Update on FTAAP – Lessons Learnt from FTAs/RTAs

Purpose: Information
Submitted by: Australia

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Purpose
To provide CD18 with a progress report on developments since CD15 on APEC’s work towards the realisation of a Free Trade Area of the Asia-Pacific (FTAAP) and areas of potential interest for Member Economies.

Background
At CD17, Lima Peru, the CD agreed to consider whether there were lessons that could be developed for free trade agreements (FTAs) and regional trade agreements (RTAs). CD15 noted that participation in APEC FTAAP work is through the CTI representative for each member economy (2015/SOM3/CD/009) and not through the CD.

Progress report – update on FTAAP

Leaders instructed officials to implement the Lima Declaration on FTAAP, in particular to develop, and implement programmes towards the realization of the FTAAP.

Collective Strategic Study on Issues Related to the Realization of FTAAP (Strategic Study)
The Strategic Study highlighted the following points:

- APEC is highly integrated in economic terms and makes a strong contribution to the global economy;
- An eventual FTAAP could be a major instrument to further regional economic integration;
- The groundwork for making progress toward an FTAAP has been advanced, including through APEC’s work on emerging trade issues, progress at the sub-regional level with FTAs and initiatives such as improving supply chain connectivity;
- The Trans-Pacific Partnership (TPP) and the Regional Comprehensive Economic Partnership (RCEP) provide possible future pathways to an FTAAP. Other regional integration undertakings also provide potential lessons to the eventual realization of the FTAAP;
- The economic case for an eventual FTAAP is strong; however, significant barriers to trade and investment remain;
- Progress towards realisation of an FTAAP will need to build on APEC’s core strength of economic and technical cooperation through practical work including targeted capacity building.

The Strategic Study found that while tariff levels have fallen over time, the use of non-tariff measures (NTM) has become more common. NTMs include a range of measures such as technical barriers to trade (TBTs) or conformity assessment requirements; quotas; price controls; or behind the border measures such as local content requirements, trade related investment measures and measures related to government procurement. There has been a faster growth of trade in intermediate inputs than trade in final goods. This is because transaction costs imposed by policy and non-policy factors and behind the border measures accumulate along value chains. SME’s and micro business are particularly disadvantaged by these practices.

The Strategic Study also found that accumulation of costs across the supply chains disadvantages consumers through higher costs. Addressing NTMs to reduce unnecessary transaction costs is important and can be achieved by enhancing regulatory cooperation within APEC economies to lower the costs of doing business.

The Strategic Study also found that the proliferation of FTAs and RTAs in the region may have a detrimental effect. It has led to the creation of the so called ‘spaghetti bowl’ effect which has resulted in a complicated web of overlapping agreements which can lead to high costs for verifying rules of origin (ROO). The additional administrative costs and resulting trade diversion may offset any initial gains. An analysis of the data indicates that a simplification of ROO across trade agreements could address the spaghetti bowl effect by reducing transaction costs and contribute to creating more trade in the APEC region.
APEC leaders have previously stressed the need for the FTAAP to be comprehensive and cover non-tariff issues. The APEC Business Advisory Council (ABAC) has also called for stronger implementation of good regulatory practice (GRP) to minimise the potential barriers from behind the borders.

The Strategic Study indicated that trade agreements can have a role in promoting regulatory coherence and cited TPP’s Chapter 25 (Attached) on regulatory coherence as an example. Regulatory coherence is taking good regulatory practice one step further whereby domestic regulatory systems can interface as seamlessly as possible with systems in other countries.

At CD17 some members considered that the TPP Chapter 25 could serve as a useful model for the FTAAP and its inclusion would complement the work undertaken by the CD’s Virtual Working Group (VWG) on Regulatory Cooperation and Convergence (VWG RCC). For example, the proposed paper on APEC Chemical Trade will be useful to support the CD’s efforts for GRP and greater regulatory coherence by demonstrating the importance of the chemical sector to the region.

Discussions on the Regional Comprehensive Economic Partnership (RCEP) to date have not included a chapter on GRP or regulatory coherence like that of the TPP.

