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Key Findings Regarding Convergences and Divergences of Post-2008 APEC FTAs

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Session 2: Similarities and differences among recent RTAs/FTAs in the APEC Region

Key Findings regarding Convergences and Divergences of post-2008 APEC FTAs


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What is the origin of this study?



Update of Peru's 2008 Study on Identifying Convergences and Divergences in APEC RTAs/FTAs

Introduction of Peru's 2008 Study

- **A collaborative effort of Peru, Chile, Japan, New Zealand, United States and the Inter American Development Bank (IADB):**
 - Covers 14 Chapters of 30 FTAs/RTAs within APEC.
- **General Outcomes:**
 - The study shows the existence of a possibility for convergence in the analyzed chapters and sets a basis for discussing alternatives for achieving a more thorough harmonization, which may lead towards an FTAAP in the long term.
 - In particular chapters such as Customs Procedures, the substance and intent of the rules do not vary markedly, whereas in other areas a higher level of divergence could be identified.
- **Further Actions:**
 - The study attempts to provide a broad and deep overview of trade liberalization in APEC. It may help find a strategy to turn RTAs/FTAs into building blocks towards APEC economic integration.

What are the background & objectives of the 2016 update study?

Update of Peru's 2008 Study on Identifying Convergences and Divergences in APEC RTAs/FTAs

Introduction of the 2016 Update Study

- **Based on the analytical framework of the 2008 study:**
Include a comparison between the findings of the 2008 report and those from the update study.
- **Objective of this update**
Identify common ground among the FTAs entered into by APEC economies and thereby the possible building blocks of a future FTAAP.
- **Includes 10 post-2008 FTAs/RTAs:**
Australia-New Zealand-ASEAN FTA, Australia-Japan FTA, Canada-Peru FTA, Chile-Hong Kong, China FTA, Chile-Thailand FTA, China-Korea FTA, Korea-United States FTA, Japan-Vietnam FTA, New Zealand-Chinese Taipei FTA and Singapore-Chinese Taipei FTA.
- **Topics covered:**
 - Market access for goods, rules of origin, customs procedures, TBT, SPS, trade remedies, competition policy, services, Investment, environment and labor.
 - Additional chapters on **E-commerce and Economic Cooperation** are analyzed.

What are the key findings?

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Key Findings

• Tariff Liberalization

- The majority of recent bilateral trade agreements reduce at least 90 percent of tariff lines to zero within 5 years of the agreement's entry into force.
- A smaller number of bilateral trade agreements liberalize at a slower pace, while other agreements take a mixed approach.

• Rules of Origin and Related Procedures

- The trend among new FTAs is to simplify Rules of Origin (RoO) and their implementation procedures in order to keep the cost of issuing the certification of origin and origin verification by customs authorities at a low level.

Converging Elements*	Diverging Elements*
<ul style="list-style-type: none"> • Product Specific Rules (PSR) • Regional Value Content (RVC) • De Minimis • Cumulation • Validity Period of Certificates 	<ul style="list-style-type: none"> • Declaration and Certification (only 3 FTAs accept <i>Self-certification of Origin - all valid for one year.</i>)

* This presentation uses both qualitative and quantitative approaches to determine whether a provision belongs to the **Converging Elements** or **Diverging Elements** classification. With the quantitative approach, a provision that is not seen in at least **one half** of the FTAs examined is regarded as **Diverging Elements**. With the qualitative approach, a provision that is described in the update study as showing a higher degree of difference is also regarded as **Diverging Elements**. 8

Key Findings

• Customs Procedures

- All post-2008 FTAs examined contain provisions relating to customs procedures. The content of these provisions is quite similar.
- However, with regard to the provisions related to “Penalties,” there are only 6 FTAs contain such provision. And regarding “the release of goods,” only 3 FTAs stipulate Party may require importers to provide guarantee before releasing the goods.

