



**Asia-Pacific
Economic Cooperation**

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Agenda

Submitted by: Peru



**Capacity Building on Existing International
Investment Agreements in the APEC Region,
Relevance, Emerging Trends, Challenges and
Policy Options to Address Coherence in Treaty
Making
Lima, Peru
22-24 February 2016**

<p>“Capacity Building on Existing International Investment Agreements in the APEC Region, Relevance, Emerging Trends, Challenges and Policy Options to Address Coherence in Treaty Making”</p>
<p>February 22</p>
<p>08:30- 09:00 Registration</p>
<p>09:00 – 09:30 Opening Session</p> <p>Welcome Remarks and Opening Statement</p> <p><i>Edgar Vásquez Vela, Vice Minister of Foreign Trade, Peru</i></p>
<p>09:30 – 11:00 Session I: The Evolving International Regime for Foreign Investment in the APEC Region: The Spaghetti Bowl Problem?</p> <p>Over the last decade, investment rule-making in the APEC region through the negotiation of IIAs has led to a complex framework of multi-layered and multi-faceted investment rules which may represent a challenge in achieving coherence in the interaction between economies' past and future IIAs, as well as their IIAs with different partners. As an introduction, this session will give an overview of the proliferation and evolution of IIAs in the APEC Region from the perspective of historical evolution, types of IIAs, relationship with other related agreements such as services, liberalization methodology and so on. This session will also look into the so-called “spaghetti bowl phenomenon” in the APEC Region, emphasizing the several types of “overlapped” IIAs.</p> <p>Keynote Speaker: <i>Shintaro Hamanaka, Economist, Asian Development Bank (ADB)</i></p> <p>Commentators: <i>Carlos Herrera, Executive Director, PROINVERSION, Peru</i></p>
<p>Coffee break</p>
<p>11:15 – 12:45 Session II: Comparative Analysis of IIA Provisions in the APEC Region</p> <p>Given the number of IIAs signed in the APEC Region, it is important to map out provisions of APEC IIAs in some detail in order to illustrate the different approaches taken by APEC economies in the formulation of legal text regarding scope, definitions, substantive and procedural provisions. This session will provide a stocktaking of treaty provisions of IIAs in the APEC Region in a comparative manner, including the recent investment provisions of large regional agreements in the Asia-Pacific and IIAs signed by key Asia-Pacific economies. The session will also analyze different approaches adopted by APEC economies in the negotiations of their IIAs.</p>

<p>Keynote Speaker: <i>Manjiao Chi, Professor, Law School, Xiamen University, China</i></p> <p>Commentators: <i>Vanessa Rivas Plata, Investment Affairs Coordinator, Vice Ministry of Foreign Trade, Peru</i></p>
<p>Lunch</p>
<p>2:30 – 4:00 Panel of Discussion I: The Current State of Play: Convergences and Divergences of IIAs in the APEC Region: Comparison of Different IIA Models</p> <p>A first panel comprised of investment negotiators from APEC economies will discuss the convergences and divergences of IIAs in the APEC Region and the evolution of the core elements and provisions included in IIAs. This session will serve as a departure point to pursue a discussion about the challenges associated with the existing framework of IIAs.</p> <p><i>Issues to be addressed by the Panel include:</i></p> <ul style="list-style-type: none"> ❖ Do APEC economies adopt a consistent approach to their IIAs? Is it possible to identify common core elements and provisions in the approaches followed by APEC economies? ❖ Do IIAs in APEC contain differences in the wording of their core elements and provisions? Do these differences represent a considerable variation in the content and meaning of those core elements and provisions? Are these variations driven by particular stimuli? Are these variations a consequence of experiences in the context of ISDS? Are there additional considerations that lead an APEC economy to introduce amendments to their past IIAs? ❖ In terms of divergences among IIAs in APEC, what are the key divergences on scope, content, and exceptions? What are the underlying policies for those divergences? <p>Moderator: <i>Manjiao Chi, Professor at Law School, Xiamen University, China</i></p> <p>Panelists: <i>Ari Sulby, Office of Investment Affairs, U.S. State Department, United States</i> <i>Zhang Yun, Division for Investment Law, Department of Treaty and Law, MOFCOM, China</i> <i>Ricardo De Urioste, Ministry of Economy and Finance, Peru</i></p>
<p>Coffee break</p>
<p>04:15 – 05:30 Continuation of Panel of Discussion I</p>
<p>February 23</p>
<p>9:00 – 10:30 Session I: Drawing a Line Between the Practice of Treaty Shopping in International Arbitration and Other Business-Related Corporate Restructuring: The Arbitrator’s Perspective</p>

This session will cover the criteria followed by arbitral tribunal to distinguish nationality planning from practices of treaty shopping.

