



Asia-Pacific  
Economic Cooperation

# Study on Convergences and Divergences of Free Trade Agreements in the APEC Region

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APEC Policy Support Unit

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The terms “national”, “state” used in the text are for purposes of accuracy in reflecting the formal designation of terms in this report, and do not imply the “political status” of any APEC member economy. The authors would like to thank the APEC Committee on Trade and Investment members for their helpful comments and suggestions. The views expressed in this report are those of the authors and do not represent the views of the APEC member economies. The report was supervised by Carlos Kuriyama, Director at the APEC Policy Support Unit. Chelsea Seah, Researcher at the APEC Policy Support Unit, provided editorial assistance. The analysis conducted in this report is strictly for research purposes, non-binding in nature and respects APEC mandates. The content does not prejudice APEC member economies’ positions, rights and commitments in any fora.

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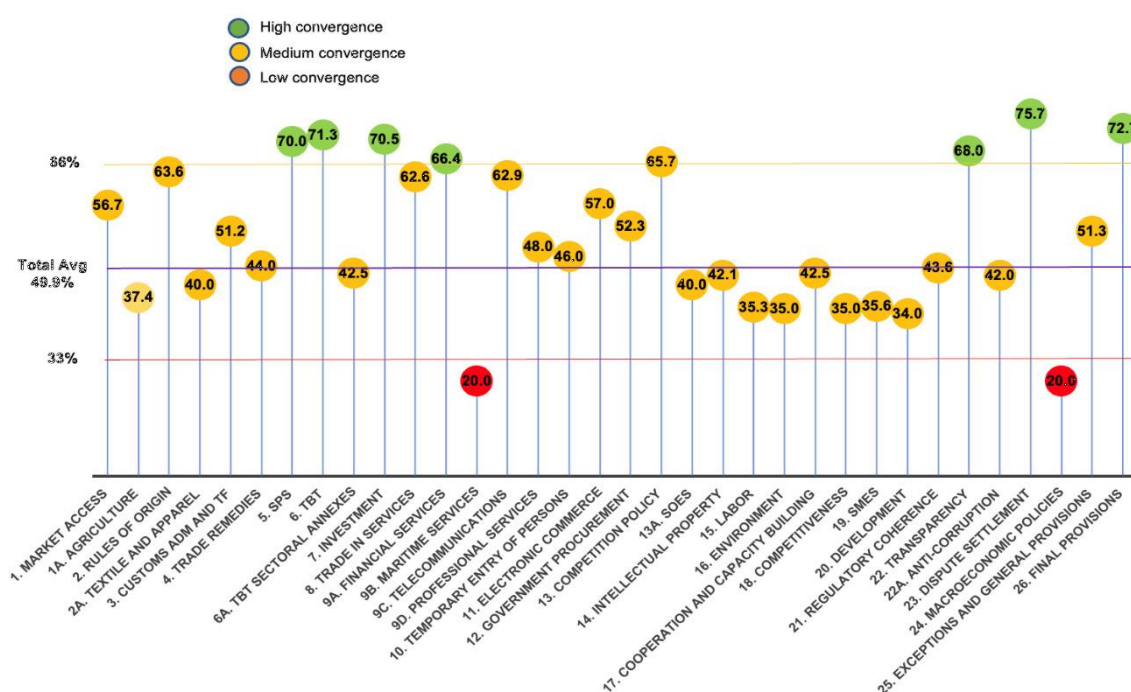
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## KEY POINTS OF THE REPORT

- With the aim to provide support to APEC's contribution to high standard and comprehensive regional undertakings going forward as envisioned through the work on the Free Trade Area of the Asia-Pacific (FTAAP), the following report conducts a comparative analysis of the content and scope of five comprehensive RTA/FTAs in the Asia Pacific region to which 17 APEC economies are signatories, to identify the degree of convergence and divergence of the provisions contained therein, and of the chapters and agreements themselves. In addition, this report also identifies innovative approaches that economies around the world are discussing – and adopting – to respond to emerging and future trends, and which have the potential to shape the international trade and investment rulebook. Finally, this report provides recommendations that may serve as a reference for APEC's work on the FTAAP initiative, consistent with the mandate of the Aotearoa Plan of Action.
- The comparative analysis of the five RTA/FTAs found that a large majority of the chapters/sectoral annexes analyzed (32, equivalent to 94% of the total) have medium to high levels of convergence among themselves, and only one chapter (macroeconomic policies) and one sectoral annex (maritime services) were found to have a low level of convergence.

### Level of convergence by chapter



- Without prejudging on the scope, nature, process or appropriate platform towards any future high standard and comprehensive regional undertaking, the comparative analysis identifies areas where APEC could do more work to further advance the FTAAP agenda. The study found that, for the 17 APEC economies which are Parties of at least one of the five RTA/FTAs assessed, the inclusion of 22 of the 34 chapters/sectoral annexes in this process could be either feasible, or feasible with a certain degree of challenge, and 12

chapters/sectoral annexes could be challenging at the outset of such a process. On the latter, particularly challenging would seem to be provisions in areas where some APEC economies are not familiar with -based on the content of their RTA/FTAs in force- or domestic policy approaches seem to be far apart (for example: labor, environment, State-Owned Enterprises (SOEs), anti-corruption, textiles and apparel, maritime services, and macroeconomic policies).

- The analysis of emerging and future trends that have disrupted international trade and investment, including the Covid-19 pandemic, the increasing environmental concerns, and the acceleration of the digital economy, identified seven innovative approaches where economies around the world seek to provide responses: supply chain resilience; investment facilitation; digital economy; inclusive trade; fisheries subsidies; fossil fuel subsidies; and trade in essential goods and services. As discussed, a number of APEC economies are already participating in related initiatives in these areas, either bilaterally, regionally, or at the multilateral level.
- The findings of the report speak of the broad commonalities that already exist between most APEC economies under the five largest RTA/FTAs in the region, and conclusions can be drawn in terms of reaching comprehensive, high-standard obligations, and ambitious liberalization commitments in these agreements. The FTAAP agenda has a role to play in fostering synergies among trade agreements. That fact should serve as an important reference when considering how to advance economic integration in the region in a manner that is market-driven, including through the FTAAP agenda, which contributes to high standard and comprehensive regional understandings.
- Additionally, the participation of several APEC economies in the seven above identified innovative approaches that respond to current and emerging challenges already shows the interest that these economies attach to finding new ways to respond to pressing issues. There seems to be fertile ground to consider new angles to respond to emerging trends in trade in the APEC context. These innovative approaches could serve as a guide to build momentum towards advancing the FTAAP agenda and strengthen the case towards greater convergence in the future.
- Importantly, the chapters/sectoral annexes reviewed and the innovative approaches contribute to the different objectives and actions within the three drivers stated in the APEC Putrajaya Vision 2040 and the Aotearoa Plan of Action.
- Technical recommendations on how to address challenges, build capacity, take into account different levels of development, handle sensitivities and other particular circumstances mentioned throughout the analysis, are drawn from the tools previously devised and used by economies in past and current processes. Recommendations in the report to address challenges also rely to an extent on well tested approaches previously used in APEC dynamics. The report provides a non-exhaustive catalog of tools and creative measures that members can resort to for these purposes.
- The analysis concludes that APEC economies have been able to create solutions in the past, from the technical instance, to address challenges and achieve ambitious standards to liberalize and facilitate trade and investment flows under alternative regional configurations. The result of such dedicated efforts and achievements could be used to contribute to the advancement of the Free Trade Area of the Asia-Pacific (FTAAP) agenda



and that contributes to high standard and comprehensive regional undertakings, regardless of the process or platform APEC members decide to use in pursuance of such goals.

## **1. INTRODUCTION**

This report has been prepared pursuant to the project “Study on Convergences and Divergences of Free Trade Agreements in the APEC region”, which consists of conducting a study to compare the content of the following Regional Trade Agreements/Free Trade Agreements (RTA/FTAs)<sup>1</sup>: 1) the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area (AANZFTA), 2) the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), 3) the Agreement between the United States, the United Mexican States, and Canada (USMCA), 4) the Additional Protocol to the Framework Agreement of the Pacific Alliance (PA), and 5) the Regional Comprehensive Economic Partnership Agreement (RCEP). The objective of the study is to discuss areas of convergence and divergence across all chapters of trade agreements in the region that contribute to high standard and comprehensive regional undertakings, consistent with the mandate of the Aotearoa Plan of Action to further advance the Bogor Goals and economic integration in the region in a manner that is market-driven, including through the work on the Free Trade Area of the Asia-Pacific (FTAAP) agenda, with an aim to inform what has already been done, as well as to identify areas where work could be done towards achieving those high standards.

Given the dynamic nature of international trade and investment, the RTA/FTA rulebook is under constant revision and evolution, in an effort by the Parties to incorporate fresh approaches into their agreements that accommodate emerging trends and tackle new challenges. Therefore, in addition to assessing these agreements, the report also analyzes several new trade and investment trends brought about by events such as the Covid-19 pandemic, the acceleration of the digital economy, and the disruption of global and regional supply chains, all of which deserve reflection of APEC economies advancing the FTAAP agenda.

### **OBJECTIVES**

A first objective of this report is to conduct a comparative analysis of the content and scope of the chapters/sectoral annexes of the five RTA/FTAs, to identify the degree of convergence and divergence of the provisions contained therein, and of the chapters/sectoral annexes and agreements themselves to determine how much they converge and how wide the divergences are.

A second objective of this report is to identify emerging and future trends shaping the trade and investment rulebook, and to suggest means to consider innovative approaches in advancing the FTAAP agenda contributing to high standard and comprehensive undertakings.

A final objective of this report is to present findings and recommendations resulting from the analysis of both the comparison of the five RTA/FTAs and of the innovative approaches.

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<sup>1</sup> The analysis of the five RTA/FTAs includes subsequent amendments (modifying protocols) to those agreements that have been put into force by its Parties up until March 2024. As such, it does not include the most recent amendments to the AANZFTA, which is currently undergoing domestic processes by its Parties.

## STRUCTURE

This report consists of two parts (A and B). Part A Section 1 includes the general outcomes of the analysis of the degree of convergence conducted at the provision and at the chapter levels, resulting from the comparison of 34 chapters/sectoral annexes included in the five RTA/FTAs.

This is followed by an analysis in Section 2 of Part A, that identifies emerging and future trends that are shaping, or have the potential to shape, the trade and investment rulebook, and suggests how APEC economies may incorporate these trends in advancing the FTAAP agenda and contribute to high standard and comprehensive regional undertakings. Seven areas were identified as worth being considered as innovative approaches responding to emerging trade trends: supply chain resilience; investment facilitation; digital economy; inclusive trade; fisheries subsidies; fossil fuel subsidies; and trade in essential goods and services.

Part A Section 3 presents the main findings resulting from the extensive analysis conducted in the previous two sections. It also provides a set of recommendations, most of them alternatives to undertake commitments that have been devised in the context of the five RTA/FTAs analyzed, or are being utilized in the discussions of the emerging trends, to address challenges, build capacity, take into account different levels of development, handle sensitivities and other particular circumstances; all of which may be useful, from a technical perspective, to approach the challenges in advancing the FTAAP agenda in outstanding areas to contribute to high standard and comprehensive regional undertakings.

Finally, Part A closes with a set of concluding reflections. The conclusions stress that, whilst political decisions and geopolitical challenges cannot be disregarded when considering advancing the FTAAP agenda, APEC members have already been able to create solutions to address challenges, from the technical instance, to achieve ambitious standards to move towards convergence. We know there is a diversity of viewpoints on the role of regional and free trade agreements, and as the FTAAP agenda advances, it could bring trade and investment policies and rules in line under alternative regional configurations.

In support to Section 1 of Part A, Part B includes an in-depth comparative analysis for each provision of the 34 chapters/sectoral annexes of the five RTA/FTAs, accompanied by detailed summary tables for each chapter.

## METHODOLOGY<sup>2</sup>

The methodology used to conduct the analysis of convergences and divergences for 29 chapters, plus five sectoral annexes, of the five RTA/FTAs, is done at three levels: provision, chapter and RTA/FTA.

First, a comparison and analysis are conducted at the **provision level** among the five RTA/FTAs, and levels of convergence, with corresponding percentages for each level, are assigned for each provision. In this sense, if the provision is in one agreement, the level of convergence is marked as “low” and is weighted with 20% level of convergence; on the other end, if the provision is contained in the five agreements, the level of convergence is marked as “high”, with a 100% level of convergence. The assessment of this score also reflects a

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<sup>2</sup> Annex A Methodology contains a detailed description of the methodology carried out in this analysis.

qualitative analysis, as appropriate, in which additional considerations are made, relating to the depth of the commitment and nature of the provisions, beyond their sole presence in the RTA/FTAs.

For this analysis, we understand “convergence” as “the act of converging and especially moving toward union or uniformity” of the provisions contained in the five RTA/FTAs, therefore, this convergence should not necessarily be understood as resulting exclusively neither from identical provisions, nor only among a particular subset of RTA/FTAs. The objective is to identify areas with enough room for discussions in the context of future work to strengthen economic integration in APEC.

Following that, at the **chapter level**, an average exercise of the marks assigned for each provision is conducted for each chapter. Consequently, if the result of the average exercise is 33% or less, a chapter is assigned a “low” convergence; when this figure is above 33% and below 66%, it is assigned a “medium” convergence; and if it is above 66%, the convergence is determined as “high”. This exercise will determine the level of convergence among chapters/sectoral annexes of the five RTA/FTAs.

As such, at the **RTA/FTA level**, the average of the chapter level convergences allowed us to determine the level of convergence among the RTA/FTAs analyzed, which stands at 50.0%.