Converging Elements	Diverging Elements
<ul style="list-style-type: none"> • Customs Chapters • Temporary Admission • Confidentiality • Review and Appeal • Trade Facilitation • Express Shipments • Cooperation • Committee • Advance Rulings • Transparency/Publication/Enquiry Points 	<ul style="list-style-type: none"> • Release of Goods and Financial and Non-financial Securities (Most FTAs contain the provisions of release of goods, but only 3 FTAs stipulate the security/guarantee) • Penalties (6 FTAs contain such provision, but differ in the imposition of civil or administrative penalties or criminal sanctions)

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Key Findings

• Sanitary and Phytosanitary Standards (SPS) Provisions

- The SPS provisions in the post-2008 FTAs **seldom** go beyond obligations under the WTO SPS Agreement.
- Noticeable discrepancies in provisions on transparency, equivalence, regionalism, as well as control, verification, and approval are evident in **ANZTEC**, in which WTO-plus SPS provisions are adopted.

Converging Elements	Diverging Elements
<ul style="list-style-type: none"> • SPS Chapter • Rights and Obligations • Risk Assessment • Technical Consultation & Committee • Dispute Settlement 	<ul style="list-style-type: none"> • (ANZTEC) Transparency, Equivalence, Regionalism Provisions, Control, Verification and Approval

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Key Findings

• TBT Provisions

- Provisions on Technical Barriers to Trade (TBT) in all of the post-2008 FTAs reviewed **converge** in adopting stronger obligations regarding the acceptance or recognition of conformity assessment results and offering national treatment to Conformity Assessment Bodies (CABs) from FTA partners with respect to designation, authorization or certification, and transparency requirements.

Converging Elements	Diverging Elements
<ul style="list-style-type: none"> • Objective and Scope • Use of International Standards • Technical Regulations • Conformity Assessment Procedures (CAPs) • Transparency • Sector-/Issue-Specific Cooperation • TBT Committee and other Provisions 	<ul style="list-style-type: none"> • Use of International Standards (only China-Korea FTA identified ISO/IEC etc. as international standard)

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Key Findings

• Trade Remedies

- While the common approach is to reaffirm the parties' existing rights and obligations under WTO provisions, divergences are evident, especially regarding bilateral, sector-specific safeguards (SSG) and the requirements of bilateral safeguards.

Converging Elements	Diverging Elements
<ul style="list-style-type: none"> • Anti-dumping Measures • Countervailing Measures • Non-simultaneous Use of Multilateral and Bilateral Safeguards 	<ul style="list-style-type: none"> • Safeguards <ul style="list-style-type: none"> – Sector-Specific Safeguards: 3 FTAs have specific provisions on certain agricultural products, 1 FTA on textiles, clothing and automotive sectors. – Bilateral Safeguards: Different Mechanisms or Requirements

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Key Findings

• Competition Policy

- A competition chapter is seen in all post-2008 FTAs reviewed except the Chile-Thailand FTA.

Converging Elements	Diverging Elements
<ul style="list-style-type: none"> • Laws, Regulations and Institutions • The Implementation of Competition Policy and Law • Designated Monopolies and State Enterprises • Cooperation and Consultation 	<ul style="list-style-type: none"> • Cooperation on Consumer Protection <ul style="list-style-type: none"> - 5 FTAs include such provisions. • Dispute Settlement <ul style="list-style-type: none"> - 7 FTAs exclude dispute settlement from the chapter on competition policy.

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Key Findings

• Trade in Services

- A new trend observed among the examined FTAs: the inclusion of contact points to facilitate communications between the Parties on any matter covered by the trade in services Chapters.
- Most of the provisions in this chapter have become common elements in recent APEC FTAs. However, the inclusion of emergency safeguards is relatively rare.

Converging Elements	Diverging Elements
<ul style="list-style-type: none"> • Modal Coverage • General Exceptions • National Treatment • Most Favored Nation (MFN) • Market Access • Domestic Regulation • Transparency • Recognition • Transfers and Payments 	<ul style="list-style-type: none"> • Temporary Entry • Denial of Benefits • Amendment/Withdrawal of Commitments • Review/Future Liberalization • Cooperation/Committees • Subsidies • Monopolies and Exclusive Service Suppliers • Definitions
	<ul style="list-style-type: none"> • Approach to Sectoral Coverage (5 positive-list , 5 negative-list approach) • Local Presence: 5 FTAs do not require this. • Emergency Safeguards: 3 FTAs include such provisions. • Different Specific Sectors Commitments.

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Key Findings

• Investment provisions

- Of the 8 post-2008 FTAs that contain provisions on investment in the 2016 updated study, all share a high level of similarity with respect to the elements commonly found in International Investment Agreements (IIAs).