**Recommendations**

That the CD notes:

- the above update on FTAAP progress; and
- that individual member economies consider what contributions they can make regarding promoting GRP for the chemical sector within the context of the FTAAP work.
Collective Strategic Study on Issues Related to the Realization of the FTAAP*

EXECUTIVE SUMMARY

In their 1994 Bogor Declaration, APEC Leaders agreed to common goals of free and open trade and investment by 2010 for industrialised economies and 2020 for developing economies. These targets, known as the Bogor Goals, reflected the shared belief that free and open trade and investment are essential to realise the region’s growth potential and enhance economic and social outcomes for all APEC economies. Since then, APEC’s role in facilitating regional economic growth and cooperation has helped to achieve increased prosperity and stability in the Asia-Pacific region. From 1989 to 2014, the average applied tariffs of APEC economies fell by more than 10 percentage points and, as a result, there has been a seven-fold increase in both intra-APEC merchandise trade and APEC’s total trade.

On the recommendation of APEC’s Business Advisory Council in 2004, APEC Leaders agreed in 2006 to examine the long-term prospect of a Free Trade Area of the Asia-Pacific (FTAAP). In 2010, Leaders established that the realization of an FTAAP would build on ongoing regional undertakings such as the Trans-Pacific Partnership (TPP) and the Regional Comprehensive Economic Partnership (RCEP). The 2014 Beijing Roadmap for APEC’s Contribution to the Realization of FTAAP endorsed by Leaders in 2014 called for a Collective Strategic Study on Issues Related to the Realization of the FTAAP with any recommendations by the end of 2016.

This Study is to help identify key issues that are essential for APEC economies to advance towards realisation of an FTAAP. It has been prepared against the background of emerging voices of support for protectionist policies which risk eroding national prosperity in economies in the Asia-Pacific. Globalisation and accompanying policies that support more open trade and investment have lifted millions of people throughout the region out of poverty and delivered improved living standards to many more. But there is a constituency that believes it has been adversely affected by globalisation. The case that free and open trade and investment promotes economic prosperity, improved job opportunities and stronger growth needs to be strengthened and made again.

Further advancement of trade and investment liberalization in the Asia-Pacific could bring great opportunities and lead to an eventual FTAAP. Reducing barriers to trade and investment could increase connectivity and help bring many enterprises and workers into the mainstream of the global production system so as to lead to inclusive economic growth. Progress towards realisation of an FTAAP should continue to build on regional and bilateral trade agreements (RTAs/FTAs) and other regional undertakings which are open and transparent.

A strong foundation of unilateral liberalization of economic and investment policies, trade facilitation, and economic and technical cooperation is essential to demonstrate APEC’s continued commitment towards free and open trade and investment in the Asia-Pacific which would contribute to eventual realization of an FTAAP. It is a testament to APEC’s strength, rooted in non-binding, consensus-based cooperation that APEC has been able to advance work on issues that have struggled to gain traction in other settings. The goal of a high-quality and comprehensive FTAAP which will address next generation trade and investment issues requires much practical work in APEC to help economies prepare to be able to participate in such an agreement.

The needs and interests of APEC economies vary significantly and there is a particular challenge in meeting the capacity-building needs of developing economies. APEC should continue its role as an incubator of issues and engage in concrete work to bring about eventual realisation of an FTAAP. New trade and investment issues that would benefit from closer examination by APEC include: identifying market access commitments under the agreed pathways to an FTAAP; working with business to identify NTMs; supporting the APEC Services Competitiveness Roadmap; identifying areas of convergence in
investment agreements; and exploring best practice in customs origins procedures. A stock-take of new issues dealt with in existing RTAs/FTAs and in the existing Pathways should precede this work.

The Study makes six core points:

- APEC is highly integrated in economic terms and makes a strong contribution to the global economy;
- An eventual FTAAP could be a major instrument to further regional economic integration;
- The groundwork for making progress toward an FTAAP has been advanced, including through APEC’s work on emerging trade issues, progress at the sub-regional level with FTAs and initiatives such as improving supply chain connectivity;
- The Trans-Pacific Partnership (TPP) and the Regional Comprehensive Economic Partnership (RCEP) provide possible future pathways to an FTAAP. Other regional integration undertakings also provide potential lessons to the eventual realization of the FTAAP;
- The economic case for an eventual FTAAP is strong; however, significant barriers to trade and investment remain;
- Progress towards realisation of an FTAAP will need to build on APEC’s core strength of economic and technical cooperation through practical work including targeted capacity building.

Chapter 1: Overview

This chapter provides an historical overview of the discussions in APEC of an eventual FTAAP, which led to the development of the Collective Strategic Study. It also introduces the background, describes the objectives, and previews the contents of the Study.

