Asia-Pacific
Economic Cooperation

2017/SOM3/DIA/002

Annual Report on Trends and Developments in Provisions and Outcomes of Regional Trade Agreements and Free Trade Agreements Implemented in 2016 by APEC Economies: Presentation

Submitted by: Policy Support Unit, APEC Secretariat

APEC VIET NAM 2017

Dialogue on Regional Trade Agreements and Free Trade Agreements
Ho Chi Minh City, Viet Nam
27 August 2017

Asia-Pacific Economic Cooperation

Advancing Free Trade for Asia-Pacific Prosperity

Annual Report on Trends and Developments in Provisions and Outcomes of RTA/FTAs Implemented in 2016 by APEC Economies

27 August 2017 – SOM Dialogue on RTA/FTAs

Presented by
Carlos Kuriyama, Senior Analyst, APEC Secretariat, Policy Support Unit.

Introduction

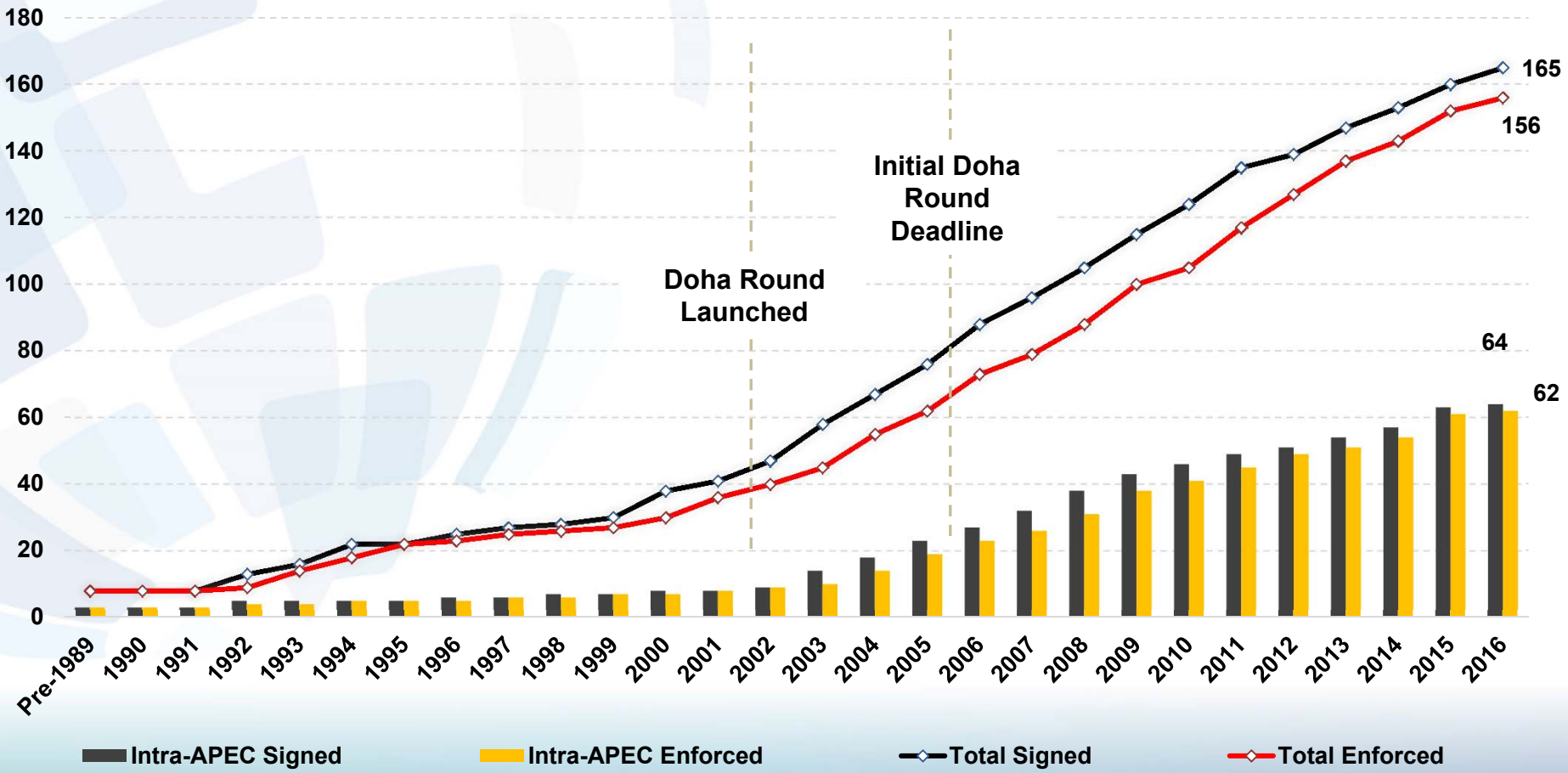
- Report discusses the **evolution of RTA/FTAs by APEC economies** within the APEC region with the rest of the world

- Analyzes **4 agreements** that were entered into force in 2016:
  - Japan-Mongolia
  - Pacific Alliance
  - Viet Nam-EAEU
  - Korea-Colombia

- **4 Chapters** were analyzed in detail:
  - Customs Administration, Procedures and Trade Facilitation
  - Electronic Commerce
  - Government Procurement
  - Investment

of RTA/FTAs signed and enforced by APEC economies

Asia-Pacific Economic Cooperation



Sources: APEC Secretariat. Policy Support Unit

Intra-APEC Trade Pairings Covered by RTA/FTAs

Asia-Pacific Economic Cooperation

Trade relationships within APEC have increasingly been covered by preferential trade agreements

Year	Intra APEC Trade Pairings	Intra-APEC Trade Pairings with RTA/FTA	% Intra-APEC Trade Parings with RTA/FTAs	Intra-APEC Trade Flows (USD Billions)	Intra-APEC Trade Flows by RTA/FTA Partners (USD Billions)	% of Intra-APEC Trade Flows by RTA/FTA Partners
1996	210	27	13%	$ 1,796.67	$ 544.15	30.3%
2006	210	52	25%	$ 3,779.95	$ 1,748.28	46.3%
2016	210	101	48%	$ 5,551.26	$ 3,542.74	63.8%

