



**Asia-Pacific
Economic Cooperation**

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**Presentation of the Key Findings of the Preliminary
Report and a Brief Overview of Dispute Settlement
Mechanisms in Asia-Pacific Trade Agreements**

Submitted by: Chile



**Workshop on Current Trends on Dispute
Settlement Mechanisms in Trade Agreements
Chiang Mai, Thailand
25 August 2022**

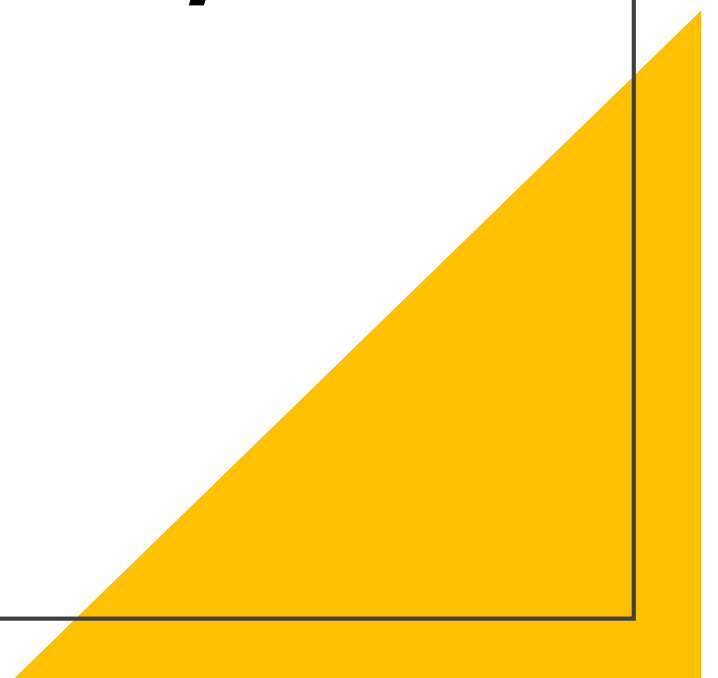
**Presentation of the Key Findings
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Brief Overview of Dispute
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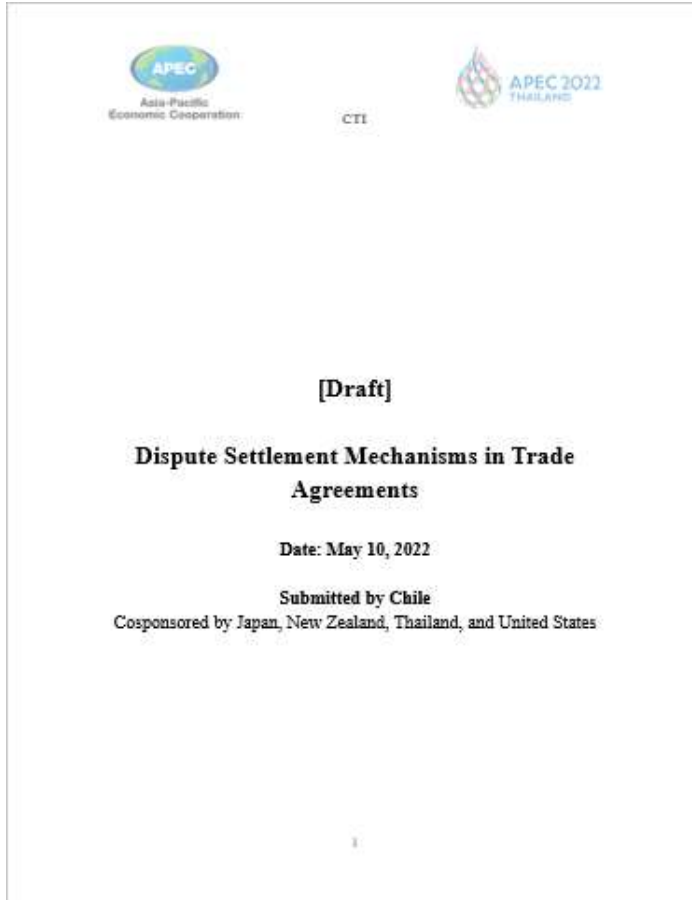
Felipe Tagle

**Head of the International Law
Division**

25 August 2022

Presentation of the Key Findings of the Preliminary Report





Initiative “Dispute Settlement Mechanisms in Trade Agreements”: Preliminary Report

- The Preliminary Report is based on a questionnaire circulated among APEC economies on 5 January 2020.
- The Preliminary Report was circulated among APEC economies on 8 June 2022 and contained key findings that sorts all the data provided by economies through their responses.