Chapter 2: Review of the APEC Region’s Economy

This chapter looks at the APEC region’s trade and investment relationships. It focuses on: (i) basic trends in intra-APEC and extra-APEC trade and investment since the mid-1990s, and the diversity of patterns around those trends at the economy level; (ii) factors behind evolving patterns of trade and investment specialization across the region, such as changes in revealed comparative advantage and factors that contribute to competitiveness; and (iii) the implications for the APEC region of the weakening relationship between growth in world trade and economic growth since the 2009 global financial crisis.

Chapter 3: Next Generation Trade and Investment Issues

This chapter touches on the next generation trade and investment issues that should be considered in an eventual FTAAP. The potential issues identified in this chapter go beyond those previously identified by APEC member economies (APEC member economies have been involved in a process to identify such issues since 2011). Given this, the issues identified in the chapter should not be used to set and/or prejudge the scope of an FTAAP.

Chapter 4: Measures Affecting Trade and Investment

This chapter describes the current state-of-play in the Asia-Pacific in relation to the various measures that affect trade and investment, including tariffs and non-tariff measures, measures affecting services, and investment regimes. It also analyses the impact of those measures, reviews the work that APEC has done to address issues related to the measures, and considers what might be done by APEC in the future.

Chapter 5: Stocktaking of Existing RTAs/FTAs in the Asia-Pacific Region

This chapter evaluates the level of coverage and ambition of existing RTAs/FTAs in the region, and identifies how well they support the multilateral trading system. It examines the impact of overlapping FTAs in the region, which creates the so-called ‘spaghetti bowl’ effect, and identifies some recent trends.
Chapter 6: Stocktaking of Initiatives and Outcomes Relevant to an FTAAP

This chapter discusses selected APEC initiatives and outcomes that lay the foundation in support of the eventual realization of the FTAAP. It describes several initiatives on trade and investment liberalization and facilitation, including best practices for RTAs/FTAs, and looks at achievements in specific sectors, such as environmental goods, customs and next generation trade and investment issues.

Chapter 7: Update of Other Analytical Work

This chapter revisits APEC’s 2009 Further Analytical Study on the Likely Economic Impact of an FTAAP. Like the 2009 study, it supports the view that deeper integration, through either enhanced trade facilitation or freer trade in services, is a more desirable outcome compared to shallow integration based solely on elimination of tariffs. It suggests that APEC set an ambitious liberalization goal that involves deeper integration beyond tariff elimination.

The second part of the chapter provides an update on the 2008 APEC report on Identifying Convergences and Divergences in APEC RTAs/FTAs. It reviews 10 recently concluded RTAs/FTAs based on the analytical framework of the 2008 report. While divergences remain in many areas, the level of convergence appears to be increasing. Common elements and practices in RTAs/FTAs across a wide range of trade issues could create a solid foundation for an eventual FTAAP.

Chapter 8: Ongoing Regional Undertakings

This chapter describes regional undertakings that could serve as pathways to the FTAAP: the TPP and the RCEP. Other regional initiatives covered are the Pacific Alliance, the Eurasian Economic Union (EAEU) and ASEAN economic integration initiatives. The chapter also briefly describes APEC’s contribution to two recently concluded WTO agreements: the expanded Information Technology Agreement (ITA) and the Trade Facilitation Agreement (TFA).

Chapter 9: Opportunities and Challenges

This chapter summarises the Study and presents some opportunities and challenges arising from global and region-wide economic change. It concludes with the Study’s recommendations.

* The issues addressed in the Study are based on collective inputs from APEC economies and do not necessarily represent the future policy positions of individual APEC economies.
CHAPTER 25
REGULATORY COHERENCE

Article 25.1: Definitions

For the purposes of this Chapter:

covered regulatory measure means the regulatory measure determined by each Party to be subject to this Chapter in accordance with Article 25.3 (Scope of Covered Regulatory Measures); and

regulatory measure means a measure of general application related to any matter covered by this Agreement adopted by regulatory agencies with which compliance is mandatory.

Article 25.2: General Provisions

1. For the purposes of this Chapter, regulatory coherence refers to the use of good regulatory practices in the process of planning, designing, issuing, implementing and reviewing regulatory measures in order to facilitate achievement of domestic policy objectives, and in efforts across governments to enhance regulatory cooperation in order to further those objectives and promote international trade and investment, economic growth and employment.

