



**Asia-Pacific
Economic Cooperation**

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

Submitted by: Policy Support Unit, APEC Secretariat



**Dialogue on Regional Trade Agreements and Free
Trade Agreements
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APEC
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Advancing
Free Trade for Asia-Pacific
Prosperity


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

2 September 2015 – SOM Dialogue on RTA/FTAs

Presented by
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Introduction



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- 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

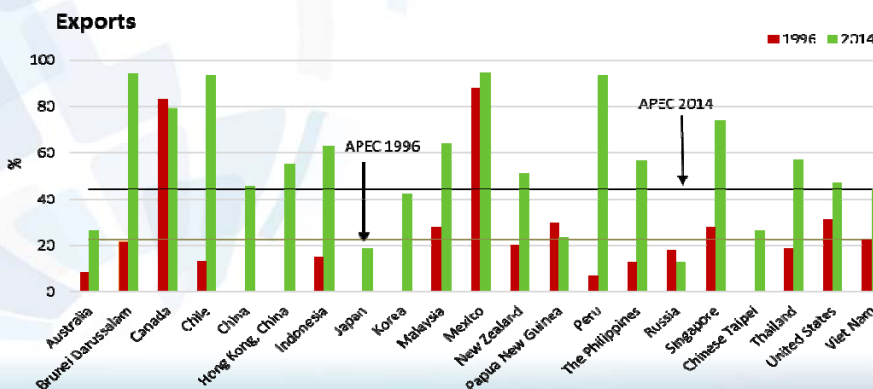


Source: APEC Secretariat, Policy Support Unit

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

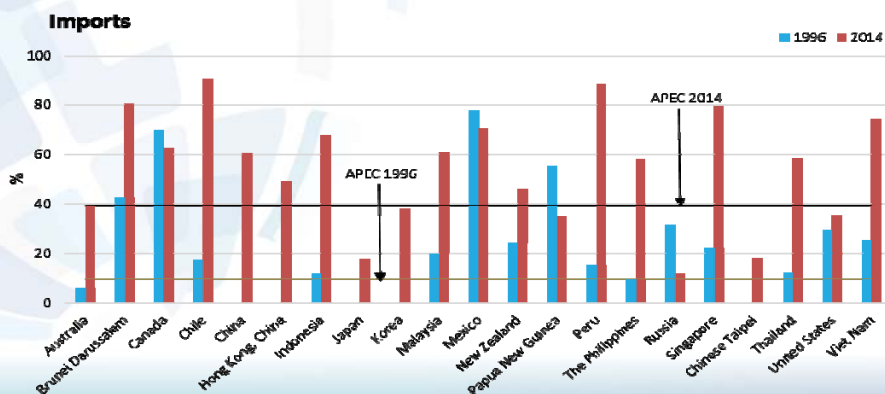


Source: APEC Secretariat, Policy Support Unit

APEC Economies' Share of Imports with RTA/FTA Partners



10% of APEC exports went to RTA/FTA partners in 1996. This share increased to 39% in 2014



Source: APEC Secretariat, Policy Support Unit

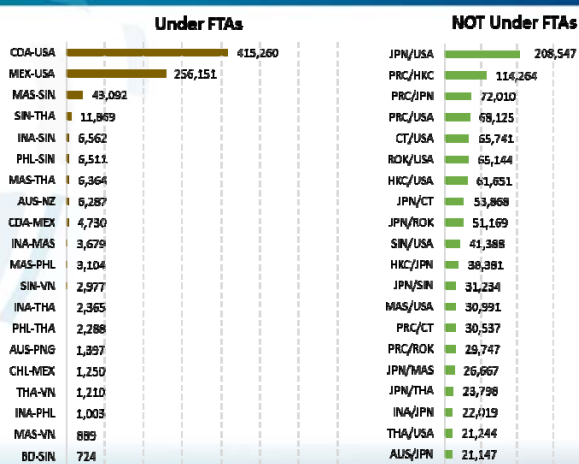
Top 20 intra-APEC Bilateral Trade Flows under RTA/FTA in year 2000



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

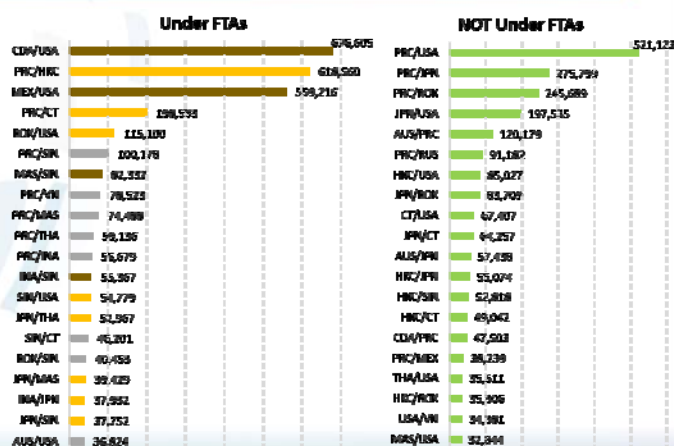
Top 20 intra-APEC Bilateral Trade Flows under RTA/FTA in year 2014



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)



Chapters \ RTA/FTAs	Australia-Korea	Canada-Honduras	Chile-Hong Kong, China	China-Iceland	China-Switzerland	Singapore-Chinese Taipei
Trade in Goods						
Rules of Origin						
Customs Administration /Trade Facilitation						
Technical Barriers to Trade				Included in Trade in Goods chapter		
Sanitary and Phytosanitary Measures						
Emergency Action						
Trade Remedies						
Cross Border Trade in Services						
Financial Services						
Telecommunications						
Movement of Business People						
Investment						

Source: APEC Secretariat, Policy Support Unit

Chapter Structure of New Trade Agreements in Force in 2014 (2)



Chapters \ RTA/FTAs	Australia-Korea	Canada-Honduras	Chile-Hong Kong, China	China-Iceland	China-Switzerland	Singapore - Chinese Taipei
Government Procurement						
Intellectual Property						
Competition Policy						
E-Commerce						
Cooperation / Promotion						
Labor						
Environment						
Transparency						
Dispute Settlement						

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

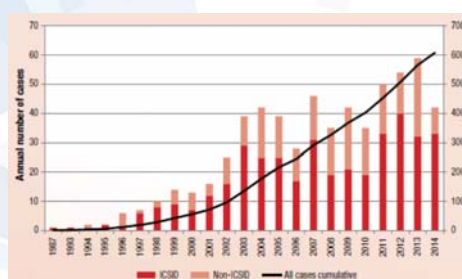
Investment Chapters



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

Known ISDS Cases: Annual and Cumulative

Results of Concluded Cases



Result	Number of Cases	Percentage
In favour of government	132	37%
Settled	101	28%
In favour of investor	87	25%
Discontinued	29	8%
Breach but no damages	7	2%
Total	356	100%

Source: UNCTAD (2015), "IIA Issues Note", No. 1, February

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 agreement includes 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 agreement 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**.

Thank you!



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