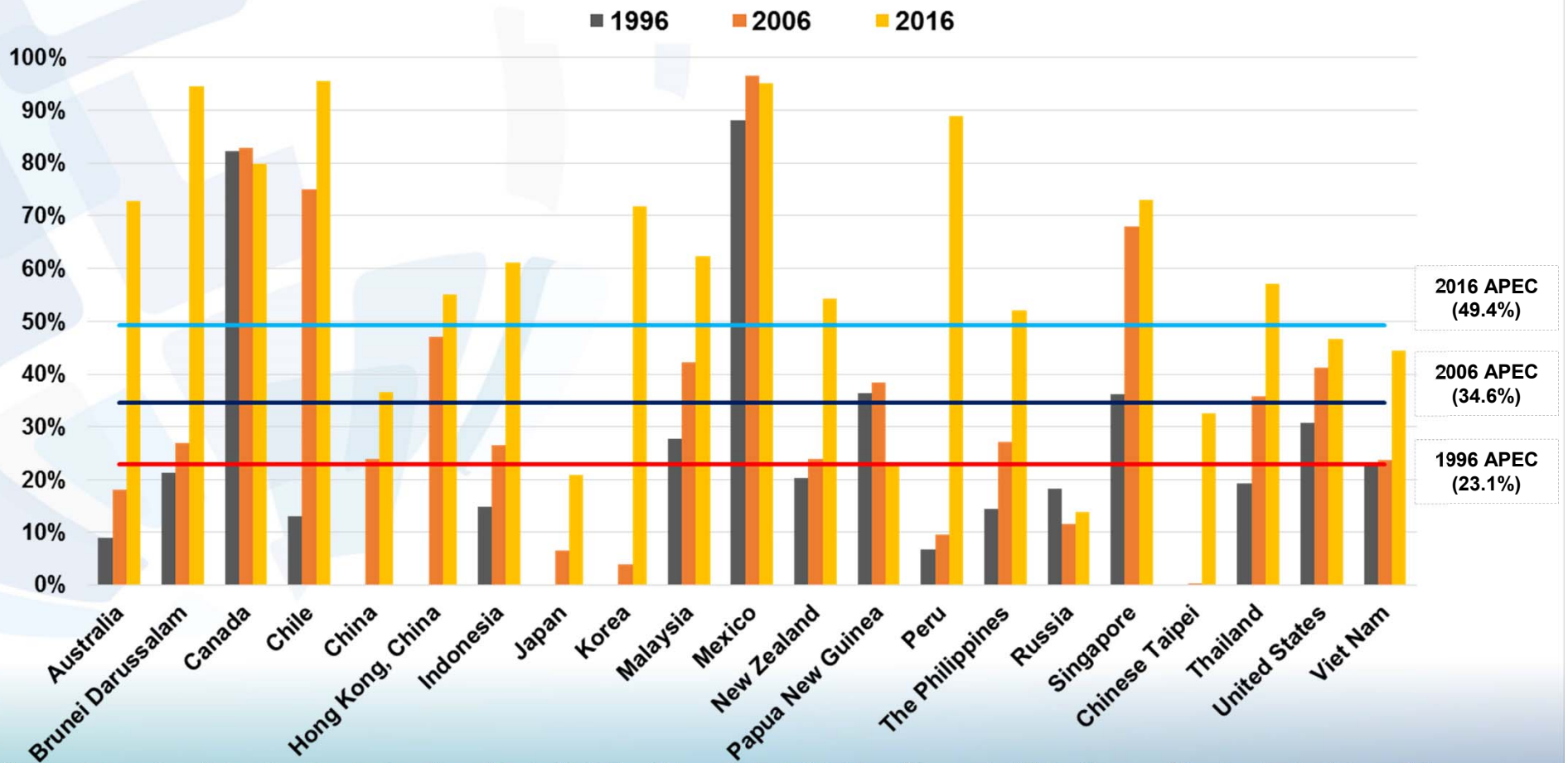
Sources: International Monetary Fund – Direction of Trade Statistics; Chinese Taipei's Ministry of Finance; APEC Secretariat, Policy Support Unit Calculations

Over the last 2 decades, intra-APEC pairings with RTA/FTAs:

- Have increased more than 3 times
- Their trade flows increased more than 6 times in USD terms
- Their trade flows more than doubled in relative terms

Share of Trade with RTA/FTA Partners (Export)