As a further element of analysis, each chapter was rated as “feasible”, “feasible/challenging” or “challenging”. Parameters such as the weighting of its convergence (the average convergence of each provision), the number of APEC members that undertook commitments in that chapter, and potential issues at stake in any future initiative were considered to determine this. Such parameters are detailed in Table 1 of Part A, as well as in the summary matrix of each chapter included in Part B.

For APEC economies to undertake commitments related to these chapters/sectoral annexes, this convergence exercise must not necessarily be seen as a determinant to endorse or not these commitments in future trade agreements. This indicator should rather serve as a complementary tool to identify in which areas APEC could do further work to close gaps among different positions and further advance the FTAAP agenda to contribute to high standard and comprehensive regional undertakings.

To determine the parameters for the identification of the seven innovative approaches, three main recent disruptive developments that have impacted trade and investment worldwide have been considered: the Covid-19 pandemic; the increasing environmental concerns; and the acceleration of the digital economy. In addition, trade tensions, armed conflicts, and the increasing awareness of the impact of natural disasters in trade, which have implied rethinking the way supply chains are distributed, have guided research for this section. Finally, other issues -which can be somehow related to some of the abovementioned disruptive events- such as the new investment facilitation provisions in different bilateral agreements and in World Trade Organization (WTO) by some economies, and gender equality, were also taken into account.

The areas surveyed for the identification of emerging trends include (i) multilateral/plurilateral discussions at the WTO; (ii) ongoing regional negotiations (such as the ASEAN Digital Economy Framework Agreement – DEFA –); (iii) agreements where at least one APEC economy has participated, either concluded or already put into force recently; and (iv)

initiatives being conducted in APEC fora and other regional or plurilateral organizations in support of innovative approaches.

## 2. PART A

### 2.1. SECTION 1: GENERAL OUTCOMES BY CHAPTER

This section provides a description of the general outcomes by chapter and sectoral annexes of the RTA/FTAs. This includes the summary of the content of chapters/sectoral annexes, an identification of the similarities and differences among them, the binding nature of the obligations, whether they are subject to dispute settlement, and finally a characterization on the feasibility of adopting provisions contained therein in initiatives aiming to strengthen economic integration in APEC (Table 1). This exercise supports the APEC Putrajaya Vision 2040 and the Aotearoa Plan of Action, by effectively advancing efforts on the FTAAP agenda. A more detailed comparative analysis of chapters is available in Part B of this study.

#### 2.1.1. Market access for goods

The five RTA/FTAs include a goods' market access chapter. In general terms, the chapter contains disciplines related to customs duties, non-tariff measures, consultations and cooperation, annexes related to tariff phase-out schedules of each one of the Parties and other annexes or appendices related to provisions derived from specific articles.

The five RTA/FTAs contain provisions covering most of the key disciplines of the chapter, such as national treatment (NT); general provisions (GP) related to reduction and/or elimination of customs duties; acceleration of tariff commitments; import and export restrictions; import licensing; and administrative fees, charges, and formalities. Provisions where there are partial similarities (up to four RTA/FTAs) are waiver of customs duties; temporary admission of goods and containers; goods re-entered after repair and alteration; taxes, duties or charges to export; non-tariff measures; technical discussions or consultations and a committee on trade in goods.

Provisions where there are no or minimal similarities refer to topics that confirm WTO rights and obligations of particular interest to the Parties of an RTA/FTA, or market access issues considered as new generation issues, such as remanufactured goods, and export license procedures.

Most provisions in this chapter are binding, and subject to dispute settlement (DS) procedures. This chapter has a medium level of convergence. It is worth highlighting nonetheless that the RTA/FTAs with a market access chapter encompass 17 APEC economies, which means that at least 81% of APEC members have undertaken related commitments.

Getting an understanding in this area could represent a challenge, but it is feasible. Also, the coverage of existing issues in the five RTA/FTAs implies that APEC economies are forging stronger ties to pursuit discussions leading to improve liberalization, support transparency, and foster the reduction of non-tariff measures.

##### 2.1.1.1. Agriculture

Some provisions related to agriculture are included in the five RTA/FTAs. Nevertheless, only USMCA and CPTPP include broad provisions regarding agriculture, agricultural biotechnology, and tariff-rate quotas. The only provision shared by the five agreements is on

export subsidies, which reaffirms WTO's commitment to eliminate and not reimplement those kinds of subsidies.

For this reason, this analysis primarily focuses on USMCA and CPTPP chapters. Both agreements are structured similarly, but there are a few differences. While CPTPP includes additional provisions on export credits, export credit guarantees or insurance, and agricultural export state enterprises, USMCA contains a provision on international cooperation consultative committees on agriculture and domestic support.

On agricultural biotechnology, while the USMCA provisions relate mainly to agricultural biotechnology, CPTPP is limited to products of modern biotechnology.

Only USMCA and CPTPP include provisions on tariff-rate quota administration. It is important to say that in the case of USMCA, such provisions only apply to the US and Canada, as they are included in Annex 3-A Agricultural trade between Canada and the US.<sup>3</sup>

At the chapter level, this chapter has a medium level of convergence among the five RTA/FTAs. Notably, while agriculture related provisions are present in the five RTA/FTAs, if we leave aside the issue of export subsidies (which is a reaffirmation of an existent multilateral commitment), an agriculture chapter is present in two RTA/FTAs (CPTPP and USMCA), involving 12 APEC economies, which means that at least 57% of APEC members have already undertaken related provisions. While export subsidies and tariff rate quota administration are two areas with common elements across the RTA/FTAs examined for this report, more work in APEC as part of the FTAAP agenda could be required in areas covered by few agreements, such as biotechnology.

### **2.1.2. Rules of origin and origin procedures**

The five RTA/FTAs include a chapter related to rules of origin and origin procedures. USMCA contains these provisions in two different chapters.

The five RTA/FTAs are similar in terms of having clear and understandable rules and criteria to determine that goods traded among the Parties originate from the respective region in order to be eligible for preferential tariff treatment. These RTA/FTAs also contain some corresponding provisions for the certification and verification of origin as well as the responsibilities for importers, exporters, producers, customs administrations and other competent authorities or bodies.

Most provisions are binding and are subject to the dispute settlement mechanisms (DSM). Although this chapter has an overall medium level of convergence, it should be highlighted that a third of the provisions in the chapter are identified with a high level of convergence and some of them are key elements to the chapter, for example origin criteria; goods wholly produced or obtained; regional value content; indirect materials; accessories, spare parts, tools and instructional or other information materials; packaging materials and containers for retail sale; packing materials and containers for shipment; transit and transshipment/direct consignment; claims for preferential treatment; third-party invoicing; waiver of certification of origin; denial of preferential tariff treatment; review and appeal, among others.

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<sup>3</sup> Annex 3-A also includes dairy pricing and export, grains and others (dairy, poultry or eggs products).

There are also other provisions with a medium-high level of convergence, such as intermediate materials, record keeping requirements, refunds, and claims for preferential tariff treatment after importation, committee on rules of origin and origin procedures, accumulation and *de minimis*.

It is worth noting that the chapter of rules of origin and origin procedures in these five RTA/FTAs encompass a total of 17 APEC economies, resulting in at least 81% of APEC members that have committed to related disciplines in the chapter.

In general, noting the different positions in the RTA/FTAs analyzed in this study regarding rules of origin and origin procedures, some challenges in specific topics such as accumulation of processes; adjustments to the value of the materials; remanufactured goods, including treatment of recovered materials; certification; and special verification procedures would require further work to achieve high standard and comprehensive regional undertakings.<sup>4</sup>

### **2.1.2.1. Textiles and apparel**

Two RTA/FTAs (CPTPP and USMCA) include a chapter on textiles and apparel goods. Although AANZFTA, PA, and RCEP do not have such a chapter, provisions of other chapters apply to this sector, such as trade remedies, customs administration and trade facilitation, market access, rules of origin and origin procedures.

The textiles and apparel chapters share the objective of defining specific provisions for the sector to deal with areas of concern, i.e., to determine additional and special requirements for textile and apparel goods to be considered as originating and benefit from preferential tariff treatment. Most provisions on textiles and apparel converge with a similar degree of commitment (binding language) but in CPTPP and USMCA there are differences in scope and in special treatment provisions. On the one hand, AANZFTA, PA and RCEP include a specific provision for the sector in the *de minimis* provision on rules of origin. On the other hand, PA has special provisions for the sector related to procedures in case of short supply. All provisions are subject to DS procedures.

The textiles and apparel chapter has a medium level of convergence. The RTA/FTAs that include these special, sectoral provisions, encompass 12 APEC economies, which means that at least 57% of APEC members have already subscribed to provisions related to this sector. Work with respect to product specific rules (PSRs) on textile and apparel goods could present challenges, as specific commitments, particularly those that emphasize on strict rules of origin, enforcement, and monitoring, are highly sensitive for some economies. These areas could be potential topics to encourage dialogue and communication, understand the diversity of viewpoints and contribute on progressing the FTAAP agenda.

### **2.1.3. Customs administration and trade facilitation**

A chapter on customs administration and trade facilitation is included in all five RTA/FTAs. There are similarities in the provisions of these chapters in order to promote cooperation among the customs administrations, simplify customs procedures, promote efficient administration of customs procedures, and ensure predictability and consistency in the application of customs laws and regulations. Several of the provisions correspond to the commitments of the WTO

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<sup>4</sup> While the analysis of product-specific rules (PSR) was not part of the scope of the project, divergences in PSR among FTAs could affect significantly whether goods can be conferred origin or not, and benefit from preferential treatment, under each of the FTAs.



Trade Facilitation Agreement (TFA) and others go beyond the TFA. Most of the provisions are binding, and all are subject to DSM. Differences arise in terms of coverage, wording, and level of detail.

There is a medium level of convergence in this chapter. Nonetheless, the five agreements comprise 17 APEC economies, meaning that at least 81% of APEC members already undertake commitments on trade facilitation.

The five RTA/FTAs use the provisions established in the WTO TFA as a basis; in some cases, the RTA/FTAs use the TFA to elaborate on specific topics or go further than what is prescribed in such multilateral agreement. In this sense, the TFA represents common ground in APEC, and a useful platform to move forward in related commitments.

The possibilities for further convergence in the context of advancing the FTAAP agenda contributing to high standard and comprehensive regional undertakings seem feasible. Discussions around trade facilitation and customs administration provisions would not represent major challenges, as the convergence on common provisions is high. However, some divergences may arise in terms of depth, commitments, and coverage of certain topics such as advance rulings, transparency on publication, times and procedures for the release of goods, authorized economic operator and customs cooperation, as the structure and scope of these provisions is not identical in the five agreements.

#### **2.1.4. Trade remedies**

Provisions on trade remedies are included in four RTA/FTAs (AANZFTA, CPTPP, USMCA and RCEP). The four RTA/FTAs contain provisions on safeguards which are binding and are subject to DS procedures, and three (CPTPP, USMCA and RCEP) contain provisions on antidumping and countervailing duties, the vast majority not being subject to DSM. In terms of wording and scope, the provisions are similar, but the structure and level of detail vary.

Safeguard provisions is one area that depends on the market access commitments, and there is no common approach to the regulation of global safeguards. Regarding antidumping and countervailing duties, the four RTA/FTAs are similar in terms of not affecting the rights and obligations under WTO agreements. CPTPP, USMCA and RCEP establish additional provisions on practices relating to antidumping and countervailing duty proceedings, among other provisions. CPTPP also prescribes certain rules if the originating goods are under a tariff rate quota or another safeguard measures under that treaty

In general, some RTA/FTAs contain provisions that do not appear in other RTA/FTAs such as bilateral safeguard measures contained in AANZFTA, CPTPP and RCEP, the prohibition of zeroing in RCEP, or cooperation on prevention of duty evasion in USMCA.

At the chapter level, the chapter has a medium level of convergence. Despite that, the agreements that include provisions on trade remedies encompass 17 APEC economies, which means that at least 81% of APEC members have already subscribed to provisions related to this chapter.

Trade remedies could be a sensitive subject; while there is a minimum set of provisions that could be acceptable in high standard and comprehensive regional undertakings, such as provisions on safeguard measures or some on antidumping and countervailing duty

proceedings; there are nonetheless specific provisions that could be challenging to take into account, such as the binational panels included in USMCA, or the prohibition of zeroing contained in RCEP.

### **2.1.5. Sanitary and phytosanitary measures**

The chapter on Sanitary and Phytosanitary Measures (SPS) is included in the five RTA/FTAs. These chapters use as a basis the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) and its provisions are mostly binding. Building on the SPS Agreement, new commitments and mechanisms to facilitate communication and cooperation and to enhance transparency are established among the Parties. Except for AANZFTA, the provisions of the chapter in the rest of RTA/FTAs are enforceable through DS procedures, subject to certain specific considerations.

The SPS chapter registers a high level of convergence for the five RTA/FTAs. This chapter has already been adopted by 17 APEC economies, which means that at least 81% of APEC members have already undertaken related commitments. Given the need to guarantee the protection of human, animal, and plant life and health, through SPS measures that are science-based and not unduly burdensome, while facilitating trade between economies, the incorporation of these kinds of measures to advance the FTAAP agenda and contribute to high standard and comprehensive regional undertakings seems feasible.

