



**Asia-Pacific
Economic Cooperation**

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**Examples of Free Trade Agreements and Economic
Partnership Agreements Including Optional
elements International Cooperation**

Submitted by: United States



**Free Trade Area of Asia-Pacific Capacity
Building Workshop on Competition Policy:
Sharing Good Examples of Free Trade
Agreements and Economic Partnership
Agreements
Puerto Varas, Chile
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Examples of FTAs/EPAs including “optional elements” International Cooperation

Overview

- International Cooperation Framework
- FTAs/EPAs and Competition
- FTAs/EPAs and Competition Cooperation

International Cooperation Framework

Multiple Cooperation Channels

- Cooperation can broadly be divided into enforcement based and policy based.
- There are multilateral, bilateral, and informal channels of competition cooperation outside of the trade context.

International Civil Case Cooperation

- Cross border cooperation takes place in significant amount of ATR merger challenges.
- Cooperation also occurs in civil non-merger matters.
- Exchanges of evidence/theories utilizing party waivers facilitate more efficient investigations and effective remedies, while minimizing risk of divergence.

International Cartel Case Cooperation

- Formal and informal cooperation. Limitations on case cooperation in some instances due to grand jury secrecy rules.
- Importance of the use of waivers.
- Coordinate timing of raids and searches.
- Maximize the value of mutual leniency applicants and cooperators.
- Potential to get evidence from abroad via mutual legal assistance treaties (MLATs).

Formalizing Cooperation – Bilateral Agreements

- Agreements/MOUs are catalysts for international cooperation, but not legally necessary for cooperation to take place.
- Soft Agreements: Do not provide for exchange of statutorily protected information.
- Strengthen cooperation through provisions regarding coordination and notification of enforcement actions.

Multilateral Competition Fora

- International Competition Network (ICN)
 - 139 competition member agencies.
 - Largely a “virtual” organization, projects staffed by participating agencies.
- Organization for Economic Cooperation for Development (OECD)
 - Competition Committee and Global Forum.
- Multilateral Organizations lead consensus projects on cartels, mergers, and case cooperation.

FTAs/EPAs and Competition

Goals of FTAs/EPAs and Competition

- Private firms can impose anticompetitive restraints which also restrict trade (e.g. group boycotts, market allocations). FTAs/EPAs ensure each party has a non-discriminatory legal framework for addressing anticompetitive restraints. USMCA 21.1.
- Discriminatory treatment or lack of process can also be a barrier to trade. FTAs/EPAs include procedures to that help ensure enforcement transparency. USMCA 21.2.

FTAs/EPAs and Competition Cooperation

FTA/EPA Cooperation

- Three basic categories of cooperation under FTA/EPAs:
 1. Capacity building : technical assistance (on both substantive and procedural matters like privilege). USMCA 21.3.6.
 2. Investigative assistance and creating legal capacity for agency-to-agency cooperation. USMCA 23.3.3 – 23.3.4.
 3. Policy cooperation: both on a bilateral basis and in other multilateral fora. USMCA 23.3.1, .2, and .5.
- FTA/EPA cooperation when done properly reinforces rather than supersedes other cooperation efforts.