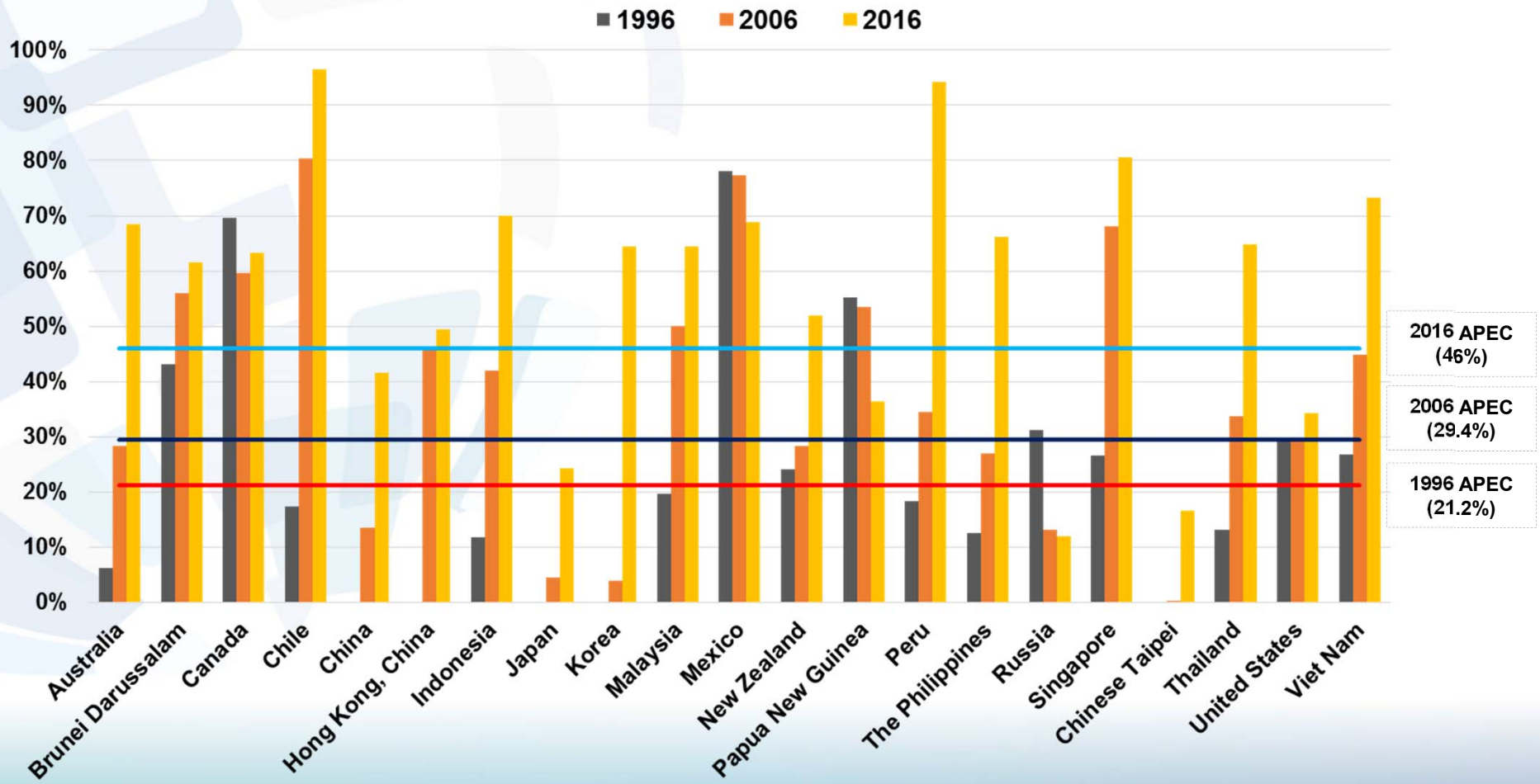
Asia-Pacific Economic Cooperation



Source: International Monetary Fund – Direction of Trade Statistics; Chinese Taipei's Ministry of Economic Affairs, Bureau of Foreign Trade; Chinese Taipei Ministry of Finance, External Trade Statistics

Share of Trade with RTA/FTA Partners (Import)