### **2.1.6. Technical barriers to trade**

The five RTA/FTAs include a chapter on technical barriers to trade (TBT). This chapter incorporates and builds on substantive provisions of the Agreement on Technical Barriers to Trade of the WTO (TBT Agreement), such as those contained in articles 2, 5 and Annex 3 of this agreement. Most of the provisions are binding. Provisions such as the incorporation of the TBT Agreement, conformity assessment, transparency, cooperation and trade facilitation, and information exchange and technical discussions tend to converge overall, while divergence among the five agreements can be found in provisions such as standards, compliance period for technical regulations and conformity assessment procedures, and implementing arrangements. The chapter is subject to DS in AANZFTA, CPTPP, PA and USMCA. Under RCEP, DS procedures are non-applicable at the entry into force of the agreement, but a future application is subject to a review process.

The TBT provisions are included in the five agreements, confirming the centrality that APEC economies attach to this issue, and the chapter registers a high level of convergence. This chapter has been adopted by 17 APEC economies, which means that at least 81% of APEC members have already subscribed TBT-related commitments.

There are many common TBT elements among RTA/FTAs subscribed by APEC economies that would facilitate the development of high standard initiatives to advance the FTAAP agenda in this area.

#### **2.1.6.1. Sectoral annexes**

As a complement to the TBT chapter, three RTA/FTAs (CPTPP, PA and USMCA) include sectoral annexes which contain specific provisions for 11 sectors: (i) wine and distilled spirits; (ii) information and communication technology (ICT); (iii) pharmaceuticals; (iv) cosmetics; (v) medical devices; (vi) proprietary formulas for prepackaged and food additives; (vii) organic

products; (viii) chemical substances; and (ix) energy performance standards, (x) food supplements, and (xi) household cleaning products.

The level of convergence for the sectoral annexes is medium for cosmetics, and low, for the rest. Sectoral annexes are subject to DS procedures.

Sectoral annexes could be challenging to agree to for APEC economies noting their divergent interests in certain sectors.

### **2.1.7. Investment**

The chapter of investment is included in the five RTA/FTAs. These chapters share a similar scope, i.e., contain substantive protections to investors of the Parties and their covered investments, and, except for RCEP, provide for Investor-State Dispute Settlement (ISDS) with certain nuances. Some of the substantive provisions vary in the degree of detail or clarifications, and ISDS differs in scope and application.

At the chapter level, on the one hand, the substantive investment protections have a high level of convergence for the five RTA/FTAs, which include 17 APEC economies, meaning that at least 81% of APEC members have already subscribed commitments under this chapter. On the other hand, for ISDS, the level of convergence is medium. ISDS is only included in four RTA/FTAs, with important restrictions under USMCA and CPTPP. Setting aside these restrictions, RTA/FTAs providing general access to foreign investors to ISDS include 15 APEC economies, which represent 70.5% of APEC members. Notwithstanding that RCEP does not include ISDS provisions, this topic is part of the work program for future discussions.

One of the areas where further capacity-building and other initiatives may be needed is on ISDS. Whilst a welcoming investment climate can help attract high quality, durable investment, many RTA/FTAs include provisions on ISDS reflecting different approaches, which underlie the distinct positions of the Parties to these agreements.

### **2.1.8. Cross-border trade in services**

A chapter on Cross-Border Trade in Services (CBTS) is included in the five RTA/FTAs, regulating modes I, II and IV, with mode III covered by the Investment chapter. Two RTA/FTAs (AANZFTA and RCEP) also include all four modes in a single chapter. Most provisions are binding and subject to DSMs with a few exceptions. In terms of wording and scope, the provisions are similar. The objective of those chapters is to discipline trade in services, which plays an important role in international trade. The CBTS chapter is included in the five RTA/FTAs among 17 APEC economies, meaning that at least 81% of APEC members have already subscribed related commitments under the chapter.

While there is a high level of convergence on the substantive provisions included in the agreements, the overall level of convergence of this chapter is medium, in particular due to the approach to scheduling: while PA, CPTPP, and USMCA use a negative listing approach – i.e., all services sectors are disciplined, save for specific exclusions, exceptions and reservations – AANZFTA uses a positive listing approach, i.e., commitments apply only to listed services sectors. RCEP uses a hybrid approach which allows a Party to make commitments in either a positive or negative list (though a Party making commitments in a positive list is obliged to transition to a negative list in the future). This is the main difference and the reason why there are provisions subject to future liberalization.

Recognizing the different approaches concerning services scheduling, APEC economies could embark on activities to advance the FTAAP agenda by getting a better understanding of these approaches and identifying ways to achieve high standard and comprehensive regional undertakings on cross-border trade in services.

## **2.1.9. Sectoral Chapters on Trade in Services**

### **2.1.9.1. Financial services**

A chapter or annex on financial services appears in the five RTA/FTAs. Almost all provisions are binding, and all are subject to DS procedures between Parties. CPTPP, PA and USMCA also include ISDS mechanisms.

In terms of wording and scope, some provisions are similar such as treatment of certain information, transparency, exceptions or recognition; however, not all provisions are included in the five RTA/FTAs, as in cases such as national treatment, Most-Favored-Nation (MFN) treatment and market access, cross-border trade, new financial services, self-regulatory organizations, or payment and clearing systems. Even so, there is high convergence among CPTPP, PA and USMCA, for example, as they all include articles on national treatment, MFN treatment, market access, Senior Management and Board of Directors (SMBD) and Non-Conforming Measures (NCMs).

The level of convergence of the chapter on financial services is medium. The five agreements that include this chapter cover 17 APEC economies, which means that at least 81% of APEC members have undertaken commitments related to this chapter.

While many areas in financial services show reasonable degree of convergence, more work is required in areas such as national treatment, MFN treatment, market access, SMBD and location of computing facilities. As in the case of trade in services, recognizing the different approaches about services scheduling, APEC economies could embark on activities to get a better understanding of these approaches and identify ways to achieve high standard and comprehensive regional undertakings on financial services.

### **2.1.9.2. Maritime services**

The chapter on maritime services is only contained in PA, whose provisions apply to measures affecting international maritime transport services and services related to maritime transport. Those provisions are binding and applicable in addition to those provisions contained in chapters on CBTS and investment.

The convergence of this chapter is low. Only three APEC economies are part of PA, which means that at least 14% of APEC members have already subscribed maritime services related commitments.

### **2.1.9.3. Telecommunications**

Provisions on telecommunications are included in all five RTA/FTAs, either through a chapter or in the form of an annex to the services chapter (AANZFTA, RCEP). These chapters/annexes apply to measures by a Party affecting trade in public telecommunications services. While the level of convergence tends to be medium to high in a number of important provisions such as

competitive safeguards, universal service, interconnection with major suppliers, leased circuit services and co-location, in some agreements, provisions go further or get into more details than others, implying medium, or medium-low levels of convergence, as in approaches to regulation, access and use of services, obligations relating to suppliers, roaming, resale, submarine cables, and independent regulatory bodies, among others.

With a few exceptions, the provisions in these chapters/annexes are binding, and DS procedures apply.

The five RTA/FTAs include a telecommunications chapter/annex. The chapter has an overall medium level of convergence. The five RTA/FTAs encompass a total of 17 APEC economies, which means that at least 81% of APEC members have already undertaken obligations related to telecommunications.

There are many common elements among the five RTA/FTAs on telecommunications issues that could facilitate to advance the FTAAP agenda and contribute to high standard and comprehensive regional undertakings.

#### **2.1.9.4. Professional services**

Four RTA/FTAs (CPTPP, PA, USMCA and RCEP) contain an annex to the CBTS chapter on professional services. The objective of this annex is to facilitate trade in professional services among the Parties, including with respect to recognition of professional qualifications obtained in other Parties.

The level of convergence is medium among the four RTA/FTAs, given differences in the scope and level of detail. In addition, regarding the use of DSM, whilst PA and RCEP exclude DS procedures for these annexes, USMCA and CPTPP do not.

The four RTA/FTAs with a professional services annex account for 17 APEC economies, which means that at least 81% of APEC members have already subscribed to provisions related to this annex. Noting the diversity of viewpoints on the role of regional and free trade agreements, it is important to encourage increased dialogue and communication in this area to further advance the FTAAP agenda.

#### **2.1.10. Temporary entry of business persons**

Four RTA/FTAs (AANZFTA, CPTPP, USMCA and RCEP) include a chapter related to temporary entry of business persons, including temporary entry of services providers. These chapters apply to measures affecting the movement of business persons across the borders of the Parties. The level of convergence tends to medium among the four RTA/FTAs as in some agreements the provisions go further or provide more detail than in others, as in commitments on application procedures, grant of temporary entry, provision of information, cooperation and committee. Most provisions are binding, and subject to DS procedures provided that two conditions are met: (i) the matter involves a pattern of practice on the part of the granting Party, and (ii) the natural person affected has exhausted all available administrative remedies on the matter.

Unlike in other agreements, individual commitments provided in USMCA are based on general provisions instead of Party-specific lists.

The convergence of the chapter on temporary entry of business persons is medium. The four RTA/FTAs that include this chapter cover 17 APEC economies, which means that at least 81% of APEC members have already undertaken related commitments to these disciplines. Noting the uneven and limited approach in this area in RTA/FTAs and the importance of regulating the movement of business persons, it is important for APEC economies to share good practices to support the advancement of the FTAAP agenda and contribute to high standard and comprehensive regional undertakings in this topic in the future.

#### **2.1.11. Electronic commerce**

The five RTA/FTAs include a chapter on electronic commerce. These chapters share similar scope and objectives, i.e., to promote the use of electronic commerce, facilitate trade/avoid unnecessary barriers to its use and development and recognize the importance of frameworks to increase consumer confidence, in light of the economic growth and opportunities it provides.

While the level of similarities tends to be higher in a number of provisions such as the elimination of customs duties, electronic authentication, electronic signatures, online consumer protection, and paperless trading, among many others; relevant differences emerge in the policy space around provisions regarding data flows and data localization, the inclusion of obligations on non-discrimination of digital products, source code or interactive computer services, and on the scope of cooperation on cybersecurity, among others. These areas where differences emerge are those where APEC economies would need to do further work to raise awareness about their importance, learn about the sensitivities surrounding them and explore ways to achieve common ground to ensure that policies reach high standards.

Regarding the settlement of disputes, RCEP involves the non-application of DS procedures to the e-commerce chapter, while CPTPP, PA and USMCA do apply such DS procedures to the entirety of the chapter (CPTPP and USMCA provide two or three-year transitions to specific Parties on particular provisions, after which, DS fully applies).

Even though the five RTA/FTAs have included an electronic commerce chapter as part of their obligations, which emphasizes the importance that APEC economies adhere to this subject, the chapter has a medium level of convergence. It is worth highlighting nonetheless that such RTA/FTAs encompass 17 APEC economies, meaning that at least 81% of APEC members have already undertaken obligations related to this chapter.

#### **2.1.12. Government procurement**

The chapter on government procurement is included in four RTA/FTAs (CPTPP, PA, USMCA and RCEP). As for CPTPP, PA and USMCA (applicable only between Mexico and the United States), most provisions are binding and subject to DS procedures with a few exceptions. In terms of wording and scope, the provisions share similarities. The objective of these kinds of chapters is to provide more transparency when the State is the procuring entity and an effective competition among suppliers.

However, RCEP includes a more reduced set of provisions (such as transparency, cooperation, and future review), which are not subject to DS procedures.

Hence, the convergence in this chapter is medium, and coverage is limited to 12 APEC economies, which means that only 57% of APEC members have obligations related to this chapter. Whilst government procurement provisions could have many elements in common in

the RTA/FTAs, the subject matter is challenging due to its particular use to achieve domestic policy objectives. In the context of advancing economic integration through the work of the FTAAP agenda, increased dialogue and communication in APEC is needed on high standard policies that ensure effective competition among prospective suppliers for covered procurement.

### **2.1.13. Competition policy**

The chapter of competition is included in four RTA/FTAs (AANZFTA, CPTPP, USMCA, and RCEP). For its part, PA does not have a chapter of competition as such, but there are certain references to the concept in several chapters (for example, Article 7.5, cooperation and facilitation of trade; Article 8.6, technical specifications or Article 8.9, procurement procedures). A distinguished characteristic of the chapters contained in USMCA, CPTPP and RCEP is that in addition to the provisions about competition, there are also obligations related to consumer protection.

The core obligation contained in the chapters is to promote effective economic competition to improve the welfare of societies. Although the disciplines are binding, the provisions are not subject to DSM, but an instance for consultations is provided.

Similarities between CPTPP and USMCA are high, with RCEP sharing only the basic obligations with the other two agreements. The text of AANZFTA only recognizes the importance of promoting competition among its members but does not elaborate on specific areas as CPTPP, USMCA and RCEP do. As a result of this, the convergence in this chapter is medium. The agreements that incorporate a competition chapter cover 17 APEC economies, which means that at least 81% of APEC members have already subscribed to related commitments related to this chapter.

The Parties in these RTA/FTAs have a similar understanding of the importance of promoting competition and, to some extent, of the basic obligations in this area, which may serve as a starting point for discussions to advance the FTAAP agenda. Given the high similarities between CPTPP and USMCA, but the existing differences between those two agreements and the commitments in AANZFTA, and even to a greater extent with RCEP, a diversity of viewpoints (for example, in areas such as transparency and procedural fairness) should motivate APEC to encourage more dialogue and communication in these areas as part of the FTAAP agenda and contribute to a better understanding on how high standard and comprehensive regional undertakings on competition policy could be pursued.

#### ***2.1.13.1. State-owned enterprises and designated monopolies***

A chapter of SOEs is only included in CPTPP and USMCA. The provisions in these chapters accord with the objective of regulating the operations and financing of SOEs, to guarantee that SOEs act in accordance with commercial considerations, provide non-discriminatory treatment, and do not cause harm via non-commercial assistance. In both agreements, these provisions are subject to DS procedures. The level of convergence of this chapter is medium. These chapters have been adopted by 12 APEC economies, meaning that at least 57% of APEC members have already undertaken SOEs related commitments.

