic Import Licenses.</li><li>• If Agreement on Import Licensing Procedures-related notifications are complied with at the WTO, then no need to separate notification under the WTO.</li><li>• FTA provisions require reason to be given for the denial of the Import License.</li><li>• CPTPP provide certain additional contents that must be included in the notification. They are: history of importing the product or similar products; minimum importer or end user production capacity; etc.</li></ul>	<ul style="list-style-type: none"><li>• There is no WTO Agreement on Export Licensing Procedures.</li><li>• FTA provisions on it deal with publication and transparency relation obligations.</li><li>• FTA provisions also provide the types of information to be included in the notification.</li></ul>



# NATIONAL TREATMENT

- Based on the fundamental principle of non-discrimination in International Trade Law.
- Important to prevent the creation of an uneven level playing field in the market for domestic and imported products.
- Complements the goal of consumer welfare.
- FTA Article on National Treatment merely incorporates Article III of the GATT.
- Following the Canadian FTA approach, a negotiator may create an exclusion list that exempts certain tariff lines or measures from being subject to the National Treatment obligation.

# NEW ISSUES IN TRADE IN GOODS CHAPTER



- Regulation of Re-manufactured good.
- Regulation of trade in products of modern biotechnology.

## ADMINISTRATIVE MECHANISM OF THE TRADE IN GOODS CHAPTER

- It is done through the establishment of the body, Sub-Committee on Trade in Goods that functions on the Joint Committee of the FTA.
- The functions of the Sub-Committee are:
  - Discussion on concerns pertaining to tariff and non-tariff barriers, and technical amendments.
  - Coordinate with other Committees.
  - Exchange of trade information.
  - Monitor, oversee, promote, and address trade-related matters between the Parties.

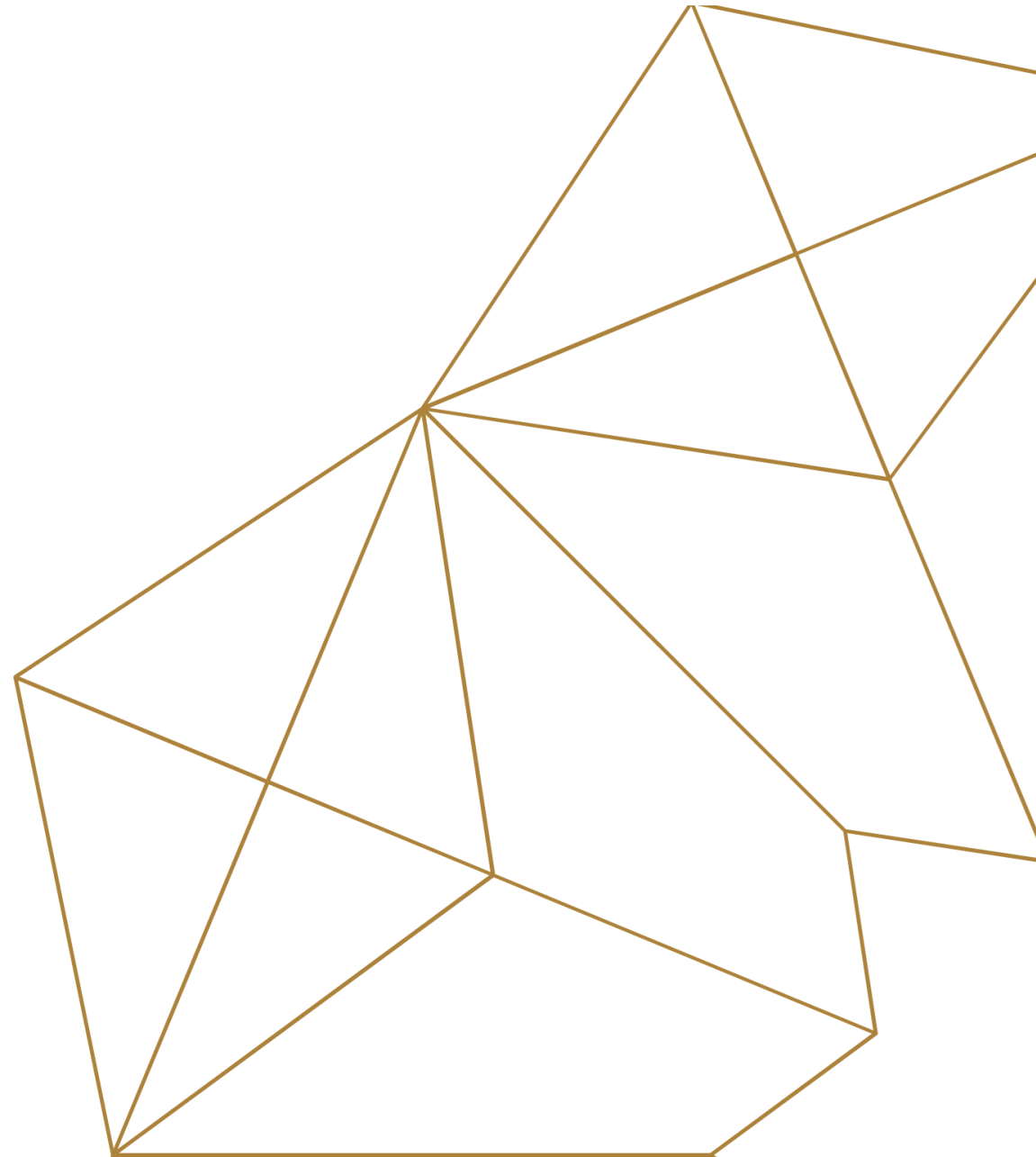


## FTA UTILIZATION ANALYSIS

The impact of FTA needs to be monitored after it comes into operation. In order to do so, the parties are required to exchange data, and also conduct a Utilization Study to analyse the impact of the FTA in furthering the trade.

# STRATEGIES FOR THE TRADE IN GOODS NEGOTIATIONS

- Coordination and Engagement with the Stakeholders.
- Awareness of the latest developments in WTO.
- Keep track of policy-developments of the FTA-country.
- Awareness of agricultural trade rules as separate disciplines exists for Trade in Agriculture Goods and Industrial Goods.
- Awareness of legal terminologies like 'shall', 'may', 'recognise', and 'endeavour' to effectively understand the implications of the obligations
- Coordination with the negotiators of the Rules of Origin and Customs and Trade Facilitation chapters as the issues are quite interlinked. .



**THANK YOU**