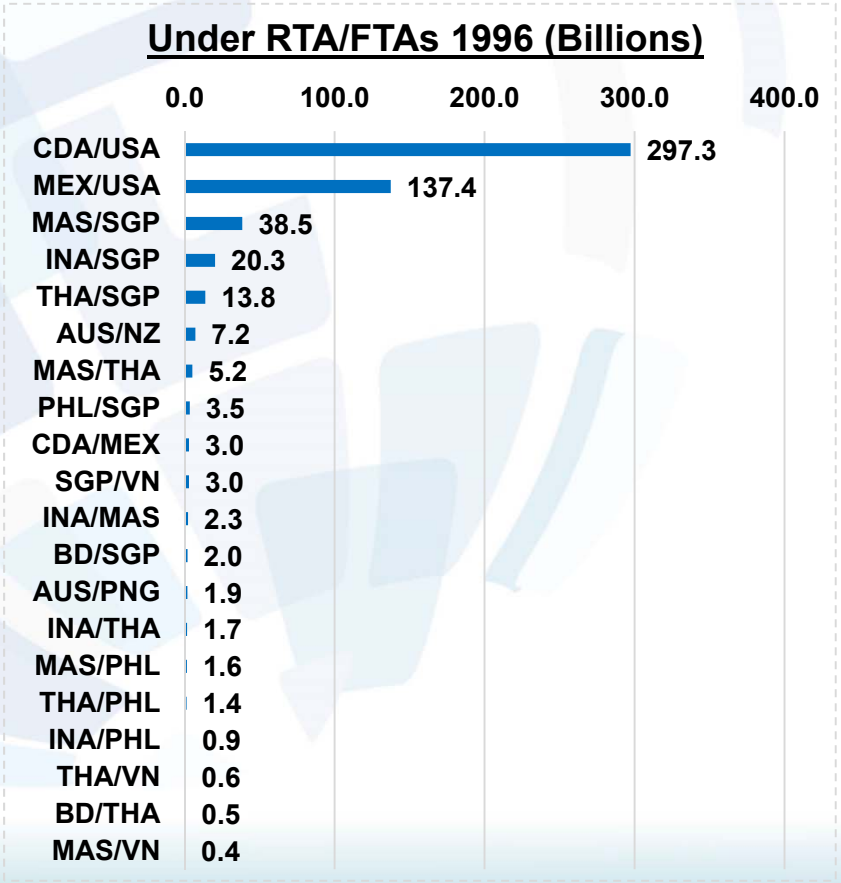
Asia-Pacific Economic Cooperation

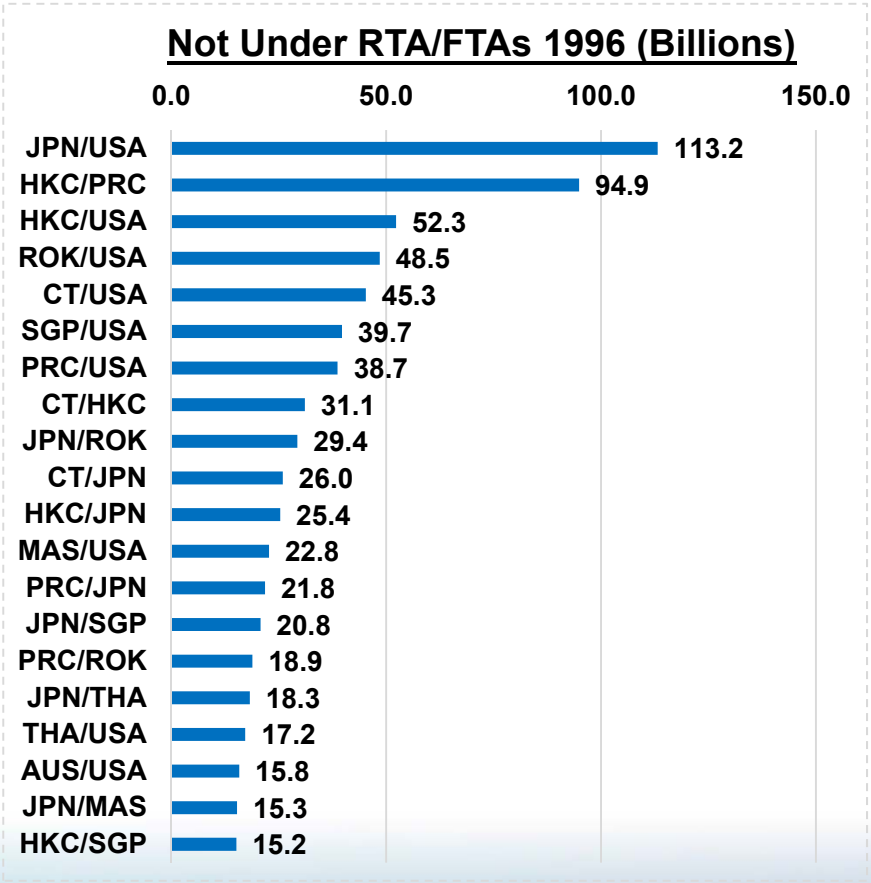


Source: International Monetary Fund – Direction of Trade Statistics; Chinese Taipei's Ministry of Economic Affairs, Bureau of Foreign Trade; Chinese Taipei Ministry of Finance, External Trade Statistics

Top 20 Intra-APEC Trade Flows under RTA/FTAs (1996)