Initiatives on SOE to encourage dialogue and communication in the context of advancing the FTAAP agenda are encouraged noting the diversity of viewpoints in this area and the different role that SOEs play in the economies of APEC members.

#### **2.1.14. Intellectual property**

The chapter of intellectual property is included in four RTA/FTAs (AANZFTA, CPTPP, USMCA and RCEP). These chapters recognize that the protection and enforcement of Intellectual Property Rights (IPRs) should take into account the need to maintain an appropriate balance between the right of IP owners and the legitimate interest of users (AANZFTA), or should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations (CPTPP, USMCA and RCEP). A common feature is that each RTA/FTA provides for cooperation and sets out transition periods for specific obligations and Parties. The RTA/FTAs refer in various manners to the relationship between the agreement and the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), including in some cases with respect to the protection of public health and access to medicines.

In terms of protection of IPRs, CPTPP, USMCA and RCEP set minimum standards that Parties must provide for the protection for trademarks, geographical indications (GIs), patents, plant varieties, industrial designs, copyright and related rights, and trade secrets. Despite that AANZFTA does not contain specific provisions for some IPRs, it contains a definition of IPRs covering the above-mentioned rights. In this regard, some general obligations of the agreement apply to all the categories. The protection established in these RTA/FTAs includes establishing transparent procedures for examination, opposition and cancelation of IPRs, where applicable, and providing for civil and criminal procedures and remedies as well as border measures. Whilst CPTPP, USMCA and RCEP are more comprehensive in scope, AANZFTA is more general. The binding obligations are also enforceable through the DSM of each RTA/FTA.

In addition, some RTA/FTAs set forth terms of protection for IPRs greater than those under the TRIPS Agreement.

At the chapter level, the chapter has a medium level of convergence. The level of ambition differs among the signatories of those four RTA/FTAs. While some prefer binding provisions, others prefer a best endeavor approach to require transitional periods to undertake binding commitments. The agreements that include this chapter encompass 17 APEC economies, which means that at least 81% of APEC members have already subscribed to provisions related to an IPR chapter.

Thus, the comparative analysis across the four RTA/FTAs show that it could be feasible to include many IPR disciplines in any high standard and comprehensive regional undertakings. However, more challenging differences are present in certain areas where APEC economies could do more work to learn from best practices and get a better understanding of the issues. Areas for further study could include, for example, the types of signs registrable as trademarks and protection for collective and certification trademarks; recognition of GIs; data protection for agricultural chemical and pharmaceuticals products and patent terms adjustment under certain scenarios; some of the exclusive rights provided for authors, performers and producers of phonograms; protection against circumvention of technological protection measures and rights management information; and obligations related to copyright infringement in the online environment.



### 2.1.15. Labor

Two RTA/FTAs (CPTPP and USMCA) include a chapter on labor, reflecting the relationship between international trade and fundamental labor rights.<sup>5</sup> The provisions of these chapters contain commitments to effectively enforce labor laws related to the fundamental labor rights recognized by the International Labor Organization (ILO) (freedom of association, forced labor, child labor, discrimination, minimum wages, hours of work and occupational safety and health); and other obligations such as the promotion of public awareness, procedural guarantees, and public awareness. Provisions are binding and subject to DS procedures.

In addition to provisions related to fundamental labor rights, USMCA's labor chapter includes innovative provisions on migrant workers, violence against workers, and discrimination in the workplace; and includes an annex on Mexico's labor law reform commitments that links to dispute settlement annexes between Mexico-US and Mexico-Canada that contain an innovative mechanism that provides for expedited enforcement of workers' free association and collective bargaining rights at the facility level (rapid response labor mechanism).

This chapter shows a medium level of convergence for the five RTA/FTAs. CPTPP and USMCA cover 12 APEC economies, which means that at least 57% of APEC economies have already undertaken labor-related commitments. Considering that labor issues are very sensitive for some of APEC economies, further dialogue and communication is encouraged on labor-related matters to advance the FTAAP agenda and get a better understanding of the diversity of viewpoints on these matters.

### 2.1.16. Environment

Two RTA/FTAs (CPTPP and USMCA) include a chapter on environment with similar content.<sup>6</sup> The general objectives of such chapters are to promote mutually supportive trade and environmental policies and practices; promote high levels of environmental protection and effective enforcement of environmental laws; and enhance the Parties' capacities to address trade-related environmental issues. USMCA contains additional provisions on environmental impact assessment, air quality, marine litter, sustainable forest management, a public submissions process, and related cooperation. CPTPP includes another provision for the transition to a low emissions and resilient economy.

CPTPP and USMCA share similar provisions like levels of protection, enforcement of environmental law, protection of the marine environment from ship pollution, environmental cooperation, and submissions on enforcement matters. Nevertheless, USMCA includes a footnote<sup>7</sup> clarifying that "for Dispute Settlement, a panel shall presume that a failure is affecting

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<sup>5</sup> It is worth noting that New Zealand and Indonesia signed a Memorandum of Understanding on Labor Cooperation and New Zealand and the Philippines a Memorandum of Agreement on Labor Cooperation. In these instruments, among others, the Parties recognized (NZ-INA MOU) or reaffirm (NZ-PHL MOA) their obligations under ILO. See WTO Factual presentation of the AANZFTA, section 5.11, <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/REG/284-1R1.pdf&Open=True>

<sup>6</sup> It is worth noting that New Zealand and Indonesia signed a Memorandum of Understanding on Environmental Cooperation and New Zealand and the Philippines a Memorandum of Agreement on Labor Cooperation. In these instruments, among others, the Parties recognized (NZ-INA MOU) or reaffirm (NZ-PHL MOA) encourage sound environmental policies and practices and improve the capacities and capabilities of the Parties to address environmental matters. See "WTO Factual presentation of the AANZFTA", section 5.11, <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/REG/284-1R1.pdf&Open=True>

<sup>7</sup> See notes 5 to article 24.4 Enforcement of Environmental Laws; 7 to article 24.8 Multilateral Environmental Agreements: 12 to article 24.9 Protection of the Ozone Layer; and, 16 to Article 24.10 Protection of the Marine Environment from Ship Pollution.

trade or investment, unless the responding Party demonstrates otherwise." In other words, the burden of proof relies on the responding Party. This is a new approach that could be part of the plans to advance the FTAAP agenda, as it differs from the more traditional approach in which the burden of proof lies on the party filing a dispute.

At the chapter level, this chapter has a low level of convergence among the five RTA/FTAs. Notably, while this chapter is present in two RTA/FTAs, these two agreements involve 12 APEC economies, translating it to at least 57% of APEC members adopting this sort of environmental provisions.

#### **2.1.17. Cooperation and capacity building**

The chapter of cooperation and capacity building is included in three RTA/FTAs (AANZFTA, CPTPP and RCEP). These chapters share a similar scope and objectives, i.e., to strengthen cooperation and capacity building activities to better implement and maximize the use of the agreements. However, certain nuances emerge, for example in ways to conduct work (through work programs, or through a committee), in referring to levels of development, or in considering participation from international donors and the private sector. The provisions in these chapters are of a binding nature, but the chapter is not subject to DS procedures.

At the chapter level, the cooperation and capacity building chapter has a high level of convergence. Given that the overall objective of these chapters is to strengthen cooperation and capacity building activities to maximize the use of opportunities derived from trade agreements – an aspirational objective that is at the heart of APEC's agenda, including in those initiatives that are part of the FTAAP –, endeavoring to include related commitments in any high standard and comprehensive regional undertakings is feasible.

#### **2.1.18. Competitiveness and business facilitation**

The chapter of competitiveness and business facilitation is included in two of the five RTA/FTAs (CPTPP and USMCA). These chapters share a similar objective, which is to promote economic integration and improve the business environment, but in doing so, CPTPP stresses the importance of developing and strengthening supply chains in the region, whereas USMCA highlights the importance of strengthening competitiveness, production and trade and investment in the North American region. The provisions on these chapters are binding, but the chapter is not subject to DSM.

At the chapter level, there is a medium level of convergence. The two agreements that include this chapter cover 12 APEC economies, which means that at least 57% of APEC economies have subscribed commitments under these provisions. In addition to seeking to enhance competitiveness, foster additional integration and improve business environments in the region, these chapters are not subject to dispute settlement procedures. APEC could play an important role in sharing best practices and promote comprehensive initiatives with high standards in this area, noting that it aims to strengthen regional economic integration and business facilitation in one of APEC's pillars.

#### **2.1.19. Small and medium-sized enterprises**

Chapters on small and medium enterprises (SMEs) are included in three RTA/FTAs (CPTPP, RCEP and USMCA). These chapters correlate in seeking to increase the participation of SMEs

in trade and investment opportunities created by the agreements. The three FTA/RTAs contain substantive and binding provisions such as cooperation, information sharing, and the committee on SMEs issues. The chapter is not subject to DS procedures.

The SMEs chapters register a medium level of convergence. Despite that, CPTPP, RCEP and USMCA cover 17 APEC economies, which means that at least 81% of APEC members have commitments on SMEs to some degree. Given the importance of SMEs to APEC economies, developing comprehensive initiatives that include SME topics are feasible.

#### **2.1.20. Development**

The only agreement that incorporates a chapter on development is CPTPP, while development is referred to in the rest of the RTA/FTAs mostly as an objective that the trade agreement will help achieve.

The CPTPP chapter on development is binding, although not subject to DS procedures. There are specific areas that the Parties endeavor to explore – including women inclusion, education, and economic cooperation – but the intention of exploring agendas and activities to strengthen development must be reconciled with the different development levels of the Parties, which may promote or hinder certain activities to fully take place.

At the chapter level, the level of convergence for this chapter is medium, given that it only exists in one agreement encompassing 11 APEC economies, which means that at least 52% of APEC members have already undertaken development related obligations.

APEC's FTAAP agenda could include discussions on development, in order to get a better understanding of how development could be framed and what responsibilities APEC economies are willing to undertake to promote it.

#### **2.1.21. Regulatory coherence**

The chapter of regulatory coherence is included in three RTA/FTAs (CPTPP, PA and USMCA). Almost all CPTPP and PA provisions are very similar in language and commitments, some of which differ from the USMCA.

This chapter has a medium level of convergence. These RTA/FTAs involve 12 APEC economies, which means that at least 57% of APEC members have already undertaken commitments related to this chapter.

Considering the importance of transparency in contributing to an improved business environment, and the fact that these RTA/FTAs have introduced certain flexibilities regarding the recourse to dispute settlement procedures; APEC can allocate resources to strong, dedicated capacity-building cooperation efforts related to ways to improve regulatory coherence among APEC economies.

### **2.1.22. Transparency**

The chapter of transparency is included in CPTPP, PA, USMCA and RCEP.<sup>8</sup> Provisions are similar in the level of ambition and some of them are practically the same (i.e., administrative procedures and review and appeal). Other provisions share some parts of the language but differ in the level of ambition.

At the chapter level, these provisions have a high level of convergence. An important point to be highlighted is that transparency provisions in these RTA/FTAs comprise 17 APEC economies, which means that at least 81% of APEC members have already subscribed related provisions under this chapter.

Considering the paramount importance of transparency in international trade and the convergence among the provisions analyzed, discussing future work in this area within APEC's FTAAP agenda in order to contribute to high standard and comprehensive regional undertakings on transparency seems to be feasible.

#### **2.1.22.1. Anti-corruption**

Anti-corruption provisions are included in three RTA/FTAs (CPTPP, RCEP and USMCA) and concur with the objective of promoting transparency, integrity and ethical conduct in the trade and economic relations among the Parties, requiring adopting or maintaining provisions to criminalize and sanction corrupt behavior in issues that affect international trade or investment.

CPTPP and USMCA chapters are structured similarly, and their provisions are also similar in language, but the level of ambition is higher in USMCA with respect to the binding nature of most of the provisions. Both agreements include provisions relating to measures to combat corruption, participation of private sector and society, dispute settlement and application and enforcement of anti-corruption laws, while RCEP only includes limited provisions to one article (measures against corruption) in its general provisions and exception chapter. Nevertheless, the three agreements contain a binding provision measure to prevent and combat corruption with respect to any matter covered by the agreement.

At the chapter level, the anti-corruption chapter has a medium level of convergence. Significantly, the inclusion of such provisions in the three RTA/FTAs involves 17 APEC economies, meaning that at least 81% of APEC members have already subscribed to provisions related to this chapter.

Considering the divergence in the coverage and level of ambition of the RTA/FTAs that include anti-corruption provisions, APEC could advance the FTAAP agenda by engaging in capacity-building initiatives to get a better understanding of a nexus between trade and anti-corruption as an initial step towards achieving high standard and comprehensive regional undertakings in this area.

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<sup>8</sup> Despite that AANZFTA does not contain a chapter on transparency, provisions on publication are included in the chapters of trade in goods; trade in services; investment; standards, technical regulations and conformity assessment procedures; movement of natural persons; electronic commerce, and intellectual property. In addition, provisions on due process rights, such as review and appeal are included in chapter on rules of origin; customs procedures; and trade in services.

### **2.1.23. Dispute settlement**

The chapter on dispute settlement is contained in the five RTA/FTAs. Almost all provisions are binding. The fact that this chapter is present in those agreements shows the will of the Parties to enforce the obligations adopted.

In terms of provisions, there are numerous similarities, even if the wording is not identical. There is high convergence between AANZFTA and RCEP on one part in several areas, including establishment and reconvening of a panel, functions of a panel, third parties, compliance review, Special and Differential Treatment (S&DT) and expenses, and among CPTPP, PA and USMCA on the other part, for issues such as cooperation, scope, third party participation or panel report.