TRADE AGREEMENT	DATE OF SIGNATURE	CONSULTATIONS	ARBITRAL PROCEDURE S W/ COMPENSATION OR SUSPENSION OF BENEFITS	ARBITRAL PROCEDURE S W/O COMPENSATION OR SUSPENSION OF BENEFITS	COMPLIANCE REVIEW
FTA between Economy 1 / Economy 2	e.g. October 21, 2017	YES	YES	NO	YES

Question 1

Please provide a list of all the trade agreements your economy is a party to that include consultation and arbitral procedures in their Dispute Settlement chapter/module.

Results to Question 1

- Approx. 99% of the trade agreements informed by APEC economies in the first question, report the inclusion of consultations.
- Approx. 96% of the trade agreements informed by APEC economies in the first question, report the inclusion of compensation or suspension of benefits in their arbitral procedures.
- Approx. 87% of the trade agreements informed by APEC economies in the first question, report the inclusion of a compliance review in their arbitral procedures.

Question 2

Please provide a list of all the trade agreements your economy is a party to that include provisions on alternative DSM to the ones mentioned in question 1, in their Dispute Settlement chapter/module.

TRADE AGREEMENT	DATE OF SIGNATURE	MECHANISM
FTA between Economy 1 / Economy 2	e.g. October 21, 2017	e.g. Mediation

Results to Question 2

- Almost a 90% of the trade agreements informed by APEC economies in the second question, report the inclusion of good offices, conciliation and/or mediation as an alternative dispute settlement mechanism.

Question 3

TRADE AGREEMENT	DATE OF SIGNATURE	CHAPTER/MODULE	MECHANISM
FTA between Economy 1 / Economy 2	e.g. October 21, 2017	e.g. Trade and Sustainable Development	e.g.: 1. Specific Environmental Consultations 2. Specific Labour consultations

Please provide a list of all the trade agreements your economy is a party to that include specific DSM for other chapters/modules than the Dispute Settlement chapter/module.

Results to Question 3

- Approx. 74% of trade agreements informed by APEC economies report the inclusion of specific dispute settlement mechanisms in chapters/modules other than the Dispute Settlement chapter/module.
- The chapters/modules that most repeatedly report the inclusion of specific dispute settlement mechanisms are Competition, Sanitary and Phytosanitary Measures and Technical Barriers to Trade.
- Approx. 92% of the chapters/modules informed by APEC economies in the third question, report the inclusion of consultations as a specific dispute settlement mechanism.

Question 4

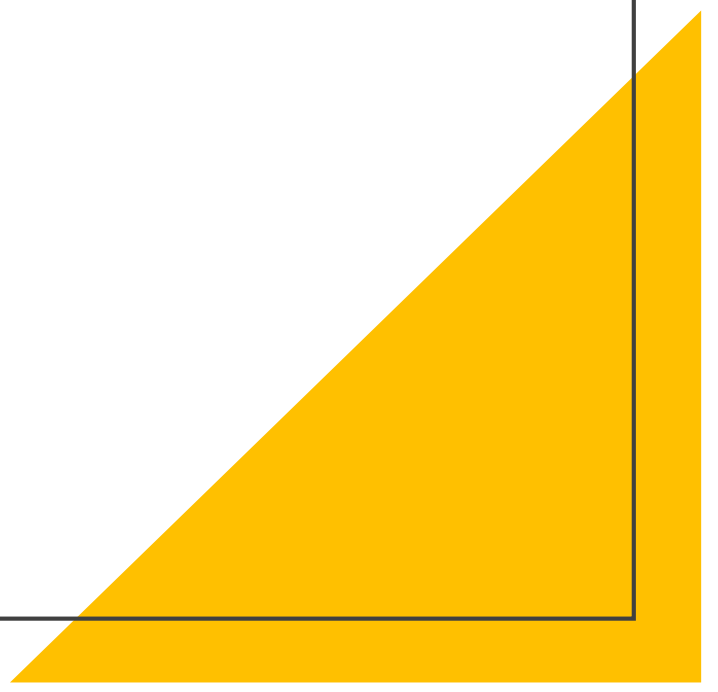
Please provide a list of the trade disputes your economy has faced, the matter of the dispute, and the DSM employed to address it.