Asia-Pacific Economic Cooperation

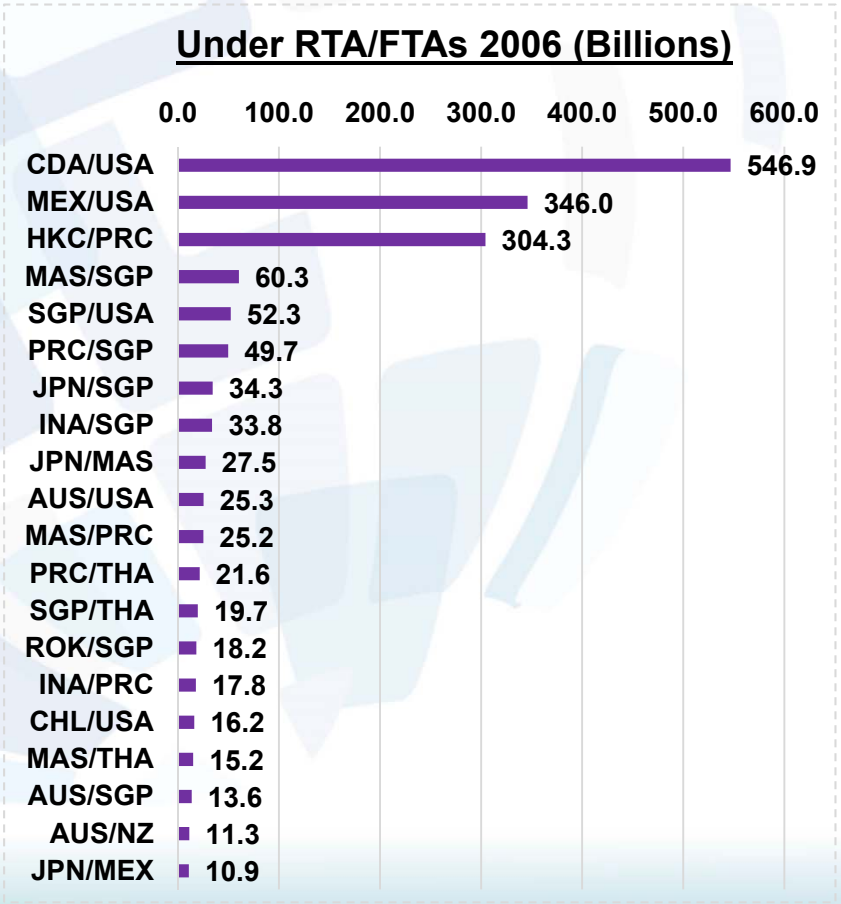


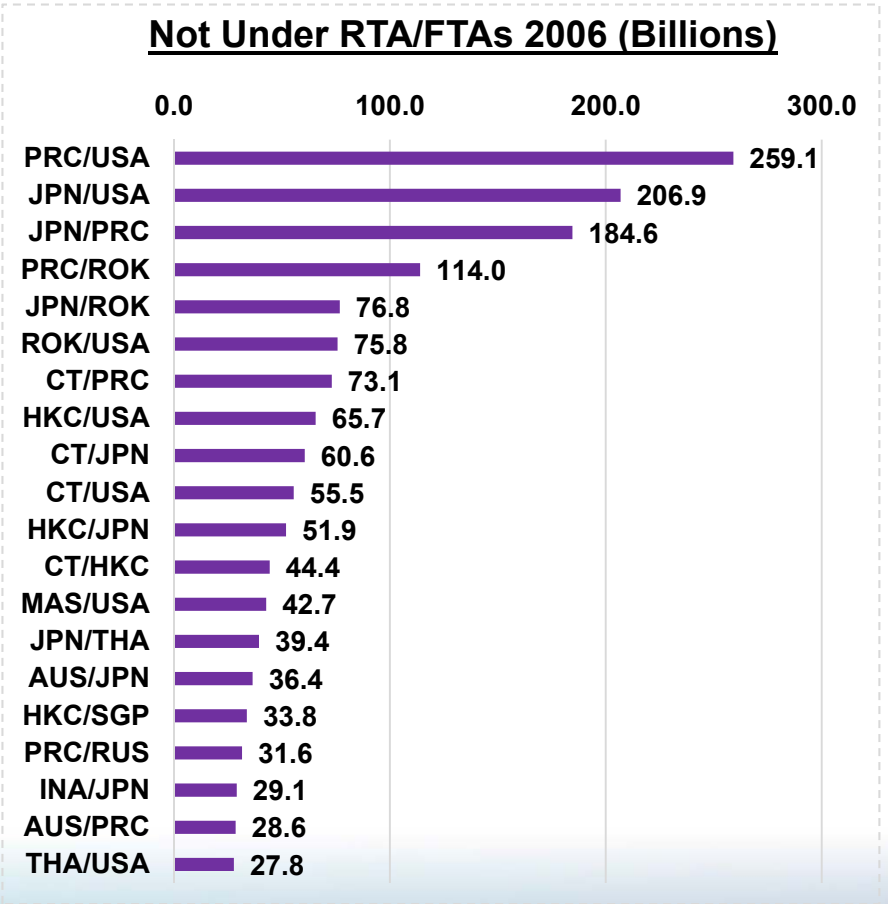


Source: International Monetary Fund – Direction of Trade Statistics; Chinese Taipei's Ministry of Economic Affairs, Bureau of Foreign Trade; Chinese Taipei Ministry of Finance, External Trade Statistics

Top 20 Intra-APEC Trade Flows under RTA/FTAs (2006)

Asia-Pacific Economic Cooperation

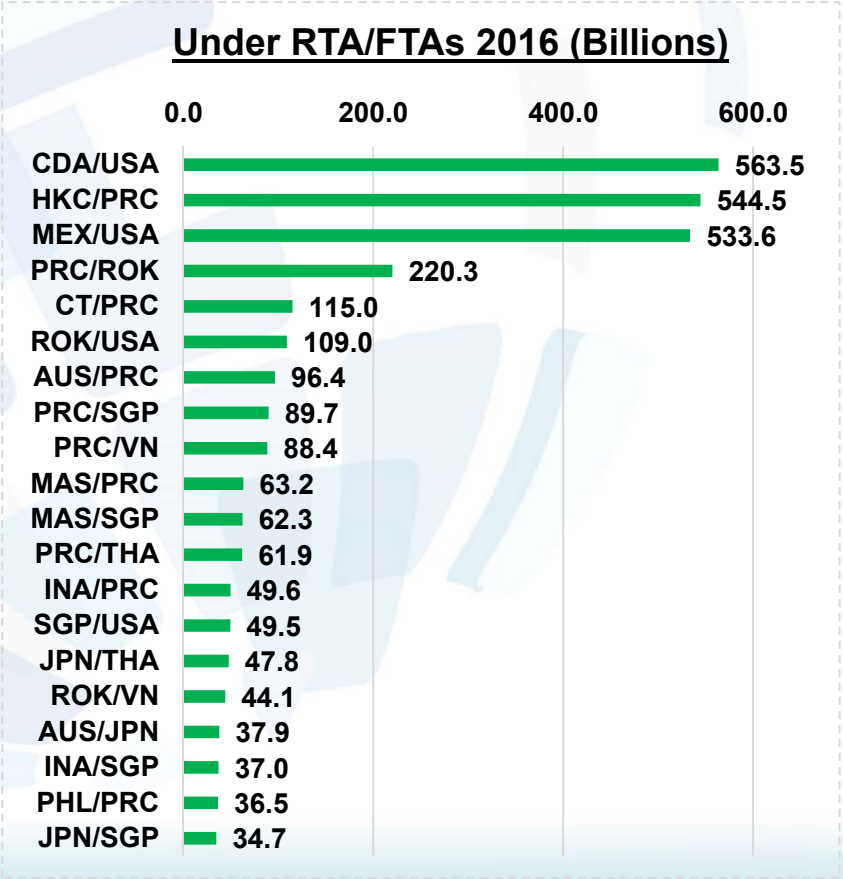


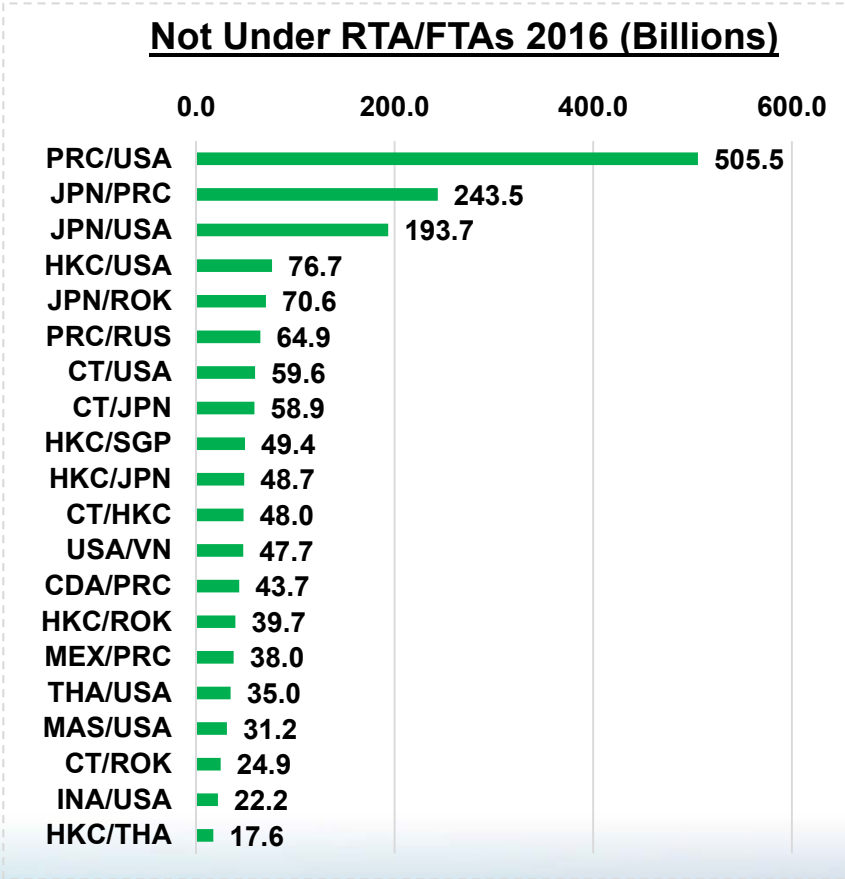


Source: International Monetary Fund – Direction of Trade Statistics; Chinese Taipei Ministry of Finance, External Trade Statistics