The level of convergence of the chapter on dispute settlement is high. The five agreements that include this chapter cover 17 APEC economies, which means that at least 81% of APEC members have subscribed commitments under the chapter.

Noting the different approaches in some dispute settlement chapters, it will be important to do work in some areas where APEC economies do not have experience and learn from those who have put them in practice. For example, the case of state-state labor-specific dispute settlement mechanism.

### **2.1.24. Macroeconomic policies and exchange rate matters**

The chapter of macroeconomic policies and exchange rates matters is only included in USMCA. For this reason, the chapter has a low level of convergence. USMCA comprises three APEC economies, which means that at least 14% of APEC members have adopted such commitments.

The overall objective of the chapter is to avoid unfair competitive advantage through the manipulation of exchange rates or the international monetary system. Nevertheless, there has been lack of appetite of some APEC economies to discuss an issue that they consider it is outside of the scope of any RTA/FTA.

### **2.1.25. Exceptions and general provisions**

The chapter on exceptions and general provisions is included in the five RTA/FTAs. These agreements show three trends. First, there are common exceptions contained in every RTA/FTA, even if there are certain differences in wording or are based on wording included in WTO agreements. Those provisions are general exceptions, security exceptions, temporary safeguard measures, taxation measures and treatment of information. Second, the structure of each RTA/FTA affects the content of the chapter and provisions. For example, most RTA/FTAs regulate certain matters on the chapter related to transparency, while one agreement (RCEP) addresses such issues in the chapter of exceptions and general provisions. Third, the specific sensitivities of each Party are also reflected in this chapter e.g., the tobacco control measures, the Treaty of Waitangi (New Zealand), cultural industries (Canada), or conditions if a Party negotiate a Free Trade Agreement (FTA) with a non-market customs territory (United States). There are new provisions such as the personal information protection set out in USMCA, which uses the APEC Privacy Framework and the APEC Cross-Border Privacy Rules system as relevant references to protect personal information.

The convergence with regard to common exceptions is high, while tailored-made exceptions for a particular Party also find room. These provisions are binding.

Most common exceptions are included in four – or even in five – RTA/FTAs that represent 17 APEC economies, which is equal to 81% of APEC members. In this sense, it seems feasible to include exceptions in high standard and comprehensive regional undertakings. APEC's efforts to advance the FTAAP agenda could include more dialogues on the approaches to exceptions in existing regional and free trade agreements.

### 2.1.26. Final provisions

The chapter of final provisions is included in the five RTA/FTAs. These chapters share a similar scope, including rules for amendments, review, entry into force and withdrawal. The five chapters also refer to amendments to the WTO Agreement, but only two include clarifications on the relationship between the RTA/FTAs and WTO or any other international agreement. Three RTA/FTAs establish a depositary.

The chapter has a high level of convergence, which includes 17 APEC economies that represent 81% of APEC members. Since this is an operational chapter, the inclusion of this type of provisions seems feasible in the context of any high standard and comprehensive regional undertaking. APEC's efforts to advance the FTAAP agenda could include more dialogues on the approaches to final provisions in existing regional and free trade agreements.

**Table 1. Compendium of general outcomes by chapter/sectoral annex**

No.	Chapter	# of RTA/FTAs where it is included	Convergence among five RTA/FTA chapters	# of APEC economies undertaking obligations	Prospects towards high standard and comprehensive regional undertakings	Examples of potential issues or areas for further study
1	Market access for goods	5	Medium (56.7%)	17	Feasible / Challenging	Tariff elimination, exclusions, remanufactured goods, elimination of export duties, and increased transparency in export license procedures.
1a	Agriculture	2	Medium (37.4%)	12	Feasible / Challenging	Different levels of interest to emphasize this area among the Parties. Negotiation of Tariff Rate Quotas (TRQs) could be an incentive to negotiate TRQ administration rules and other types of provisions.

2	Rules of origin and origin procedures	5	Medium (63.6%)	17	Feasible / Challenging	Value of materials, accumulation, remanufactured goods, certification, and verification procedures.
2a	Textiles and apparel	2	Medium (40%)	12	Challenging	Strict rules of origin, special procedures for verification, enforcement, monitoring.
3	Customs administration and trade facilitation	5	Medium (51.2%)	17	Feasible	High convergence on common provisions. Possible divergences in depth and coverage of certain topics, as the structure and scope of the provisions is not identical in the five RTA/FTAs.
4	Trade remedies	4	Medium (44%)	17	Feasible / Challenging	Sensitive matters (such as binational panels or prohibition of zeroing), but a minimum of provisions might be acceptable.
5	Sanitary and phytosanitary measures	5	High (71.8%)	17	Feasible	Important convergence in core provisions such as science and risk analysis, regionalization of SPS, equivalence, transparency, cooperation, technical consultations, Committee on SPS and DS.

6	Technical barriers to trade	5	High (71.3%)	17	Feasible	Important convergence in core provisions such as international standards, guides and recommendation, technical regulations, conformity assessments, cooperation and trade facilitation, information exchange and technical discussions, and Committee on TBT.
6a	Sectoral annexes	3	Medium (42.5%)	12	Challenging	Subject to the common or divergent interests that APEC economies have in certain sectors.
7	Investment	5	High (71.0%)	17	Feasible / Challenging	ISDS is a sensitive matter. APEC economies may limit the scope of ISDS or agree on bilateral exclusions.
8	Cross-border trade in services	5	Medium (62.6%)	17	Feasible / Challenging	Listing approach of commitments and reservations.
9a	Financial services	5	High (66.4%)	17	Feasible/ Challenging	NT, MFN, MA, SMD, scope.
9b	Maritime services	1	Low (20%)	3	Challenging	Included only in one RTA/FTA.
9c	Telecommunications	5	Medium (62.9%)	17	Feasible / Challenging	Approaches to regulation, submarine cables, conditions for the supply of value-added services.



9d	Professional services	4	Medium (48%)	17	Feasible / Challenging	Provisions related to specific professional services, including horizontal provisions as recognition of professional qualifications, licensing or registration and temporary licensing reflect different approaches.
10	Temporary entry of business people	4	Medium (46%)	17	Challenging	Sensitive topic. Would depend on the extent of market access commitments.
11	Electronic commerce	5	Medium (57%)	17	Challenging	Data flows and data localization, non-discrimination of digital products, source code, scope of cooperation on cybersecurity.
12	Government procurement	4	Medium (52.3%)	12	Challenging	Substantive provisions only appear in three RTA/FTAs (such as national treatment and non-discrimination, rules of origin, offsets, and use of electronic means).
13	Competition policy	4	High (65.7%)	17	Challenging	Similarities between USMCA and CPTPP, but significant gaps remain as compared with these two agreements and AANZFTA and RCEP.

13a	State-owned enterprises and designated monopolies	2	Medium (40%)	12	Challenging	Different approaches undertaken by APEC economies, with most ambitious approaches found in USMCA and CPTPP. Different role of SOEs in member economies.
14	Intellectual property	4	Medium (42.1%)	17	Feasible / Challenging	Types of signs to be registered as trademarks, GIs protected under other international agreements, data protection for agricultural chemical and pharmaceutical products, enforcement of exclusive rights for authors, performers and producers of phonograms, in the online environment.
15	Labor	2	Medium (35.3%)	12	Challenging	Sensitive for some APEC economies, including subjecting it to DS procedures.
16	Environment	2	Medium (35%)	12	Challenging	Burden of proof, lack of commitments by major economies, subjecting it to DS procedures.
17	Cooperation and capacity building	3	Medium (42.5%)	16	Feasible	Ways to conduct work (programs vs committee), international donors, private sector participation.
18	Competitiveness and business facilitation	2	Medium (35%)	12	Feasible	Scope of issues.

19	Small and medium-sized enterprises	3	Medium (35.6%)	17	Feasible	SMEs are core to APEC economies.
20	Development	1	Medium (34%)	11	Feasible	Finding common ground on development.
21	Regulatory coherence	3	Medium (43.6%)	12	Feasible	Capacity-building cooperation.
22	Transparency	4	High (68%)	17	Feasible	The paramount importance of transparency in international trade and APEC works, as well as the convergence among the provisions analyzed.
22a	Anti-corruption	3	Medium (42%)	17	Challenging	Divergence on the level of ambition and coverage.
23	Dispute settlement	5	High (75.7%)	17	Feasible	Electronic document filing, Referrals of matters from judicial or administrative proceedings, State-state labor-specific mechanism.
24	Macroeconomic policies and exchange rates matters	1	Low (20%)	3	Challenging	Included only in one RTA/FTA. Possible lack of appetite of some APEC economies.
25	Exceptions and general provisions	5	Medium (51.3%)	17	Feasible / Challenging	Specific exceptions, public order, personal protection information, access to information.
26	Final provisions	5	High (72.7%)	17	Feasible	N/A.
<b>Total average among five RTA/FTAs</b>			<b><u>50.0%</u><sup>9</sup></b>			

<sup>9</sup> This 50.0% represents the total average convergence among the five RTA/FTAs. Nevertheless, this arithmetical calculation should not be understood as a qualifier of the difficulty of negotiating high standard and comprehensive undertakings, but

## 2.2. SECTION 2: INNOVATIVE APPROACHES

International trade and investment are dynamic in nature. As a result, the RTA/FTA rulebook is under constant revision and evolution, in an effort by Parties to incorporate fresh approaches into their agreements that accommodate emerging trends and tackle new challenges. This section identifies emerging and future trends shaping the trade and investment rulebook and suggests how to consider such trends to advance the FTAAP agenda and contributing to high standard and comprehensive regional undertakings.

In the process to identify the innovative approaches included in this section, three main recent disruptive developments that have impacted trade and investment worldwide have been considered: the Covid-19 pandemic; the increasing environmental concerns; and the acceleration of the digital economy. In addition, trade tensions, armed conflicts, and the increasing awareness of the impact of natural disasters in trade, which have implied rethinking the way supply chains are distributed, have guided research for this section. Finally, other issues - which can be somehow related to some of the abovementioned disruptive events - such as the new investment facilitation provisions in different bilateral agreements and in WTO by some members, and gender equality, were also taken into account.

The areas surveyed for the identification of trends and innovative approaches include (i) multilateral/plurilateral discussions at WTO; (ii) ongoing regional negotiations (such as, for example, the DEFA); (iii) agreements where at least one APEC economy has participated, either concluded or already put into force recently; (iv) and initiatives being conducted in certain APEC fora and other regional or plurilateral organizations in support of innovative approaches.

The following seven areas were identified as worth being considered as innovative approaches by APEC economies in the context of advancing the FTAAP agenda and contributing to high standard and comprehensive regional undertakings, to complement the body of rules that have been already included by a large number of APEC economies under the five RTA/FTAs analyzed in Section 1 of Part A of this report. APEC economies could use these innovative approaches to respond to emerging trends, by expanding and updating the trade and investment rulebook in the region.

### 2.2.1. Supply chain resilience

#### *Context*

For several years, different governments have acknowledged the importance of adopting public policies for supply chain resilience in order to improve logistics, security, sustainability, infrastructure, and interaction with stakeholders. However, interest has increased in recent years as a result of the Covid-19 pandemic, but also from particular events with international trade impacts, such as natural disasters, climate change, measures adopted by some economies, trade conflicts, and armed conflicts.

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rather as the degree of commonality among the five RTA/FTAs, if the disciplines contained therein were to be considered as a point of departure.

Some international and regional organizations and fora, such as WTO, APEC, the Organization for Economic Co-operation and Development (OECD), the Asian Development Bank (ADB), the Inter-American Development Bank (IADB), among others, have sought to identify potential alternatives to define actions to ensure a resilient, agile and dynamic supply chain, responsive to emergencies, disruptions and sudden changes.<sup>10</sup>

Economies in the Asia-Pacific region are also seeking to implement bilateral or plurilateral initiatives to strengthen supply chains. In recent years, supply chains have been volatile and impacted shipping costs, from both the supply and demand perspective.

To illustrate the need to address supply chain resilience in trade negotiations, there are certain global indicators that reveal the impact of international events in prices, logistic and transportation: (i) the Freightos Baltic Index (FBX), that reflects ocean container transport spot freight rates across 12 global trade lanes; (ii) the global schedule reliability of container carriers; and (iii) the average delay for late vessel arrivals.

During the period 2019-2023 these indicators showed significant volatilities, considering geopolitical and economic events which created an environment of extreme uncertainty, including the Covid-19 pandemic, as well as disruptions caused by international conflicts, security problems in maritime routes, and congestion issues at several ports and terminals.