Keynote speaker: *Professor Brigitte Stern, University of Paris I – Panthéon- Sorbonne*

Commentators: *Lee Caplan, Partner, Arent Fox LLP*

Coffee Break

10:45 – 12:15

Roundtable: Discussing Corporate Restructuring and Treaty Shopping through the Lens of Arbitrators, ISDS Practitioners and Investment Negotiators

Speakers: *Professor Brigitte Stern, University of Paris I – Panthéon- Sorbonne*
Gaela Gehring Flores, Partner, Arnold & Porter LLP
Jennifer Haworth McCandless, Partner, Sidley Austin LLP

Moderator: *Patrick Pearsall, Chief of Investment Arbitration, U.S. State Department*

Lunch

2:30: 4:00

Panel of Discussion II: Comparing Different Avenues Followed by APEC Economies to Address the Spaghetti Bowl of IIAs

Based on the analysis of the latest developments in investment treaty arbitration, this panel will discuss elements APEC economies have included to address the challenges arising out of the spaghetti bowl in their most recent IIAs. For these purposes, a group of panelists will explore the approaches adopted by their respective economies to overcome any potential unanticipated use of an IIA in the context of ISDS.

Issues to be addressed by the Panel include:

- ❖ What are the key elements that APEC economies are including in their most recent IIAs in order to address the spaghetti bowl of IIAs in the APEC Region? Are these elements designed to address potential gaps or inconsistencies across IIAs?
- ❖ Are these key elements limited to substantive provisions? What type of procedural provisions are also designed to address the spaghetti bowl of IIAs?
- ❖ Have these elements already been tested in any particular ISDS case? What has been the outcome when an arbitral tribunal has interpreted these elements in a particular factual context?
- ❖ Are there any significant differences in approaching the spaghetti bowl of IIAs when APEC economies negotiate with non-APEC economies?

<p>Moderator: <i>Gaela Gehring Flores, Partner, Arnold & Porter LLP</i></p> <p>Panelists: <i>Patrick Pearsall, Chief of Investment Arbitration, U.S. State Department</i> <i>Manjiao Chi, Professor, Law School, Xiamen University, China</i> <i>Vanessa Rivas Plata, Investment Affairs Coordinator, Vice Ministry of Foreign Trade, Peru</i></p>
<p>Coffee break</p>
<p>04:15 – 05: 30 Continuation of Panel of Discussion II</p>
<p style="text-align: center;">February 24</p>
<p>9:00 – 10:30 Session I: Recent Developments in Investment Treaty Jurisprudence. A First Approach to Assess the Legal Challenges arising out of the Spaghetti Bowl of IIAs</p> <p>This session will review recent case law regarding the legal challenges arising out of the spaghetti bowl of IIAs; particularly the practice of treaty shopping and its different facets with the aim of assessing the approach taken by international arbitrators when facing claims by parties of newly acquired nationality.</p> <p>Keynote speaker: <i>Gaela Gehring Flores, Partner, Arnold & Porter LLP</i></p>
<p>Coffee break</p>
<p>10:45 - 12:15 Session II: Mitigating the Risk of Potential Unanticipated Consequences in the Context of ISDS</p> <p>The main objective of this session is to provide both investment negotiators and those responsible for managing investor-State cases with recommendations on how to face the legal challenges of the existing complex framework of investment rules in APEC; providing them with legal tools on how to address effectively potential unanticipated consequences derived from the spaghetti bowl of IIAs in the APEC Region. Taking into account that a dominant trend in the APEC region is the regionalization of investment-rule making, and that economies in APEC are currently embarked in negotiations of mega-regional IIAs, investment negotiators in the APEC Region must be equipped with the adequate technical skills to tackle the legal challenges associated with the state-of-the-art in international investment law.</p> <p>Some of the issues to be covered in this session include the analysis of the following concepts and provisions: Control — Denial of benefits clause — Nationality of investor — Nationality of investor, corporations — Nationality of investor, individuals — Nationality of investor, relevant time — Nationality of investor, shareholders — Ownership — Most-favoured-nation treatment (MFN).</p>

Keynote speaker: <i>Jennifer Haworth McCandless, Sidley Austin LLP</i>
Lunch
2:30: 4:00 Panel of Discussion III: Lessons and Insights for Investment Treaty Making in the APEC Region Panelists: <i>Tania Pierotic, Legal Advisor, Ministry of Foreign Affairs, Chile</i> <i>Marya Sycheva, Leading Expert, Trade in Services and Investment Unit, Russia</i> Moderator: <i>Lee Caplan, Arent Fox LLP</i>
Coffee break
04:15 – 05:30 Continuation of Panel of Discussion II
05:30 – 06:00 Closing Remarks