Top 20 Intra-APEC Trade Flows under RTA/FTAs (2016)

Asia-Pacific Economic Cooperation





Source: International Monetary Fund – Direction of Trade Statistics; Chinese Taipei Ministry of Finance, External Trade Statistics

Investment

- All 4 agreements evaluated include chapters relating to investment
- Viet Nam-EAEUs investment provision only applied between Vietnam and the Russian Federation.
- Considered **WTO plus** and include articles beyond those covered by WTOs Trade Related Investment Matters (TRIMS)
- No comparison with APEC Model Measures for RTA/FTAs as this initiative does not include measures for investments

Investment

Asia-Pacific Economic Cooperation

Similarities

- Use of **Negative list** for liberalization commitments
- **National Treatment** (NT) and **MFN treatment** at **post-establishment** level
- Guarantees **free transfer of capital** without delay
- **No performance requirements** linked to exporting certain amounts, purchasing local goods, relating the volume of imports to those of exports and supplying goods and services from the territory of the party
- Consideration of **environmental concerns**
- Inclusion of **Investor-State Dispute Settlement (ISDS)** clauses

Investment Chapters

Asia-Pacific Economic Cooperation

Differences

- NT and MFN treatment at **pre-establishment** levels
- **Exceptions** to free transfer of capital in case of **balance-of-payments** problems
- **No prohibitions** on certain **performance requirements** (e.g. local content requirements to achieve a given level of domestic content, transfer of technology)
- Fair and equitable treatment, full protection and security, and expropriation in accordance to **domestic laws** instead of **international customary law**
- **ISDS features differ**: times to submit case to arbitration, establishment of tribunal, execution of award, use of domestic courts, transparency in ISDS proceedings

Customs Administration, Procedures and Trade Facilitation

Asia-Pacific Economic Cooperation

- All agreements include customs related chapters
- Range of binding disciplines among FTAs in Customs issues and their scope differs
- Chapters are **WTO plus** by including commitments going beyond WTOs TFA
- Agreements have adopted most of APEC Model Measures in Customs with some specific exceptions

Customs Administration, Procedures and Trade Facilitation

Asia-Pacific Economic Cooperation

Similarities

- **Transparency**: laws and regulations have to be made available to the public
- References to **use IT** for customs operations
- Commonalities in **paperless trading**, **risk management** and **automated systems**
- **Review and appeal**: administrative and judicial review of decisions

Customs Administration, Procedures and Trade Facilitation

Asia-Pacific Economic Cooperation

Differences

- Transparency: laws and regulations available in **paper version** and **online**? Or only online?
- Working to make **single windows** among parties **inter-operational**
- **Enforceability of provisions**. For examples, **issuance vs best efforts** in advance rulings
- **Time** for **release of goods** and **express shipments**. Submission of documentation in **electronic format**
- **Cooperation**: fight against **specific crimes** vs mutual assistance to implement and **enforce customs chapter**

Electronic Commerce

- Most RTA/FTAs put in force in recent years includes an e-commerce chapter
- **Binding chapters** for 3 agreements:

  Japan Mongolia; Korea-Colombia; Pacific Alliance FTAs
- **WTO Plus** Chapters: No current multilateral or plurilateral WTO agreement in e-commerce
- Comparison with **APEC Model Measures**: **Mixed Results**

Electronic Commerce

Asia-Pacific Economic Cooperation

Similarities

- Acknowledgement of **growing importance of e-commerce** for economic growth
- Not charging customs duties on **electronic transmissions**
- Best efforts to make all documents available in **electronic format**, legal equivalent to paper format
- Online **consumer protection** and online **data protection**
- **Cooperation** on exchange of information, protection of private data and improvement of consumer confidence

Electronic Commerce

Asia-Pacific Economic Cooperation

Differences

- **Binding vs non-binding** chapter
- Inclusion of **definition of digital products**, **technologically-neutral treatment** of product
- **NT and MFN treatment to digital products** of the other party
- **Application** of chapter to **goods and services** vs application to the **use of electronic documents** in trade
- **Prohibition** on establishing **localization requirements of computer facilities** and imposing transfer of **access to source codes** of software
- **Electronic authentication and digital certificates**: mutual recognition? determining specific methods?

Government Procurement

- **Depth of Chapters Differ:**
  - **Comprehensive binding provisions and market access commitments**: Korea-Colombia and Pacific Alliance FTA
  - **Limited binding provisions on transparency**. No market access commitments: Japan-Mongolia FTA
  - **Non-binding provisions**: Viet Nam-EAEU FTA
- Chapters include **many provisions** based on the WTO Government Procurement Agreement **(GPA)**
- **GPA plus** as 4 FTAs include at least one non-GPA party
- **Many APEC Model Measures** are incorporated in FTA/RTAs and are deeper than model measures

Government Procurement

Asia-Pacific Economic Cooperation

Similarities among binding chapters

- **Non-discrimination** to goods and services and suppliers from RTA/FTA parties
- Rules for **selected and limited tendering**
- **No application of technical specification** which could create **unnecessary barriers to trade**
- **Treatment of tenders** and **awarding of contracts**
- **Domestic review** process

Government Procurement

Asia-Pacific Economic Cooperation

Differences among binding chapters

- Use of **list of qualified suppliers**
- **Time periods** for submission of tenders
- Publication of laws and regulations: Paper, Internet or both?
- Set asides for **MSMEs**
- **Market access commitments**: **institutions** covered and **different thresholds** to allow suppliers from other RTA/FTA parties