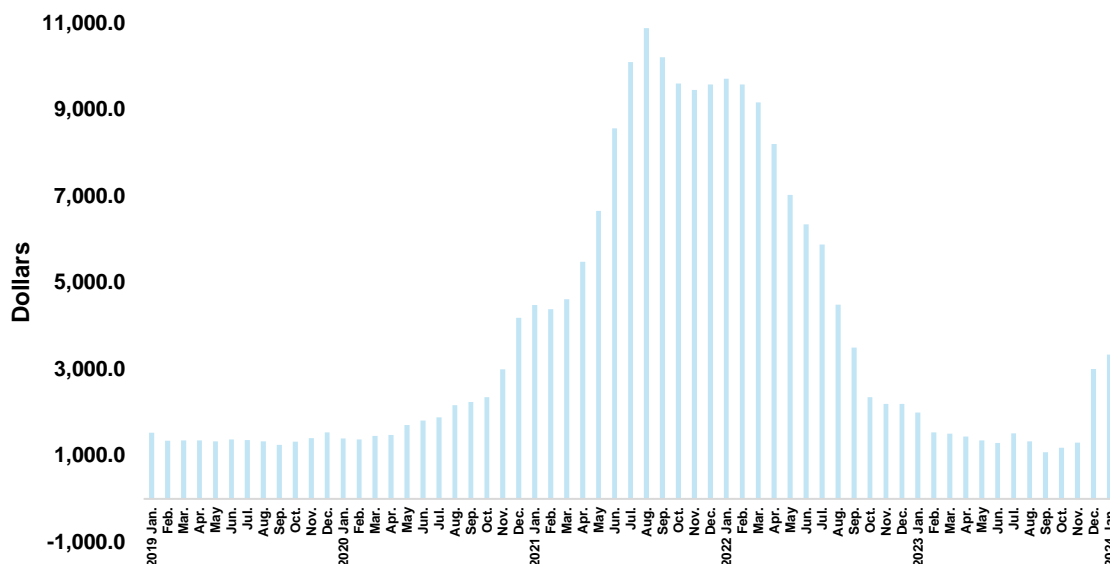
Figure 1 shows the evolution of maritime transport rates in the last four years. According to the FBX, freight rates (USD per 40 TEU container) increased from USD 1,531.8 in January 2019, to USD 3,337.0 in January 2024. However, during the period analyzed, significant escalation was observed as uncertainty in international trade increased. The freight rate reached its highest peak, USD 10,881, in August 2021. This was a 7.8% increase with respect to the previous month, but 403% higher than in August 2019, and more than seven-fold with respect to the same month in 2019. During 2023, the FBX showed less variations, but still registered an 18.5 percent increase.

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<sup>10</sup> For example, in the Global Supply Chain Forum, celebrated in March 2022, the WTO Director-General, Ngozi Okonjo-Iweala, remarked that WTO "offers a unique forum for global dialogue on supply chain issues", emphasizing that supply chain infrastructure requires to remain fit for purpose, and equipped to cope better with sudden changes. "WTO offers unique forum for dialogue on global supply chain issues", WTO, March 21, 2022, [https://www.wto.org/english/news\\_e/news22\\_e/miwi\\_21mar22\\_e.htm](https://www.wto.org/english/news_e/news22_e/miwi_21mar22_e.htm)

Additionally, in recent APEC projects, the importance of promoting actions to facilitate regional APEC trade and investment activities to contribute for the global value chain resilience improvement has been highlighted. Some of these projects are: "Toward Building Resilient Supply Chains - A Possible Role of Investment Policy", APEC CTI, December 2021, <https://www.apec.org/publications/2021/12/toward-building-resilient-supply-chains-a-possible-role-of-investment-policy>; "APEC Global Supply Chains Resilience Survey: Key Highlights and Policy Recommendations", CTI, May 2021, <https://www.apec.org/publications/2021/05/apec-global-supply-chains-resiliency-survey---summary-report>; "APEC Roadmap to Promote Global Medical Product Quality and Supply Chain Security: Supply Chain Security Toolkit", APEC, July 10, 2018, <https://www.apec.org/docs/default-source/satellite/RHSC/PWA-Documents/Global-Supply-Chain/APEC-RHSCGSCIRoadmap--Core-Curriculum-2018-Jul.pdf>

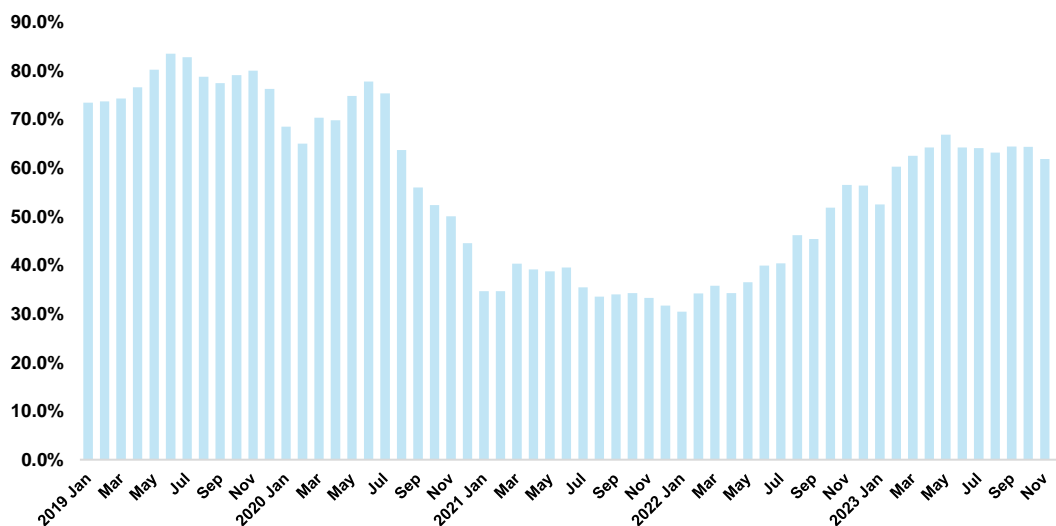
**Figure 1. Evolution of FBX for the past four years**



Source: 'FBX. Global Container Freight Index'. <https://app.terminal.freightos.com/login>

Regarding the global schedule reliability indicator, before the Covid-19 pandemic, the percentage of vessels arrivals and departures on time oscillated between 73.5% and 83.5%, but since January 2020 considerable variations were registered with significant declines in 2021 and 2022. The lowest level of the global schedule reliability was in January 2022, with 30.4%, representing almost a six-fold fall with respect to the average recorded in January 2019. During 2023, the global schedule reliability showed signs of recovery, but it has not reached the levels recorded in 2019 (in May 2023 it reached 66.8%, but in December it decreased to 56.8%).

**Figure 2. Global schedule reliability**

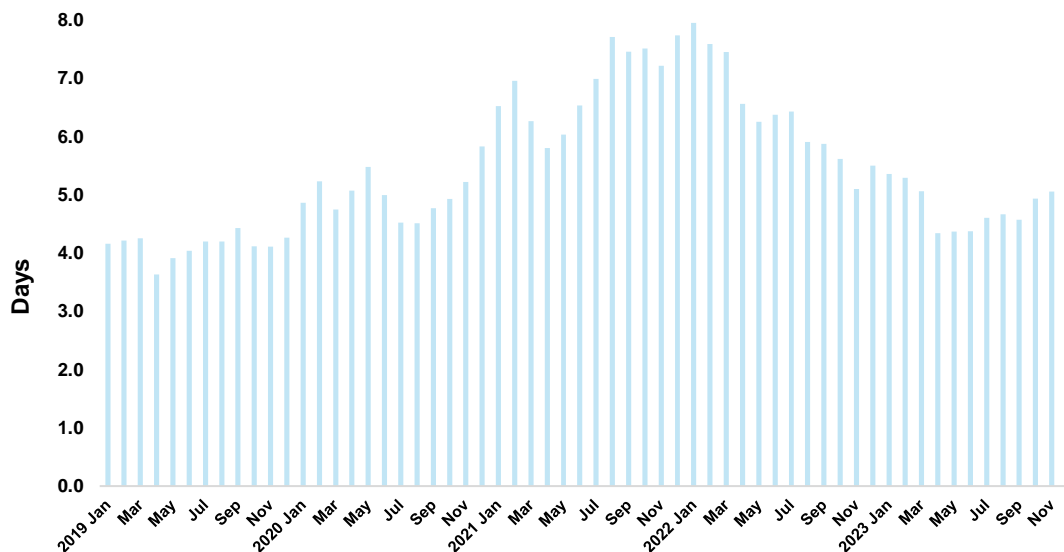


Source: 'Global Schedule Reliability'. <https://www.sea-intelligence.com/press-room/244-schedule-reliability-drops-2-5-percentage-points-in-november>

In relation to the average delay for late vessel arrivals, while in December 2018 the global average delay was about 4.0, in December 2023 a late ship was delayed by 5.4 days. Notwithstanding, as Figure 3 shows, the most representative increases occurred during 2021 and 2022, with delays from 5.5 days to almost eight days. Whilst early in

the second half of 2023 some signs of recovery appeared, the last two months of the year showed a deterioration nonetheless, mainly due to safety issues affecting vessels in the Red Sea and weather-related issues affecting shipments being transported through the Panama Canal.

**Figure 3. Global average delays for late vessels arrivals**



Source: ‘Global average delays for late vessels arrivals’. <https://www.sea-intelligence.com/press-room/244-schedule-reliability-drops-2-5-percentage-points-in-november>

In this sense, the following proposals highlight the importance of establishing and keeping up to date mechanisms in the region, seeking to address vulnerabilities in supply chains.

**Principal issues**

As part of the efforts to advance the FTAAP agenda and contribute to high standard and comprehensive regional undertakings, APEC economies could consider efforts to create a regional and collaborative partnership on common supply chain standards that would facilitate quick responses, maintain trade flows, and support the movement of essential goods to potential emergencies and contingencies.

In fact, in the APEC context, several economies have sought to advance on the above. For example, seven economies have already supported engagements on supply chain, by endorsing the Joint Ministerial Statement on Ensuring Supply Chain Connectivity amid Covid-19 situation,<sup>11</sup> in May 2020, committing to: ensuring supply chain connectivity amidst the COVID-19 situation; maintaining open and connected supply chains; working closely to identify and address trade disruptions with ramifications on the flow of necessities; ensuring that trade lines remain open, including via air and sea freight, to facilitate the flow of goods including essential supplies; refraining from the imposition of export controls or tariffs and non-tariff barriers and of removing any existing trade restrictive measures on essential goods, especially medical supplies, at this time; and working with all like-minded countries to ensure

<sup>11</sup> “Joint Ministerial Statement by Australia; Brunei Darussalam; Canada; Chile; Laos; Myanmar; Nauru; New Zealand; Singapore; the United Arab Emirates; and Uruguay affirming commitment to ensuring supply chain connectivity amidst the Covid-19 situation”, New Zealand Foreign Affairs & Trade, accessed Ministry of Trade and Industry, Singapore, accessed October 21, 2024, <https://www.mti.gov.sg/Newsroom/Press-Releases/2020/05/Joint-Ministerial-Statement-on-Supply-Chain-Connectivity>.

that trade continues to flow unimpeded, and that critical infrastructure such as our air and seaports remain open to support the viability and integrity of supply chains globally.<sup>12</sup> Similarly, in April 2020 two APEC economies signed a Declaration on Trade in Essential Goods for Combating the Covid-19 pandemic,<sup>13</sup> establishing provisions related to tariff elimination, misapplication of export prohibitions and restrictions, consultations to remove Non-Tariff Barriers (NTBs), and implementation of trade facilitation measures to ensure supply chain connectivity.

Thus, advancing the FTAAP agenda could consider a novel supply chain rationale aimed at resiliency and, in light of the broad scope of concerns under discussion, APEC economies may wish to approach supply chain resilience by including the following areas:

### **1. Transparency**

Future work may focus on issues related to the publication on a free accessible website domestic laws, regulations and procedural rules applicable to supply chains; advanced publication of draft regulations or procedural rules related to supply chains so that interested persons comment before its adoption; publication of public available supply chain and logistic data; and, in consultation with the appropriate stakeholders, elaboration and publication of guidelines, protocols, recommendations or catalogues for helping to manage and modify the supply chain structure.

### **2. Information sharing**

Regular information exchange to increase and strengthen their supply chain capabilities may include relevant public information about implementation and application of domestic legislation; best practices for management and secure supply chains; operational and strategic information related to supply chain performance; and logistic and production data.

### **3. Regional collaboration**

The analysis and evaluation of risks and vulnerabilities in the supply chain requires efficient coordination among economies. In this regard, identifying key challenges in the regional supply chain and defining joint actions or potential assistance to address possible difficulties contribute to resiliency. Some of these actions may involve the promotion of improvements in production and commercialization channels in the region; assistance in the development of programs to strengthen the diversification of materials supply or to

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<sup>12</sup> APEC has also made the following ministerial statements on logistics-related services: a) APEC Ministers Responsible for Trade Meeting Joint Statement 2021, [https://www.apec.org/meeting-papers/sectoral-ministerial-meetings/trade/2021\\_mrt](https://www.apec.org/meeting-papers/sectoral-ministerial-meetings/trade/2021_mrt) b) Annex A - APEC Definition of Logistics-related Services, <https://www.apec.org/meeting-papers/sectoral-ministerial-meetings/trade/apec-ministers-responsible-for-trade-statement-of-chair/annex-a-apec-definition-of-logistics-related-services#:~:text=Logistics%2Drelated%20Services%20are%20a,goods%20and%20services%20for%20businesses.> c) APEC Ministers Responsible for Trade Statement of Chair, <https://www.apec.org/meeting-papers/sectoral-ministerial-meetings/trade/apec-ministers-responsible-for-trade-statement-of-chair> d) APEC Non-Binding Guidelines on Logistics-related Services that Support the Movement of Essential Goods During a Public Health Emergency, <https://www.apec.org/meeting-papers/annual-ministerial-meetings/2023/2023-apec-ministerial-meeting/apec-non-binding-guidelines-on-logistics-related-services-that-support-the-movement-of-essential-goods-during-a-public-health-emergency> e) 2023 APEC Ministerial Meeting, <https://www.apec.org/meeting-papers/annual-ministerial-meetings/2023/2023-apec-ministerial-meeting> f) Annex 1: APEC MRT Statement on COVID-19 Vaccine Supply Chains, [https://www.apec.org/meeting-papers/sectoral-ministerial-meetings/trade/2021\\_mrt/annex-1](https://www.apec.org/meeting-papers/sectoral-ministerial-meetings/trade/2021_mrt/annex-1)

<sup>13</sup> “Declaration on Trade in Essential Goods for Combating the Covid-19 pandemic”, accessed January 10, 2024, <https://www.beehive.govt.nz/sites/default/files/2020-04/FINAL%20TEXT%20Declaration%20on%20Trade%20in%20Essential%20Goods.pdf>



secure data collection; development of a joint early alert system to share information and data on potential risks; definition of a common understanding of global supply chain risk; delineation of a set of elements to take into consideration for identifying priority sectors or goods where supply chain resilience is primordial; identification of technical assistance and capacity building programs to assist companies; and responding to cybersecurity incidents impacting crucial sectors.

