



**Asia-Pacific
Economic Cooperation**

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Introduction

**Trends and Developments in Provisions and
Outcomes of RTA/FTAs Implemented in 2015 by
APEC Economies - Presentation**

Submitted by: Policy Support Unit, APEC Secretariat



**Dialogue on Regional Trade Agreements and Free
Trade Agreements
Lima, Peru
25 August 2016**



Asia-Pacific
Economic Cooperation

Advancing
Free Trade for Asia-Pacific
Prosperity


Trends and Developments in Provisions and Outcomes of RTA/FTAs Implemented in 2015 by APEC Economies

2 September 2015 – SOM Dialogue on RTA/FTAs

Presented by
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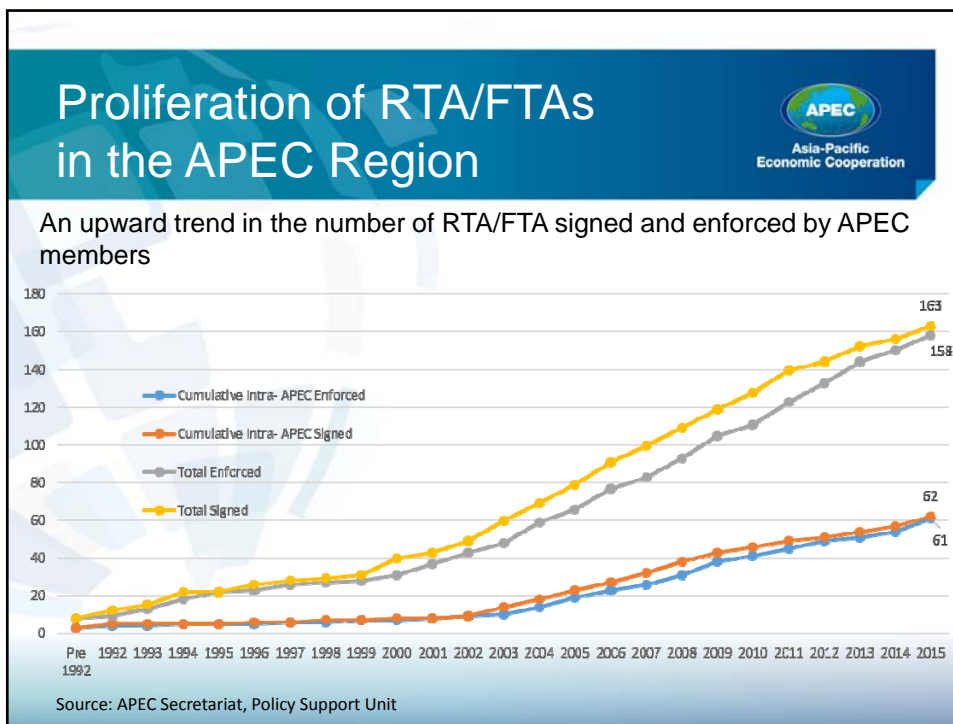
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Introduction




Asia-Pacific
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- Report analyses nine agreements that entered into force in 2015: Australia-China; Australia-Japan; Canada-Korea; Chile-Thailand; China-Korea; Korea-New Zealand; Korea-Viet Nam; Malaysia-Turkey and Mexico-Panama
- Four chapters were analyzed in detail: rules of origin, services (cross-border), investment and intellectual property
- Report also discusses on the general evolution of RTA/FTAs in the APEC region in recent years



Intra-APEC Trade Pairings Covered by RTA/FTAs



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More agreements being signed within the APEC region. More bilateral relationships within APEC being covered by RTA/FTAs

Year	Intra-APEC Trade Pairings	Intra-APEC Trade Pairings with RTA/FTAs	% of Intra-APEC Trade Pairings with RTA/FTAs	Intra-APEC Trade Flows (USD Billion)	Intra-APEC Trade Flows by RTA/FTA Partners (USD Billion)	% of Intra-APEC Trade Flows by RTA/FTA Partners (USD Billion)
2005	210	45	21%	6,647	2,487	37%
2015	210	98	47%	11,447	5,497	48%

Source: IMF and Chinese Taipei's Bureau of Foreign Trade. APEC Secretariat, Policy Support Unit calculations

Also, an increasing percentage of intra-APEC trade is being covered by FTA/RTAs.