Government Procurement: Pacific Alliance Thresholds

Asia-Pacific Economic Cooperation

	Chile			Colombia		
	Central	Sub-Central	Others	Central	Sub-Central	Others
Goods	SDR 50,000[1]	SDR 200,000	SDR 220,000[3]	SDR 50,000[1]	SDR 200,000	SDR 220,000[3]
Services	SDR 50,000[1]	SDR 200,000	SDR 220,000[3]	SDR 50,000[1]	SDR 200,000	SDR 220,000[3]
Construction Services	SDR 5,000,000[2]	SDR 5,000,000	SDR 5,000,000[4]	SDR 5,000,000[2]	SDR 5,000,000	SDR 5,000,000[4]
	Mexico			Peru		
	Central	Sub-Central	Others	Central	Sub-Central	Others
Goods	USD 79,507	N/A	USD 397,535	SDR 95,000	SDR 200,000	SDR 220,000
Services	USD 79,507	N/A	USD 397,535	SDR 95,000	SDR 200,000	SDR 220,000
Construction Services	USD 10,335,931	N/A	USD 12,721,740	SDR 5,000,000	SDR 5,000,000	SDR 5,000,000

[1] Except for Peru. Threshold for Peru is SDR 95,000
[2] Except for Mexico. Threshold for Mexico is USD 10,335,931
[3] Except for Mexico. Threshold for Mexico is USD 397,535
[4] Except for Mexico. Threshold for Mexico is USD 12,721,740
N/A: Not applicable

Source: Pacific Alliance FTA, Annex 8.2

Thank You

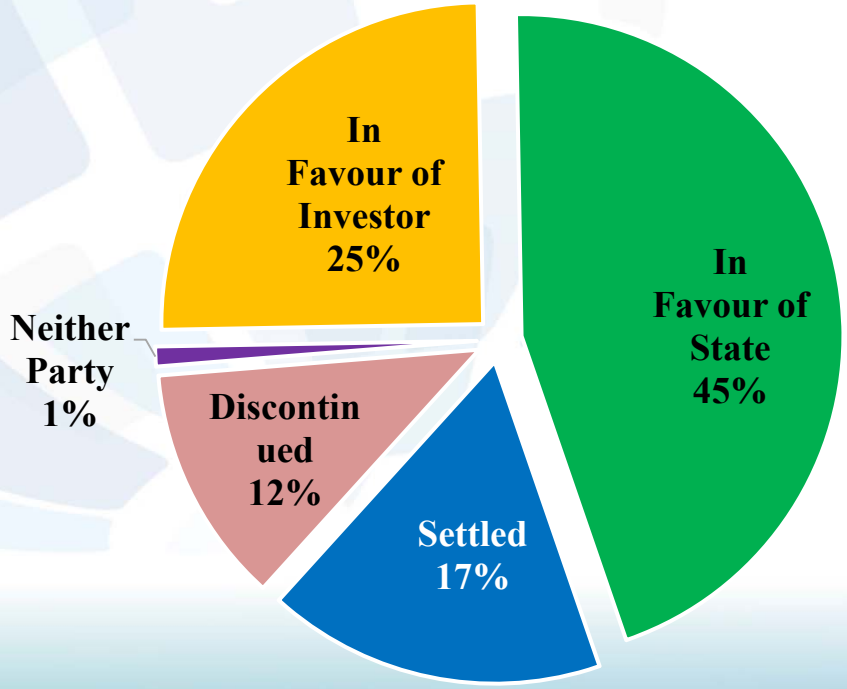
Policy Support Unit
APEC Secretariat
35 Heng Mui Keng Terrace
Singapore 119616
Telephone: (65) 6891 9600
Fax: (65) 6891 9690
Email: PSUGroup@apec.org
APEC Website - www.apec.org

Has ISDS Been Onerous for APEC Economies?

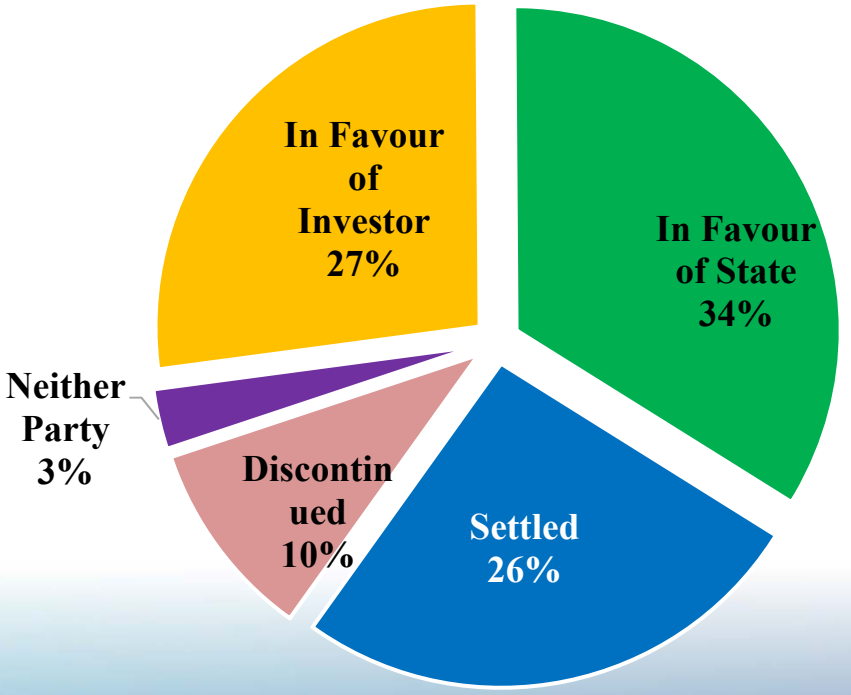
Asia-Pacific Economic Cooperation

Outcome of ISDS cases worldwide

APEC Respondent



Non-APEC Respondent



Has ISDS Been Onerous for APEC Economies?

Asia-Pacific Economic Cooperation

Amount Awarded to Investors as Percentage of Amounts Claimed

Proportion of Amount Claimed that was Awarded (%)	APEC Respondent		Non-APEC Respondent	
	No. Of Cases	Share (%)	No. Of Cases	Share (%)
Below 25	13	56.5	39	43.3
Between 25 to 50	7	30.4	26	28.9
Between 50 to 75	2	8.7	13	14.4
Between 75 to 100	1	4.3	12	13.3
Total	23	100	90	100

Source: UNCTAD – Investment Policy Hub; APEC Secretariat, Policy Support Unit Calculations

Has ISDS Been Onerous for APEC Economies?