#### **4. *Regulatory cooperation***

Since activities related to supply chains are interconnected and ensue across borders, divergence in regulations may drive impacts and challenges for all the actors involved. In this regard, actions to help develop common approaches and consistent procedures for assessments may include the adoption of international standards; recognition of certification or test results; harmonization of cross-border or logistic approaches; encouragement of stakeholder's participation in the supply chain international standards development processes; and coordinated risk management systems to identify risks to their supply chains.

#### **5. *Infrastructure***

A key element for the efficiency, management, reliability, and security of the supply chains is the quality of the underlying infrastructure. Therefore, it would be desirable to promote and ensure the development, maintenance, and upgrading of logistic services and physical and digital infrastructure, as well as investments in technology, automation, and use of ITC to get more and better corridors, port, cross border and hinterland infrastructure.

#### **6. *Monitoring and response to supply chain difficulties***

Early detection of potential risks or threats in the supply chain is essential to assessing the impacts and taking precautionary actions or developing mitigation strategies to reduce or eliminate these risks or threats. In this regard, it is important to consider monitoring capabilities; cooperative approaches to tackle supply chain vulnerabilities and risks; definition of coordinated responses; development of technical assistance and capacity building programs; and, in the event of disruptions, definition of suggested actions to mitigate supply chain shortages or impacts, with a view of maintaining the flow of trade.

#### **7. *Institutional framework***

It would be important to create a body responsible for following up the implementation of commitments, formulation of recommendations and new areas of work, monitoring compliance, and facilitating communication and coordination, including interaction with the private sector.

#### **8. *Confidentiality***

It is imperative to maintain the confidentiality of the information received and the protection of business confidential information. While initiatives on trade facilitation, transparency, and regulatory cooperation could already include aspects on confidentiality, particular initiatives with a focus on building supply chain resilience should also address the issue of confidentiality.

## 9. MSMEs

In view of the significance of micro, small and medium size enterprises (MSMEs) in the APEC region, it is important to foster resilience in MSME firms, including through mechanisms to deal with sudden changes in supply and uncertainty in business operations. Likewise, collaborative activities require strengthening capabilities, skills, supply chain agility, flexibility and production performance.

### *Conclusions*

APEC economies may wish to consider future work to advance the FTAAP agenda and contribute to high standard and comprehensive regional undertakings by discussing issues relating to supply chain resilience in areas such as: transparency, information sharing, regional collaboration, regulatory cooperation, infrastructure, monitoring, and response to supply chain difficulties, institutional framework, confidentiality, and MSMEs.

This would aim at building a strong institutional partnership to foster supply chain resilience in the region, capable of responding to potential emergencies and contingencies, and mitigating the effects of disruptions.

In line with the Aotearoa Plan of Action, these undertakings would contribute to the trade and investment driver, more directly with the first objective which refers to achieving “a free, open, fair, non-discriminatory, transparent and predictable trade and investment environment” and with the fourth objective which is to “promote seamless connectivity, resilient supply chains and responsible business conduct.” Moreover, they would also contribute to the innovation and digitalization driver, specifically to the first objective referring to “pursue structural reforms and sound economic policies to promote innovation as well as improve productivity and dynamism.”

### **2.2.2. Investment facilitation**

#### *Context*

Investment facilitation is being included as part of some new-generation international investment agreements (IIAs) and has been discussed since 2020 by a large number of WTO members. By July 2023, 112 WTO members announced the conclusion of the negotiations of the Investment Facilitation for Development Agreement (IFD Agreement), and in the margins of the 13<sup>th</sup> WTO Ministerial Conference, a Joint Ministerial Declaration on the IFD Agreement was issued by 124 Members, including 17 APEC economies;<sup>14</sup> and ASEAN concluded the Investment Facilitation Framework signed in 2021.<sup>15</sup>

Investment facilitation covers a broad range of disciplines, the types of its features according to the United Nations Conference on Trade and Development (UNCTAD) in IIAs (2015-2023)

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<sup>14</sup> Australia; Canada; Chile; China; Hong Kong, China; Indonesia; Japan; Republic of Korea; Malaysia; Mexico; New Zealand; Papua New Guinea; Peru; the Philippines; Russian Federation; Singapore and Thailand.

<sup>15</sup> “ASEAN Investment Facilitation Framework”, ASEAN, accessed November 22, 2023, <https://asean.org/wp-content/uploads/2021/11/ASEAN-Investment-Facilitation-Framework-AIFF-Final-Text.pdf>

are: regulatory environment in the host economy (54% of the IIAs analyzed), cooperation mechanisms (44%), stakeholder engagement (35%) and sustainable development (23%).<sup>16</sup>

UNCTAD also provides ten investment facilitation measures that include publication requirements for investment measures; entry and stay of personnel; objective application, right to be heard and to review; rule-making practices and regulatory coherence; streamlining of administrative procedures; right to comment on proposed regulatory measures; focal points for stakeholder engagement; institutional framework for cooperation; technical assistance and capacity building; and proactive provisions on facilitating sustainable investment.

### *Principal issues*

There are a number of provisions contained in the five RTA/FTAs that already cover investment facilitation matters through horizontal provisions such as publication requirements, regulatory coherence, or the right to be heard in an appeal or review stage.

Some provisions related to investment facilitation would be worth considering, such as (i) a single information portal containing measures and information whose aim is to help investors by identifying in one single web portal the relevant documents; (ii) applications and authorization procedures by allowing the investors to have appropriate details of documents, deadlines and other relevant information when applying for an authorization, and (iii) assistance and advisory services, as appropriate, to investors as an additional tool to facilitate investors' understanding of the laws and regulations. Similarly, provisions on sustainable investment (that includes responsible business conduct and measures against corruption) and domestic supplier databases.

### *Conclusions*

The fact that 17 APEC economies are part of the IFD Agreement shows that APEC members may wish to consider some provisions of investment facilitation in the discussions to advance the FTAAP agenda to contribute to high standard and comprehensive regional undertakings. These include the following: a single information portal containing measures and information, applications and authorization procedures, assistance and advisory services to investors, sustainable investment and domestic supplier databases.

#### **2.2.3. Digital economy**

##### *Context*

Beyond obligations already undertaken by 17 APEC economies in the five RTA/FTAs previously analyzed, trade rulemaking in the digital economy has been highly dynamic in recent years at the international level. Negotiations on e-commerce have moved forward at the WTO, where 90 of its members, 19 of them from APEC, are engaging in discussions seeking to coalesce around a framework of rules by 2024 through the Joint Statement Initiative on E-commerce.<sup>17</sup> ASEAN has also been working on a Digital Economy Framework Agreement

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<sup>16</sup> "Investment Facilitation in International Investment Agreements: Trends and Policy Options", IIA Issues Note, UNCTAD, September 2023, accessed December 14, 2023, [https://unctad.org/system/files/official-document/diaepcbinf2023d5\\_en.pdf](https://unctad.org/system/files/official-document/diaepcbinf2023d5_en.pdf)

<sup>17</sup> "E-commerce co-convenors set out roadmap for concluding negotiations in early 2024", WTO, November 30, 2023, [https://www.wto.org/english/news\\_e/news23\\_e/jsec\\_30nov23\\_e.htm](https://www.wto.org/english/news_e/news23_e/jsec_30nov23_e.htm).

negotiation,<sup>18</sup> which includes seven APEC economies. Other ongoing regional negotiations in the Asia-Pacific also seek to undertake discussions on the digital economy.

In addition, new regional and bilateral initiatives that contain a specific focus on the digital economy have been recently concluded and implemented. Examples of these include the Digital Economic Partnership Agreement (DEPA) between Chile; New Zealand; and Singapore, in force since December 2020; the Australia-Singapore Digital Economy Agreement, in force since December 2020; the Digital Economy Agreement between Singapore and the United Kingdom, in force since June 2022; the Korea-Singapore Digital Partnership Agreement (KSDPA), in force since January 2023; and the New Zealand-European Union FTA, which includes a Digital Trade chapter, concluded in July 2023.

Both in ongoing negotiations and in recently concluded agreements, APEC economies are engaging in new commitments, and deepening previously negotiated commitments on the digital economy, beyond those undertaken in the five RTA/FTAs.

To complement the context of recent events, APEC Leaders have also committed to create an enabling, inclusive, open, fair and non-discriminatory digital ecosystem for business and consumers.<sup>19</sup> To this end, the APEC Internet and Digital Economy Roadmap (AIDER) aims at providing useful guidance to APEC economies on 11 areas. Certain APEC fora have recently increased their work in areas related to the development of capabilities in the digital economy as well. Such is the case of the Competition Policy and Law Group (CPLG), which established as one of its priorities for 2023 to continue building capacity on competition assessment and enforcement in the digital economy in APEC; and the Digital Economy Steering Group (DESG), which reports the progress on 11 key areas defined in the APEC Agenda for the Digital Economy.<sup>20</sup>

The intensity and fast pace of rulemaking processes around digital trade seem to be driven by the priority of actors around the world, both governments and private actors, to leverage flourishing digital economy trends for a wide range of purposes, including developing comprehensive and coherent digital economy strategies; promoting signatories as business and investment platforms for digital development; accelerating digital transformation to stimulate innovation and increase productivity; taking advantage of economic opportunities derived from a digital environment to reduce digital divides and ensure inclusive growth; and building trust in the digital economy through more secure digital environment conditions, among others.

### ***Principal issues***

APEC economies may wish to consider new areas of work beyond those included in the five RTA/FTAs, noting new technological developments. For example:

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<sup>18</sup> “Leader’s Statement on the Development of the ASEAN Digital Economy Framework Agreement (DEFA)”, ASEAN, September 5, 2023, <https://asean.org/wp-content/uploads/2023/09/Leaders-Statement-DIGITAL-ECONOMY-FRAMEWORK-AGREEMENT.pdf>.

<sup>19</sup> See paragraph 13 of the 2023 APEC Leader’s Golden Gate Declaration.

<sup>20</sup> For the CPLG 2023 priorities see “Competition Policy and Law Group”, APEC, accessed November 29, 2023, <https://www.apec.org/groups/economic-committee/competition-policy-and-law-group>. For the DESG Report, see “Digital Economy Steering Group 2022 Report on the Implementation of the APEC Internet and Digital Economy Roadmap”, APEC DESG, 2022/CSOM/002, November 2022, [http://mddb.apec.org/Documents/2022/SOM/CSOM/22\\_csom\\_002.pdf](http://mddb.apec.org/Documents/2022/SOM/CSOM/22_csom_002.pdf)

## ***1. Areas where new provisions are being established***

### **a. Electronic invoicing and electronic payments**

Beyond commitments in electronic authentication, electronic signatures, and paperless trading, it is relevant nowadays to ensure that the implementation of measures related to e-invoicing supports cross-border interoperability, and these areas are based on international standards, guidelines or recommendations, where available. Also, for electronic payments, provisions to support efficient, safe, secure, affordable, and accessible e-payments, to promote the adoption of internationally accepted standards, and the interoperability of payment infrastructures, could be considered.

### **b. Information and communications products that use cryptography**

Governments are increasingly recognizing the importance of protecting manufacturers and suppliers of commercial ICT products that use cryptography, from being required to provide access to such cryptographic information as a condition for the manufacture, sale, distribution, import, or commercial use of that product.

### **c. Online safety and security**

Safety and security in the online environment support the digital economy. In this regard, cooperating on solutions to global online safety and security concerns could be taken into account.

### **d. Data innovation**

Collaboration on data-sharing projects, cooperation to develop policies and standards to support data portability, and sharing industry and research practices are among the areas increasingly recognized as important to promote data innovation.

### **e. Collaboration in certain emerging issues**

*i. Artificial intelligence (AI).* Given the emerging importance of this area, establishing objectives aimed at promoting the development and adoption of AI governance frameworks in relevant international fora, using internationally recognized principles, and sharing experiences on regulations, may be an area to develop cooperative actions.

*ii. Financial technology cooperation.* Signatory parties in several of the Digital Economy Initiatives analyzed in this section recognize the importance of promoting cooperation between FinTech industries, developing FinTech solutions for businesses, and encouraging entrepreneurship talent collaboration.

*iii. Digital identities.* This is a novel area for cooperation, where Parties to the RTA/FTAs recognize the importance of promoting the interoperability of their respective regimes for digital identities, and the exchange of knowledge and expertise on best practices relating to digital identity policies and regulations, among others.

*iv. Digital inclusion.* Matters relating to digital inclusion, including participation of women, rural populations, low socio-economic groups and Indigenous

Peoples in the digital economy, could be considered as a trending area for cooperation.

- v. *LawTech cooperation.* In light of the increasing importance of LawTech for legal services markets, cooperative actions such as a dedicated dialogue where knowledge, research, industry practices is shared; and sharing knowledge between regulators, academics, and other stakeholders could be considered.

## **2. Areas where previous commitments are being expanded**

### **a. Logistics**

For the purposes of e-commerce, parties to the RTA/FTAs are seeking to reinforce the importance of efficient cross-border logistics, through commitments which otherwise could be dealt with under trade facilitation-related chapters. In this regard, sharing best practices regarding the logistics sector, particularly in relation to last mile delivery digital solutions, and the use of electric, remote controlled, and autonomous vehicles, among others, may be part of a new provision.

