Trends and Developments in Provisions and Outcomes of RTA/FTAs Implemented in 2014 by APEC Economies - Presentation

Submitted by: Policy Support Unit, APEC Secretariat
Introduction

- Report analyses six agreements that entered into force in 2014: Australia-Korea; Canada-Honduras; Chile-Hong Kong, China; China-Iceland; China-Switzerland; and Singapore-Chinese Taipei
- Five chapters were analyzed in detail: investment; customs administration/trade facilitation; SPS; competition policy and Environment
- Report also discusses the general evolution of RTA/FTAs in the APEC region in the last two decades
Proliferation of RTA/FTAs in the APEC Region

The number of RTA/FTAs enforced by APEC economies has been increasing and become more evident since the 2000s

Source: APEC Secretariat, Policy Support Unit

APEC Economies’ Share of Exports with RTA/FTA Partners

23% of APEC exports went to RTA/FTA partners in 1996. This share increased to 44% in 2014

Source: APEC Secretariat, Policy Support Unit
10% of APEC exports went to RTA/FTA partners in 1996. This share increased to 39% in 2014

Source: APEC Secretariat, Policy Support Unit

In 2000, trade flows among signatory parties of intra-APEC FTAs totaled USD 780 billion

Most of this trade was explained by NAFTA, which accounted for 86.7 percent of that trade.

Many large economies had not signed any RTA/FTA

Data in USD million
Source: APEC Secretariat, Policy Support Unit
Top 20 intra-APEC Bilateral Trade Flows under RTA/FTA in year 2014

Only four of the top 20 trade flows covered by FTAs in 2000 appear in 2014.

Trade by RTA/FTA intra-APEC partners accounted for USD 3.7 billion.

More economies have been signing RTA/FTA, including largest APEC economies.

Data in USD million
Source: APEC Secretariat, Policy Support Unit

Chapter Structure of New Trade Agreements in Force in 2014 (1)

<table>
<thead>
<tr>
<th>Chapters \ RTA/FTAs</th>
<th>Australia-Korea</th>
<th>Canada-India</th>
<th>Chile-China</th>
<th>China-Iceland</th>
<th>China-Switzerland</th>
<th>Singapore-Chinese Taipei</th>
<th>Chile-South Korea</th>
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<td>Trade in Goods</td>
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<td>Cross Border Trade in Services</td>
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<td>Movement of Business People</td>
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Source: APEC Secretariat, Policy Support Unit
Chapter Structure of New Trade Agreements in Force in 2014 (2)

<table>
<thead>
<tr>
<th>Chapters \ RTA/FTAs</th>
<th>Australia-Korea</th>
<th>Canada-Honduras</th>
<th>Chile-Hong Kong-China</th>
<th>China-Iceland</th>
<th>China-Switzerland</th>
<th>Singapore-China-Taipei</th>
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<tr>
<td>Government Procurement</td>
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<td>Competition Policy</td>
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<td>E-Commerce</td>
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<td>Cooperation / Promotion</td>
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<td>Environment</td>
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<td>Transparency</td>
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Source: APEC Secretariat, Policy Support Unit

Investment Chapters

- Three RTA/FTAs include chapters with **bilateral investment liberalization** provisions.

- Two other agreements include an Investment chapter, but only refers to **cooperation** or **investment promotion**

- One agreement include clauses on **financial services** and prudential measures (because it does not have chapter on Financial services)

- WTO-plus content. Disciplines go beyond the Agreement on Trade-related Investment Measures (TRIMS)

- No existing APEC Model Measures for an Investment chapter
Investment Chapters

- Three agreements provide **national treatment** at **pre and post-establishment** phases. **Negative list** approach used.

- Two agreements provide for **MFN treatment**

- Three agreements provide for **minimum standard of treatment** in accordance to **customary international law**.