Asia-Pacific Economic Cooperation

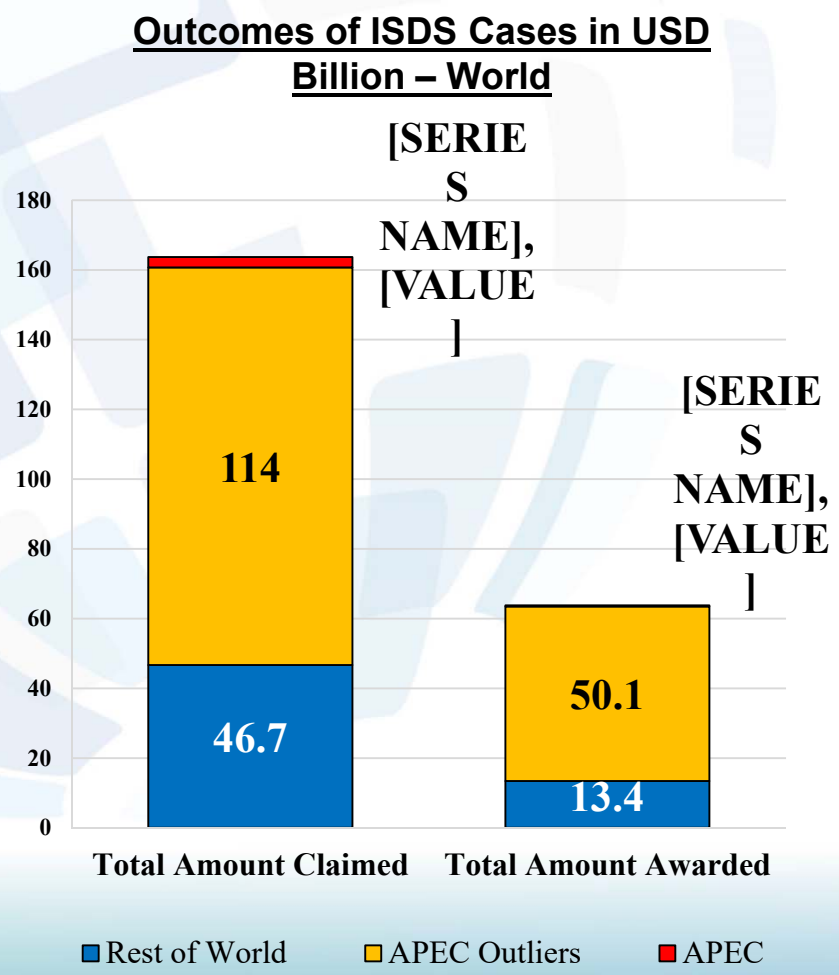
Amounts Awarded to Investors by Range (USD)

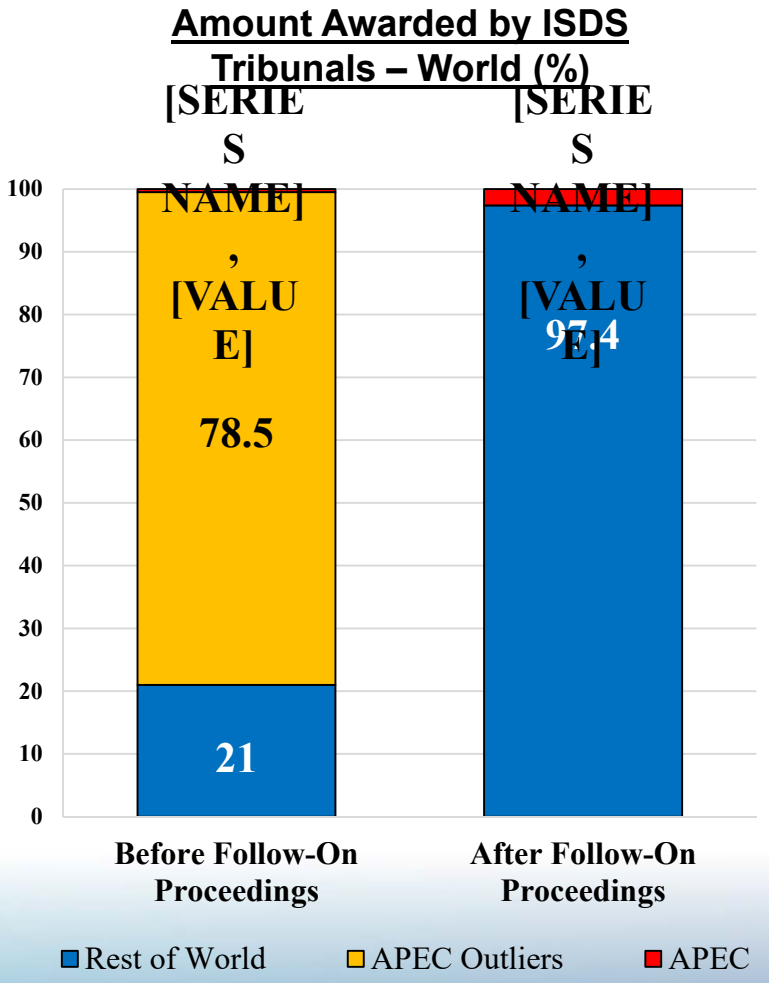
Amount Awarded in Favour of Investor	APEC Respondent		Non-APEC Respondent	
	No. Of Cases	Share (%)	No. Of Cases	Share (%)
Between 0 mil and 10 mil	12	50.0	38	36.2
Between 10 mil and 20 mil	4	16.7	15	14.3
Between 20 mil and 50 mil	3	12.5	14	13.3
Between 50 mil and 100 mil	2	8.3	11	10.5
Between 100 mil and 1 bn	0	0.0	24	22.9
More than 1bn	3	12.5	3	2.9
Total	24	100	105	100

Source: UNCTAD – Investment Policy Hub; APEC Secretariat, Policy Support Unit Calculations

Has ISDS Been Onerous for APEC Economies?

Asia-Pacific Economic Cooperation





Source: UNCTAD – Investment Policy Hub; APEC Secretariat, Policy Support Unit Calculations