2. The Parties affirm the importance of:

   (a) sustaining and enhancing the benefits of this Agreement through regulatory coherence in terms of facilitating increased trade in goods and services and increased investment between the Parties;

   (b) each Party’s sovereign right to identify its regulatory priorities and establish and implement regulatory measures to address these priorities, at the levels that the Party considers appropriate;

   (c) the role that regulation plays in achieving public policy objectives;

   (d) taking into account input from interested persons in the development of regulatory measures; and

   (e) developing regulatory cooperation and capacity building between the Parties.
Article 25.3: Scope of Covered Regulatory Measures

Each Party shall promptly, and no later than one year after the date of entry into force of this Agreement for that Party, determine and make publicly available the scope of its covered regulatory measures. In determining the scope of covered regulatory measures, each Party should aim to achieve significant coverage.

Article 25.4: Coordination and Review Processes or Mechanisms

1. The Parties recognise that regulatory coherence can be facilitated through domestic mechanisms that increase interagency consultation and coordination associated with processes for developing regulatory measures. Accordingly, each Party shall endeavour to ensure that it has processes or mechanisms to facilitate the effective interagency coordination and review of proposed covered regulatory measures. Each Party should consider establishing and maintaining a national or central coordinating body for this purpose.

2. The Parties recognise that while the processes or mechanisms referred to in paragraph 1 may vary between Parties depending on their respective circumstances (including differences in levels of development and political and institutional structures), they should generally have as overarching characteristics the ability to:

   (a) review proposed covered regulatory measures to determine the extent to which the development of such measures adheres to good regulatory practices, which may include but are not limited to those set out in Article 25.5 (Implementation of Core Good Regulatory Practices), and make recommendations based on that review;

   (b) strengthen consultation and coordination among domestic agencies so as to identify potential overlap and duplication and to prevent the creation of inconsistent requirements across agencies;

   (c) make recommendations for systemic regulatory improvements; and

   (d) publicly report on regulatory measures reviewed, any proposals for systemic regulatory improvements, and any updates on changes to the processes and mechanisms referred to in paragraph 1.

Each Party should generally produce documents that include descriptions of those processes or mechanisms and that can be made available to the public.
Article 25.5: Implementation of Core Good Regulatory Practices

1. To assist in designing a measure to best achieve the Party’s objective, each Party should generally encourage relevant regulatory agencies, consistent with its laws and regulations, to conduct regulatory impact assessments when developing proposed covered regulatory measures that exceed a threshold of economic impact, or other regulatory impact, where appropriate, as established by the Party. Regulatory impact assessments may encompass a range of procedures to determine possible impacts.

2. Recognising that differences in the Parties’ institutional, social, cultural, legal and developmental circumstances may result in specific regulatory approaches, regulatory impact assessments conducted by a Party should, among other things:

   (a) assess the need for a regulatory proposal, including a description of the nature and significance of the problem;

   (b) examine feasible alternatives, including, to the extent feasible and consistent with laws and regulations, their costs and benefits, such as risks involved as well as distributive impacts, recognising that some costs and benefits are difficult to quantify and monetise;

   (c) explain the grounds for concluding that the selected alternative achieves the policy objectives in an efficient manner, including, if appropriate, reference to the costs and benefits and the potential for managing risks; and

   (d) rely on the best reasonably obtainable existing information including relevant scientific, technical, economic or other information, within the boundaries of the authorities, mandates and resources of the particular regulatory agency.

3. When conducting regulatory impact assessments, a Party may take into consideration the potential impact of the proposed regulation on SMEs.

4. Each Party should ensure that new covered regulatory measures are plainly written and are clear, concise, well organised and easy to understand, recognising that some measures address technical issues and that relevant expertise may be needed to understand and apply them.

5. Subject to its laws and regulations, each Party should ensure that relevant regulatory agencies provide public access to information on new covered regulatory measures and, where practicable, make this information available online.
6. Each Party should review, at intervals it deems appropriate, its covered regulatory measures to determine whether specific regulatory measures it has implemented should be modified, streamlined, expanded or repealed so as to make the Party’s regulatory regime more effective in achieving the Party’s policy objectives.

7. Each Party should, in a manner it deems appropriate, and consistent with its laws and regulations, provide annual public notice of any covered regulatory measure that it reasonably expects its regulatory agencies to issue within the following 12-month period.

8. To the extent appropriate and consistent with its law, each Party should encourage its relevant regulatory agencies to consider regulatory measures in other Parties, as well as relevant developments in international, regional and other fora when planning covered regulatory measures.

Article 25.6: Committee on Regulatory Coherence

1. The Parties hereby establish a Committee on Regulatory Coherence (Committee), composed of government representatives of the Parties.