Percentage of Total APEC Trade Flows under RTA/FTAs

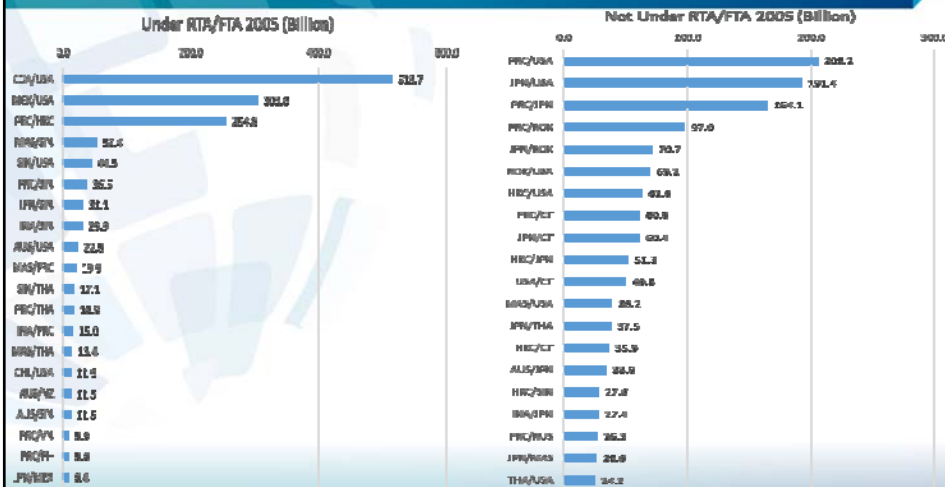


More trade flows by APEC economies are taking place with RTA/FTA partners

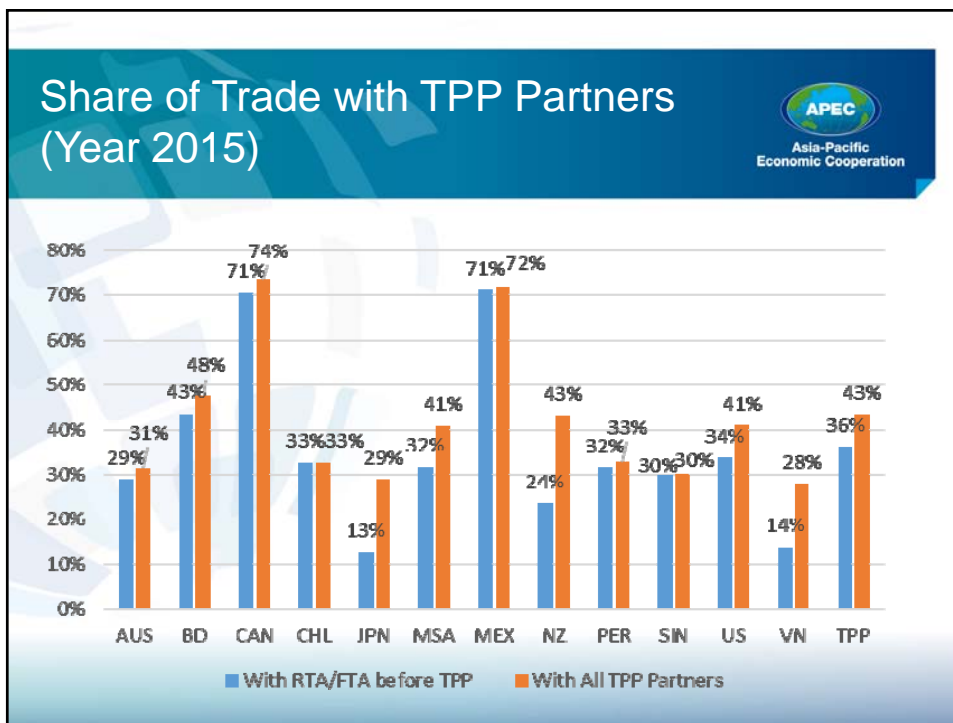
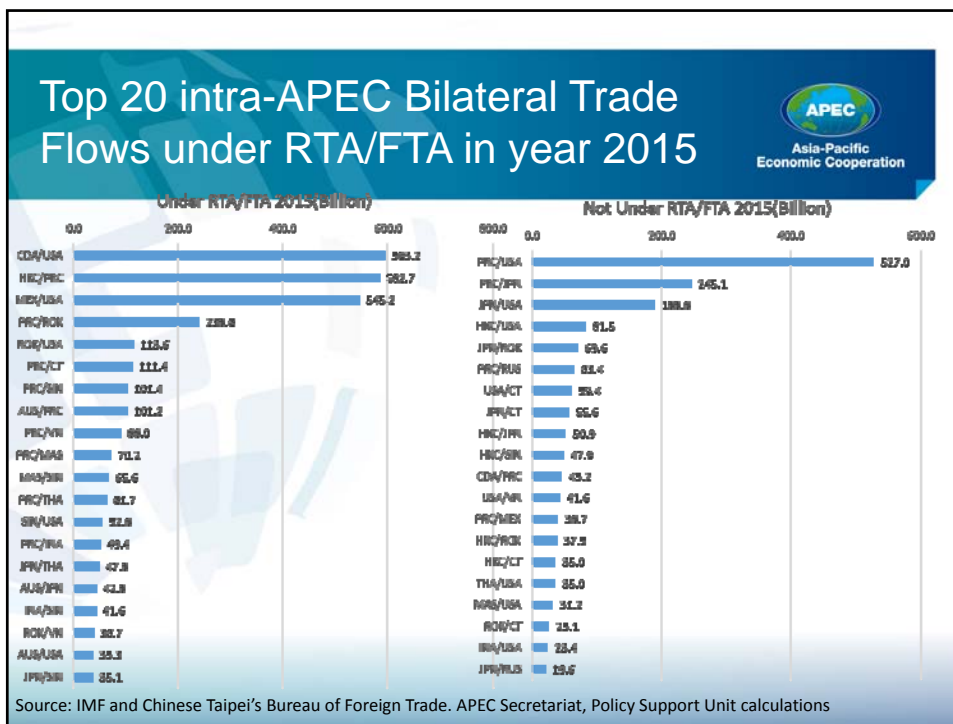
Year	Total APEC Trade Flows with RTA/FTA Partners (USD Billion)	Total APEC Trade Flows With the World (USD Billion)	% of APEC Trade Flows under FTA/RTA of APEC Trade Flows With the World
2005	2,808.8	9,794.8	29%
2015	7,769.5	16,509.1	47%

Source: IMF and Chinese Taipei's Bureau of Foreign Trade. APEC Secretariat, Policy Support Unit calculations

Top 20 intra-APEC Bilateral Trade Flows under RTA/FTA in year 2005



Source: IMF and Chinese Taipei's Bureau of Foreign Trade. APEC Secretariat, Policy Support Unit calculations



Chapter Structure of RTA/FTAs Implemented in 2015 (1)

Traditional chapters appear in all RTA/FTAs:

- Trade in Goods
- Rules of Origin
- Customs
- TBT
- SPS

More RTA/FTAs covering services trade

Chapters	Trade in Goods	Rules of Origin	Customs Administration/Trade Facilitation	Technical Barriers to Trade	Sanitary and Phytosanitary Measures	Trade Remedies	Cross Border Trade in Services	Financial Services	Telecommunications	Movement of Business People
Australia-China	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Australia-Japan	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Canada-Korea	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
China-Korea	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Chile-Thailand	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Korea-New Zealand	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Korea-Viet Nam	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Malaysia-Turkey	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Mexico-Panama	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Included in the Trade in Goods chapter										
Addressed in Trade in Services chapter and its annexes										