- **Performance requirements** are not allowed. Scope differs among agreements (e.g. technology transfer)

- Similar conditions for **lawful expropriation**. Free **transfer of capital** without delay, exceptions apply

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Investment Chapters

- 3 agreements include **Investor-State Dispute Settlement** clauses. Including them is current debate worldwide

**Known ISDS Cases: Annual and Cumulative**

<table>
<thead>
<tr>
<th>Result</th>
<th>Number of Cases</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>In favour of government</td>
<td>132</td>
<td>37%</td>
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<tr>
<td>Settled</td>
<td>101</td>
<td>28%</td>
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<tr>
<td>In favour of investor</td>
<td>87</td>
<td>25%</td>
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<tr>
<td>Discontinued</td>
<td>29</td>
<td>8%</td>
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<tr>
<td>Breach but no damages</td>
<td>7</td>
<td>2%</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>356</strong></td>
<td><strong>100%</strong></td>
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</tbody>
</table>

Customs Chapters

- The six RTA/FTA include a Customs-related chapter
- All agreements include references about the use of effective automated systems, such as IT systems
- Chapters go beyond WTO. Even if WTO TFA is implemented, RTA/FTAs will still include some WTO-plus clauses.
- Many APEC Model Measures are included in Customs provisions, such as those for release of goods, risk management, advance rulings, review and appeal, express consignments, etc
- Provisions on the publication of laws, regulations and provisions are common. Some FTAs even specify the use of English

Customs Chapters

- Two agreements encourage parties to negotiate mutual recognition of authorized economic operators
- Most agreements refer to use risk management to focus on high-risk goods and facilitate clearance of low-risk goods.
- Two agreements have provisions on release of goods. One of them mentions it shall take place within 48 hours of arrival.
- All agreements include provisions on advance rulings concerning the origin of the good and tariff classification. Some agreements also provide advance rulings for customs value criteria
- All agreements have review and appeal clauses but scope differs
SPS Chapters

- All agreements include provisions on SPS

- Rights and obligations of the WTO SPS Agreement have been incorporated or reaffirmed in the six agreements

- All SPS chapters have incorporated many APEC Model Measures on SPS and some are going beyond (e.g. consultations not just to resolve matters that may be affecting trade, but also establishing a time period for the consultations to take place)

- Some WTO-plus elements: time to establish consultations and making it faster for urgent cases, the importing side to audit exporting side’s inspection and certification systems, notification to importer when goods are detained at port of entry due to failure to meet SPS requirements.

SPS Chapters

- Only three agreements include a provision on equivalence, consistent to Article 4 of SPS Agreement. Only one includes a clause on harmonization of SPS measures.

- Two agreements include clauses on the adaptation to regional conditions (e.g. declaring pest-free or low-prevalence areas)

- Consultations and cooperation among authorities is common to explore opportunities in areas of mutual interest.

- 2 agreements exclude SPS issues from the Dispute Settlement chapter. Other 2 agreements establish that the SPS chapter is under the scope of the Dispute Settlement chapter.
Competition Policy Chapters

• Chapters include many provisions inspired by the APEC Model Measures. For example: objectives, application of competition laws, cooperation, consultations and dispute settlement

• Some chapters also go beyond the Model Measures, by including provisions regarding monopolies, state enterprises, competitive neutrality and consumer protection.

• WTO-plus chapters, as there are no existing rules on this matter in WTO.

• All agreements contain references on proscribing, removing or curtailing anticompetitive practices.

Competition Policy Chapters

• Two agreements mention that some businesses or sectors could be exempted from the application of competition laws

• Transparency requirements go beyond APEC Model Measures, as it establishes the need of response after consultations started.

• Two agreements establish the right to designate or keep monopolies. Other two refer that the Competition chapter should not difficult activities of monopolies.

• Competition policy issues are not subject to the Dispute Settlement chapter in five agreements. The other agreement allows for the use of dispute settlement mechanisms in very specific competition-related issues.
Environment Chapters

- Four agreements include a chapter on environmental matters. The other two agreements refer to bilateral side agreements or MOU on environmental matters.

- Many provisions share similar purpose to those included in the APEC Model Measures.

- All agreements recognize it is inappropriate to use environmental laws and regulations for trade protectionist purposes. It is also inappropriate to relax regulations to attract more trade and investment.

- All agreements allow the use of GATT Art XX to implement trade-related measures to protect the environment in special cases.

Environment Chapters

- Three agreements recognize that parties have the right to establish their own levels of domestic environmental protection.

- Two agreements acknowledge the importance of multilateral environmental agreements.

- Clauses on cooperation are widespread, but focus differs (e.g. trade-related aspects of environmental policies, strengthening cooperation at bilateral and multilateral fora, collaborative efforts in specific areas such as enforcement of laws, promotion of best practices, mechanisms of public participation, etc).

- Dispute Settlement chapters do not apply to Environmental chapters. Disputes need to be resolved via consultations.