2. The Committee shall consider issues associated with the implementation and operation of this Chapter. The Committee shall also consider identifying future priorities, including potential sectoral initiatives and cooperative activities, involving issues covered by this Chapter and issues related to regulatory coherence covered by other Chapters of this Agreement.

3. In identifying future priorities, the Committee shall take into account the activities of other committees, working groups and any other subsidiary body established under this Agreement and shall coordinate with them in order to avoid duplication of activities.

4. The Committee shall ensure that its work on regulatory cooperation offers value in addition to initiatives underway in other relevant fora and avoids undermining or duplicating such efforts.

5. Each Party shall designate and notify a contact point to provide information, on request by another Party, regarding the implementation of this Chapter in accordance with Article 27.5 (Contact Points).

6. The Committee shall meet within one year of the date of entry into force of this Agreement, and thereafter as necessary.

7. At least once every five years after the date of entry into force of this Agreement, the Committee shall consider developments in the area of good regulatory practices and in best practices in maintaining processes or mechanisms
referred to in Article 25.4.1 (Coordination and Review Processes or Mechanisms), as well as the Parties’ experiences in implementing this Chapter with a view towards considering whether to make recommendations to the Commission for improving the provisions of this Chapter so as to further enhance the benefits of this Agreement.

**Article 25.7: Cooperation**

1. The Parties shall cooperate in order to facilitate the implementation of this Chapter and to maximise the benefits arising from it. Cooperation activities shall take into consideration each Party’s needs, and may include:

   (a) information exchanges, dialogues or meetings with other Parties;

   (b) information exchanges, dialogues or meetings with interested persons, including with SMEs, of other Parties;

   (c) training programmes, seminars and other relevant assistance;

   (d) strengthening cooperation and other relevant activities between regulatory agencies; and

   (e) other activities that Parties may agree.

2. The Parties further recognise that cooperation between Parties on regulatory matters can be enhanced through, among other things, ensuring that each Party’s regulatory measures are centrally available.

**Article 25.8: Engagement with Interested Persons**

The Committee shall establish appropriate mechanisms to provide continuing opportunities for interested persons of the Parties to provide input on matters relevant to enhancing regulatory coherence.

**Article 25.9: Notification of Implementation**

1. For the purposes of transparency, and to serve as a basis for cooperation and capacity building activities under this Chapter, each Party shall submit a notification of implementation to the Committee through the contact points designated pursuant to Article 27.5 (Contact Points) within two years of the date of entry into force of this Agreement for that Party and at least once every four years thereafter.
2. In its initial notification, each Party shall describe the steps that it has taken since the date of entry into force of this Agreement for that Party, and the steps that it plans to take to implement this Chapter, including those to:

   (a) establish processes or mechanisms to facilitate effective interagency coordination and review of proposed covered regulatory measures in accordance with Article 25.4 (Coordination and Review Processes or Mechanisms);

   (b) encourage relevant regulatory agencies to conduct regulatory impact assessments in accordance with Article 25.5.1 (Implementation of Core Good Regulatory Practices) and Article 25.5.2;

   (c) ensure that covered regulatory measures are written and made available in accordance with Article 25.5.4 (Implementation of Core Good Regulatory Practices) and Article 25.5.5;

   (d) review its covered regulatory measures in accordance with Article 25.5.6 (Implementation of Core Good Regulatory Practices); and

   (e) provide information to the public in its annual notice of prospective covered regulatory measures in accordance with Article 25.5.7 (Implementation of Core Regulatory Practices).

3. In subsequent notifications, each Party shall describe the steps, including those set out in paragraph 2, that it has taken since the previous notification, and those that it plans to take to implement this Chapter, and to improve its adherence to it.

4. In its consideration of issues associated with the implementation and operation of this Chapter, the Committee may review notifications made by a Party pursuant to paragraph 1. During that review, Parties may ask questions or discuss specific aspects of that Party’s notification. The Committee may use its review and discussion of a notification as a basis for identifying opportunities for assistance and cooperative activities to provide assistance in accordance with Article 25.7 (Cooperation).

**Article 25.10: Relation to Other Chapters**

In the event of any inconsistency between this Chapter and another Chapter of this Agreement, the other Chapter shall prevail to the extent of the inconsistency.
Article 25.11: Non-Application of Dispute Settlement

No Party shall have recourse to dispute settlement under Chapter 28 (Dispute Settlement) for any matter arising under this Chapter.