Source: FTA texts. Prepared by APEC Secretariat, Policy Support Unit

Chapter Structure of RTA/FTAs Implemented in 2015 (2)

Many RTA/FTAs including specific chapters on:

- Investment
- Intellectual Property
- E-Commerce
- Transparency
- Dispute Settlement

Chapters	Investment	Government Procurement	Intellectual Property	Competition Policy	E-Commerce	Co-operation	Labor	Environment	Transparency	Dispute Settlement	Agriculture, forestry and fisheries co-operation	Food Supply	Energy and Mineral Resources
Australia-China	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Australia-Japan	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Canada-Korea	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
China-Korea	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Chile-Thailand	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Korea-New Zealand	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Korea-Viet Nam	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Malaysia-Turkey	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Mexico-Panama	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Addressed in the Economic Cooperation chapter													

Source: FTA texts. Prepared by APEC Secretariat, Policy Support Unit

Rules of Origin (ROO) Chapters



- Many similarities in structure of ROO chapters, some differences in content
- All agreements use **product-specific rules**. **Change of tariff classification and qualifying value content criteria** are the most utilized ones.
- **De minimis clause** establishing a **maximum value** of non-originating materials is included in all RTA/FTAs to facilitate meeting origin criteria. Six RTA/FTAs exclude textiles and apparel from that criteria, which use a **maximum weight** criteria
- **Cumulation** is included, but **no cross-cumulation** in any RTA/FTA
- Five RTA/FTAs use only **entities to certify origin**, two RTA/FTA only use **self-certification** and two RTA/FTA allow **both** systems
- Differences in the procedures to conduct **ex-post verification of origin**

Rules of Origin (ROO) Chapters



Maximum Value of Imports to Waive Origin Declarations

RTA/FTA	Maximum Value
Australia-China	AUD 1,000 (Australia); RMB 6,000 (China)
Australia-Japan	AUD 1,000 (Australia); JPY 100,000 (Japan)
Canada-Korea	USD 1,000
Chile-Thailand	USD 200
China-Korea	USD 700
Korea-New Zealand	USD 1,000
Korea-Viet Nam	USD 600
Malaysia-Turkey	EUR 500 (small packages for Turkey); EUR 1,200 (travelers' personal luggage for Turkey); USD 200 (Malaysia)
Mexico-Panama	USD 1,000

Source: FTA texts. Prepared by APEC Secretariat, Policy Support Unit

Cross-Border Trade in Services Chapters



- Eight RTA/FTAs include a chapter on services
- Four RTA/FTAs use a **negative list** to make their services commitments and **ratchet clauses**. Three RTA/FTAs use a **positive list**. The Australia-China FTA use a **mixed approach**.
- All agreements include **National Treatment** clauses, but four of them only extend it in similar (“like”) circumstances
- Six agreements include a **MFN treatment** clause, but four of them only do it in like circumstances
- **Domestic regulation**: GATS-plus elements (e.g. parties have to identify additional information required to complete the application for the authorization to supply a service). GATS-minus elements (e.g. no clause on parties not being able to apply requirements that nullify or impair services commitments that are not based in objective and transparent criteria)

Cross-Border Trade in Services Chapters



- All RTA/FTAs based **market access** provision on GATS Article XVI, but three of them do not include a clause to avoid maintaining limitations on the participation of foreign capital
- Four RTA/FTAs include a clause on **local presence**, in order not to require a service supplier to maintain an office or any form of enterprise or to be a resident as a condition to provide the service
- All RTA/FTAs include an article about the **recognition of professional degrees** or experience, based on GATS Article VII
- Seven RTA/FTAs include a provision to prohibit parties to apply **restrictions on transfers and payments**. Exceptions are possible in four of them in cases that it is needed to **safeguard the balance of payments**.
- Four RTA/FTAs mention that **consultations on subsidies** can take place if one of the parties feels affected by any subsidy implemented by the counterpart