TRADE AGREEMENT	COMPLAINANT/RESPONDENT	MATTER OF DISPUTE	DSM
FTA between Economy 1 / Economy 2	Complainant: Economy 1 Respondent: Economy 2	e.g. Measures affecting the Transit and Importing of Banana	e.g. only reached consultations phase.

Results to Question 4

- Approx. 51% of the trade disputes informed by APEC economies in the fourth question, report market access issues as the matter of dispute. The other trade disputes report, among others, trade remedies, labor, and environment issues as the matter of dispute.
- Approx. 41% of the trade disputes informed by APEC economies in the fourth question, report only having reached a consultation or negotiation stage.
- Approx. 48% of the trade disputes informed by APEC economies in the fourth question, report having initiated proceedings before a panel or group of experts.

Brief Overview of Dispute Settlement Mechanisms in Asia- Pacific Trade Agreements



CPTPP

Scope	(i) The interpretation or application, (ii) If it is considered that an actual or proposed measure of another Party violates an obligation, or (iii) Non-violation complaints.
Stages	Consultation stage and a stage before a Panel. Allegations about proposed measures, are only discussed in consultations and not before a Panel.
Good offices, conciliation and mediation	The Parties may at any time agree to undertake an alternative means.
Third Parties and Experts	If a third Party considers that it has an interest in the matter, it shall be entitled to make written and oral submissions. The Panel shall consider requests from non-governmental entities and may also seek the advice of experts.
Confidentiality	The Panel's final report will be released to the public after all steps to protect confidential information have been taken.

CPTPP

Compensation and Suspension of Benefits

If the responding Party notifies that it does not intend to eliminate the non-conformity or the nullification or impairment, or if there is a disagreement between the disputing Parties as to whether the responding Party has eliminated the non-conformity or the nullification or impairment.

There is also the possibility to pay a monetary assessment to the complaining Party or to a fund designated for initiatives that facilitate trade.

Compliance review

If the responding Party considers that it has eliminated the non-conformity or the nullification or impairment.

RCEP

Scope	(i) The interpretation and application, and (ii) If it is considered that a measure of another Party violates an obligation.
Stages	Consultation stage and a stage before a Panel.
Good offices, conciliation and mediation	The disputing Parties may at any time agree to undertake an alternative means.
Third Parties and Experts	If a third Party considers that it has an interest in the matter, it shall have the right to make written and oral submissions. The Panel may seek advice from experts.
Confidentiality	The Panel's final report may be made publicly available subject to the protection of any confidential information contained therein.

RCEP

Compensation and Suspension of Benefits

If the responding Party notifies that it does not intend to bring the measure into conformity or comply with its obligations under the Agreement.

Neither compensation nor the suspension of concessions or other obligations is preferred to compliance with the report.

Compliance review

If the disputing Parties disagree on the existence or consistency with the Agreement of the measures taken to comply with the final report.

Other

An article on special and differential treatment involving least developed Parties is established.

USMCA

Scope	(i) The interpretation of application, (ii) If it is considered that and actual or proposed measure of another Party violates an obligation, or (iii) Non-violation complaints.
Stages	Consultation stage and a stage before a Panel.
Good offices, conciliation and mediation	The Parties may decide at any time to undertake an alternative means.
Third Parties and Experts	A third Party shall, on delivery of a written notice, be entitled to make written and oral submissions. The Panel may also seek advice from experts.
Confidentiality	The Panel's final report will be available to the public after taking any steps to protect confidential information.
Compensation and Suspension of Benefits	If the disputing Parties are unable to agree on the resolution of the dispute.
Compliance review	If the responding Party considers that the level of benefits proposed to be suspended is manifestly excessive or has eliminated the non-conformity or the nullification or impairment.

Thank You!

ftagle@subrei.gob.cl