Converging Elements	Diverging Elements
<ul style="list-style-type: none"> • Asset-based definition • National Treatment* • Fair and Equitable Treatment & Full Protection and Security • Compensation for Losses • Expropriation and Compensation 	<ul style="list-style-type: none"> • Most-Favored-Nation Treatment • Performance Requirements <ul style="list-style-type: none"> - Senior Management and Board of Directors • Investment liberalization

*All but one FTA provides National Treatment in the pre-establishment stage.

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Key Findings

• Environment

- Of the 5 post-2008 FTAs that include environmental chapters in the 2016 updated study, some additional Elements are observed in provisions such as **public participation**, **dispute resolution mechanism**, and **Voluntary Mechanisms to Enhance Environmental Performance**.

Converging Elements	Diverging Elements
<ul style="list-style-type: none"> • Non-enforceable Commitments on Environmental Protection • Cooperation • Institutional Arrangements • Levels of Environmental Protection 	<ul style="list-style-type: none"> • Transparency, Public Participation and Environmental Awareness • Dispute resolution mechanism <ul style="list-style-type: none"> - Consultations : 4 FTAs - Through Dispute Settlement: 1 FTA • Voluntary Mechanisms to Enhance Environmental Performance (2 FTAs have market- based incentives, voluntary environmental goals or standards etc.)

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Key Findings

- **Labor**

- Only a minority (3 out of 10) of post-2008 FTAs contain labor provisions.
- Significant degree of divergence exists between FTAs, especially to the dispute settlement of labor issues.

Converging Elements	Diverging Elements
<p>2 out of 3 FTAs share similar objectives such as</p> <ul style="list-style-type: none"> • working conditions and living standards • internationally recognized labour principles and rights • foster exchange of information <p>All 3 FTAs have references to the ILO, though in different ways.</p>	<p>Procedural rights</p> <ul style="list-style-type: none"> • 1 FTA ensure appropriate access to tribunals, and fair, equitable, and transparent proceedings <p>Institutional arrangement, whether</p> <ul style="list-style-type: none"> • Labor Cooperation Agreement; or, • Labor Affairs Council; or, • Contact point / Meeting of the parties

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Key Findings

- **Labor (continued)**

Converging Elements	Diverging Elements
<p>2 out of 3 FTAs share similar labor rights, including:</p> <ul style="list-style-type: none"> • Freedom of association • effective recognition of the right to collective bargaining • elimination of all forms of compulsory or forced labor • effective abolition of child labor • elimination of discrimination in respect of employment and occupation 	<p>Labor cooperation, whether</p> <ul style="list-style-type: none"> • establish Labor Cooperation Mechanism; or, • establish an indicative list of areas of potential cooperation <p>Dispute Settlement</p> <p>2 out of 3 FTAs mention:</p> <ul style="list-style-type: none"> • may not have recourse to dispute settlement without first seeking to resolve the matter in accordance without labor consultations; • may not have recourse to Chapter of Dispute Settlement

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Key Findings



Additional Issues addressed in the Update Study:

- **E-commerce**
 - All post-2008 FTAs (except the Chile-Hong Kong, China and Japan-Vietnam FTAs) included either a dedicated chapter for or specific provisions on E-commerce.
 - Common obligations include refraining from imposing customs duties on digital products and promoting paperless trading. 3 FTAs require products distributed electronically to receive non-discriminatory treatment.

- **Economic cooperation**
 - 5 out of all post-2008 FTAs reviewed include cooperation provisions aimed at promoting closer economic relationships with a view to maximizing the potential benefit from these FTAs.
 - Cooperation chapters tend to vary significantly. Some chapters are very general and establish a framework or/and create a committee in charge of those matters. Others include a chapter focusing on specific sectors.

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Conclusions



- The level of convergence appears to be more obvious across the post-2008 FTAs reviewed.
- There is no common template for FTAs.
 - Common elements and practices in FTAs across a wide range of trade issues create a solid foundation for any future FTAAP.
 - Divergences reflect the specific concerns and reservations by the signatory parties.
- New trade issues identified in the Collective Strategic Study, however, warrant APEC Economies to maintain their capability and flexibility in including new agendas regarding the scope of a future FTAAP.

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