Investment Chapters



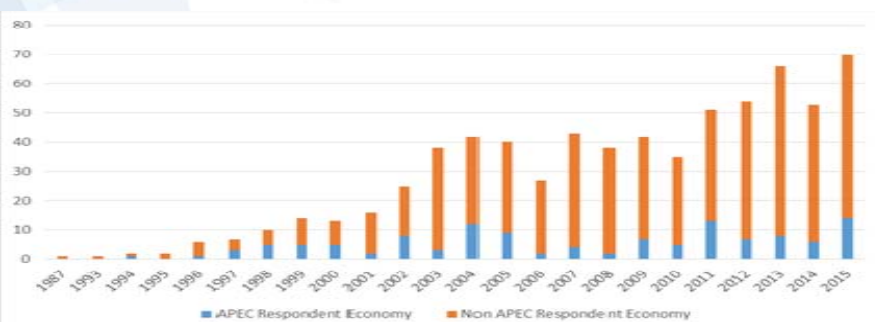
- Seven RTA/FTAs include chapters with **bilateral investment liberalization** provisions.
- WTO-plus content. Disciplines go beyond the Agreement on Trade-related Investment Measures (TRIMS)
- Four RTA/FTAs provide **national treatment at pre and post-establishment phases**. Negative list approach used. Other agreements **only pre-establishment** or **hybrid approach**
- Seven RTA/FTAs provide for **MFN treatment**. Some of them establish exceptions in dispute resolution and specific sectors.
- Six 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



- 6-out-of-7 FTAs with investment chapters include **Investor-State Dispute Settlement** clauses. Including them is current debate worldwide

Known ISDS Cases Initiated Worldwide



Source: UNCTAD – Investment Policy Hub. APEC Secretariat, Policy Support Unit calculations

Investment Chapters



Concluded ISDS Cases: Claims against APEC governments have a higher chance to be decided in favor of governments

Result	APEC as Respondent		APEC as Home of Investor		World Total	
	No. of Cases	Share	No. of Cases	Share	No. of Cases	Share
Decided in favor of State	39	45%	66	40%	162	36%
Decided in favor of Investor	23	26%	43	26%	117	26%
Decided in favor of neither party (liability found but no damages awarded)	1	1%	2	1%	8	2%
Discontinued	9	10%	19	12%	43	10%
Settled	15	17%	35	21%	114	26%
Total Concluded	87	100%	165	100%	444	100%

Source: UNCTAD – Investment Policy Hub. APEC Secretariat, Policy Support Unit calculations

Intellectual Property (IP) Chapters



- Increasing importance. **IP chapters are increasingly included** in RTA/FTAs
- However, **chapter structures could differ** significantly across RTA/FTAs.
- Seven RTA/FTAs include IP chapters and another one has provisions on geographic indications in another chapter
- All agreements include a standard **national treatment** clause
- Six RTA/FTAs include provisions on **cooperation**, mostly on exchange of information and contact points.
- RTA/FTAs between partners with differentiated income levels tend to include cooperation clauses on **technology transfer**
- All agreements include **enforcement provisions**. Four include provisions on **civil remedies** and admin procedures. Three include clauses on **criminal procedures** and penalties.

Intellectual Property (IP) Chapters



- Five RTA/FTAs include clauses on border measures
- Six RTA/FTAs include provisions on copyrights, seven on trademarks, four on geographic indications, one on industrial designs, five on patents, four on plant variety provisions
- Three RTA/FTAs allow parties to implement measures to protect genetic resources and traditional knowledge.
- Some FTAs take into account technology developments and include provisions on internet services providers (e.g. limit the liability of internet providers for copyright infringements by internet users; disclose information about subscribers violating copyrights)
- None of the RTA/FTAs include specific provisions on pharmaceutical products, but three RTA/FTAs include provisions on public health and IP issues.

Thank you!



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