### **b. Paperless trading**

A new commitment may be considered by pursuing a secure interconnection between single windows, to facilitate the exchange of data relating to trade administration documents.

### **c. Competition in the digital economy**

Parties to the RTA/FTAs are going beyond their traditional commitments in the competition policy chapters to address the challenges that arise from the digital economy. In this regard, new cooperation activities that consider exchange of information and experiences on competition policies and enforcement in the digital markets could also be taken into account.

### **d. Standards, technical regulations, and conformity assessment**

In this digital economy-focused provision, which otherwise could be dealt with under the TBT chapter, commitments to cooperate at regional, multilateral or international fora, to promote development of standards relating to the digital economy and between relevant conformity assessment bodies could be considered.

### **e. Cybersecurity**

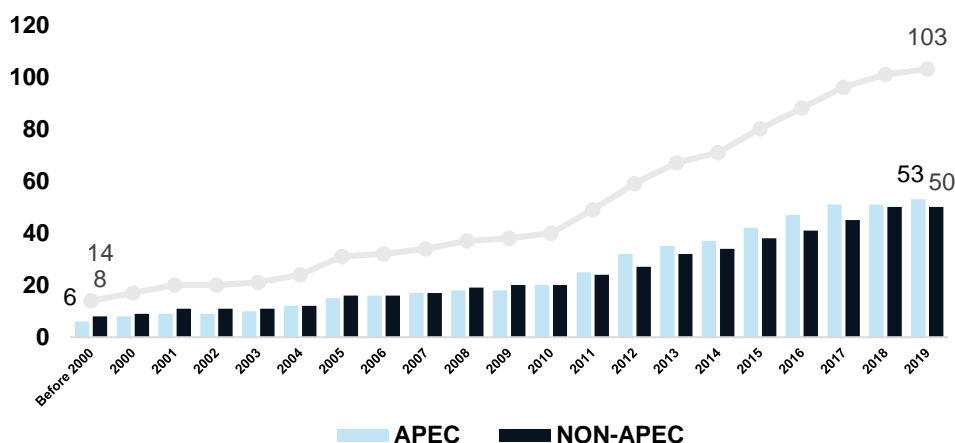
Enhancing cybersecurity could contribute to developing or strengthening domestic legal frameworks in the field of digital economy. In addition, APEC economies could establish a dialogue as a mechanism to discuss issues as risk-based approaches to tackle threats, including the potential design of cybersecurity standards. APEC economies could also incorporate soft law commitments to encourage enterprises to incorporate best practices in the identification and protection against cybersecurity risks. APEC economies could broaden cooperation and dialogue to cover other aspects related to the security in the use of ICTs.

### 3. Other challenging areas

It is worth highlighting that increasingly more Digital Economy Initiatives are including, as part of their provisions, commitments previously included in some of the five RTA/FTAs analyzed, in areas such as source code, data localization, data flows, open government data, and cooperation in cybersecurity.

This does not suggest that such issues have become less challenging than indicated in the analysis under Part A. For example, while being an indication that data localization and data flows are increasingly considered as a fundamental part of the discussions around the digital economy rulebook, it may as well be a recognition of prevailing concerns around the need to address and reduce restrictions regarding cross-border data flows matters in economies around the world. Indeed, restrictions on data storage, processing and management across borders have been increasing exponentially in the last couple of decades, as shown in Figure 4.

**Figure 4. Number of cross-border data restrictions**



Source: ‘Lessons from the COVID-19 Pandemic: A Renewed Agenda for the Free Trade Area of the Asia-Pacific (FTAAP)’. [https://www.apec.org/docs/default-source/publications/2022/5/lessons-from-the-covid-19-pandemic-a-renewed-agenda-for-the-free-trade-area-of-the-asia-pacific/222\\_psu\\_covid-19-and-agenda-for-ftaap.pdf?sfvrsn=313930b7\\_2](https://www.apec.org/docs/default-source/publications/2022/5/lessons-from-the-covid-19-pandemic-a-renewed-agenda-for-the-free-trade-area-of-the-asia-pacific/222_psu_covid-19-and-agenda-for-ftaap.pdf?sfvrsn=313930b7_2)

### Conclusions

APEC economies may wish to consider further advancing the FTAAP agenda to contribute to comprehensive regional undertakings in digital economy/e-commerce areas where new provisions are being included, such as e-invoicing and e-payments; information and communications products that use cryptography; online safety and security; data innovation; and other emerging issues such as artificial intelligence, FinTech, LawTech, digital identities, and digital inclusion. Additionally, APEC economies may also consider other areas where previous commitments are being expanded, such as logistics; paperless trading; competition in the digital economy; and standards, technical regulations and conformity assessment procedures.

There are some fundamental areas for businesses and consumers across the region where economies may still face challenges in agreeing on trade rules, noting their different regulatory

approaches, such as those related to source code, data localization, data flows, open government data, and cooperation in cybersecurity, where it is important to raise awareness and learn from those approaches. In spite of that, these areas are increasingly considered as part of the rulebook by participating economies in recent arrangements for the digital economy. Such trend could be taken into account for any future initiative including this field.

#### 2.2.4. Inclusive trade

##### *Context*

Discussions to foster inclusive economic growth are part of the agenda of many international fora.<sup>21</sup> This is part of one of the economic drivers of APEC Putrajaya Vision 2040 and Aotearoa Plan of Action.<sup>22</sup>

Regarding trade agreements, some recent RTA/FTAs have started to include clauses to address disparities affecting women. Under the new generation RTA/FTAs in general, promoting gender equality is recognized in different manners and in different degrees. Some RTA/FTAs include general references in preambles or development chapters, while others include targeted provisions in different chapters. However, some economies have taken a step forward in including a dedicated chapter to support women's economic and social empowerment.<sup>23</sup>

In the context of the RTA/FTAs analyzed, provisions related to women-related issues are included in CPTPP<sup>24</sup> and USMCA.<sup>25</sup> Whilst PA does not include these provisions in the agreement, it is worth noting the Gender Technical Group was created in 2015 with the objective of including the gender perspective in the programs and activities of PA. While the approach to trade and gender in each RTA/FTA is different, this signals that 12 APEC economies have recognized the importance of addressing this topic. Moreover, six APEC economies participating in these RTA/FTAs (Australia; Canada; Chile; New Zealand; Mexico; and Peru) recently entered the Global Trade and Gender Arrangement (GTAGA). Thus, discussions in international fora focus, among others, on:

1. Improving understanding of the different impact of trade policies that women are facing.
2. Identifying obstacles that women face in trade, including the impact of Covid-19 pandemic on these obstacles.
3. Promoting implementation of women's labor rights.
4. Empowering women in capital and markets.
5. Raising awareness on women's economic empowerment.
6. Measuring impact of unpaid work in women's participation in labor markets.

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<sup>21</sup> International fora include the UN, the OECD and WTO. The UN Sustainable Development Goal 5 addresses achieving gender equality and empowering all women and girls. In support of the implementation of the 2030 Agenda for Sustainable Development, the UN Secretary General established the High-Level Panel on Women's Economic Empowerment. The OECD developed a framework that economies can use domestically to understand the impacts of trade policies on women and better design such policies. Under WTO, members agreed to a Joint Declaration on trade and women's empowerment on the occasion of the WTO Ministerial Conference in Buenos Aires in December 2017. In follow-up to this Declaration, some WTO members established the Informal Working Group on Trade and Gender.

<sup>22</sup> In 2019, APEC ministers endorsed the La Serena Roadmap for Women and Inclusive Growth. In addition, some APEC economies issued the Joint Declaration for Inclusive and Sustainable Trade and then launched the Inclusive Trade Action Group.

<sup>23</sup> See, for example, Canada – Chile FTA, Canada – Israel FTA, Chile – Argentina FTA, Chile – Brazil FTA, Chile – Ecuador, Chile – Uruguay FTA, and Japan – United Kingdom FTA.

<sup>24</sup> See articles 23.1 and 23.4.

<sup>25</sup> See articles 14.17, 23.9, 23.12 and 25.2, as well as Annex 15-E.

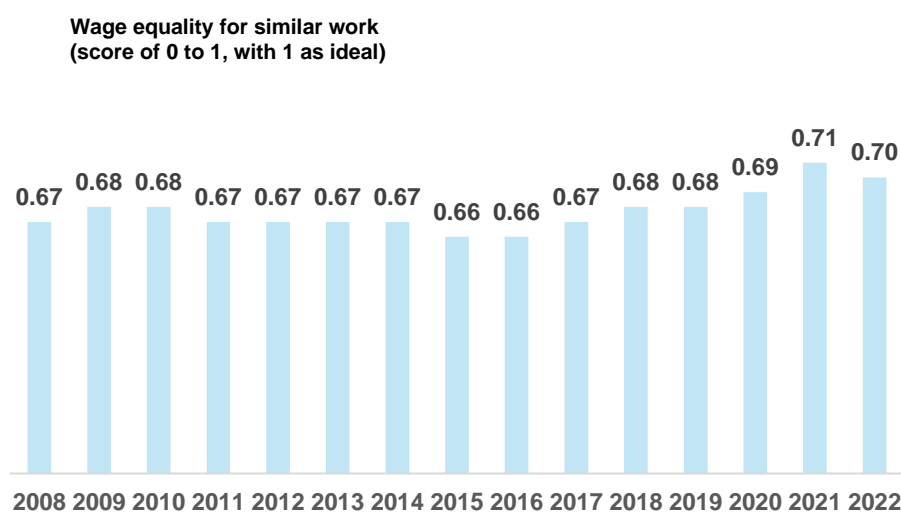


On the other hand, issues incorporated in dedicated gender chapters or the GTAGA mainly focus on:

1. Recalling the UN sustainable development goal 5 on achieving gender equality and empowering all women and girls or the WTO Buenos Aires Declaration on Trade and Women’s Economic Empowerment.
2. Reaffirming obligations under of the UN Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) and the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up.
3. Carrying out cooperation activities in a wide range of areas to encourage the promotion of inclusive economic growth and participation of women in domestic and international markets.
4. Corporate Social Responsibility.

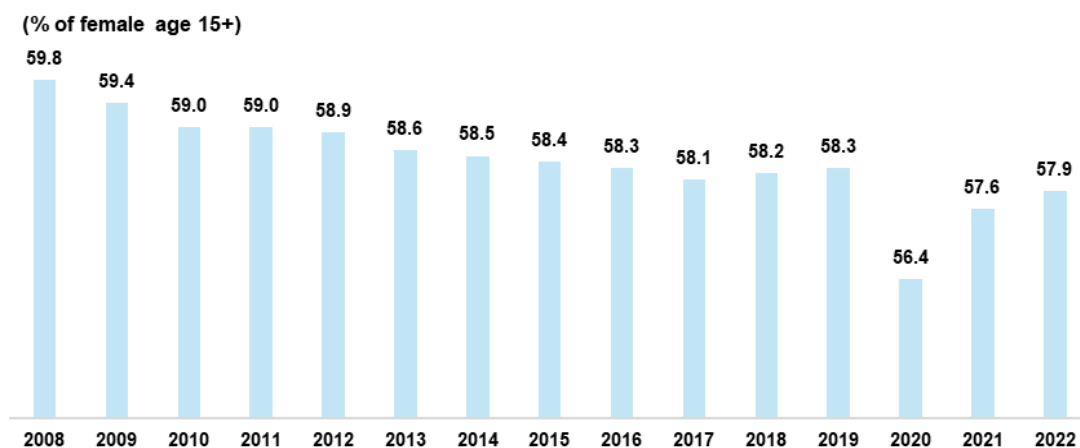
Only one FTA chapter so far includes the possibility to submit the matter to dispute settlement on a consent basis.<sup>26</sup>

**Figure 5. Evolution of the wage gap between men and women**



Source: ‘The APEC Women and the Economy Dashboard 2023’.  
[https://www.apec.org/docs/default-source/publications/2023/8/223\\_psu\\_apec-women-and-the-economy-dashboard.pdf?sfvrsn=bf5084d\\_2](https://www.apec.org/docs/default-source/publications/2023/8/223_psu_apec-women-and-the-economy-dashboard.pdf?sfvrsn=bf5084d_2)

<sup>26</sup> See article 13.6 of the Canada – Israel FTA.

**Figure 6. Women labor force participation rate**

Source: 'The APEC Women and the Economy Dashboard 2023'. [https://www.apec.org/docs/default-source/publications/2023/8/223\\_psu\\_apec-women-and-the-economy-dashboard.pdf?sfvrsn=bf5084d\\_2](https://www.apec.org/docs/default-source/publications/2023/8/223_psu_apec-women-and-the-economy-dashboard.pdf?sfvrsn=bf5084d_2)

In addition to women's issues, inclusivity may address other groups whose potential has not been realized. The 2023 APEC Leader's Golden Gate Declaration recognizes APEC Leader's commitment not only in support of gender equality, but also the economic inclusion and empowerment of other groups with untapped economic potential such as Indigenous Peoples, persons with disabilities, and those from remote and rural communities. Moreover, APEC Leaders welcome the San Francisco Principles on Integrating Inclusivity and Sustainability into Trade and Investment Policy. It is worth noting that three APEC economies participating in these RTA/FTAs entered into the Indigenous Peoples Economic and Trade Cooperation Arrangement (IPETCA).

### *Principal issues*

In line with Aotearoa Plan of Action's driver towards strong, balance, secure, sustainable, and inclusive growth, including issues on trade and women to effectively advance efforts on the FTAAP agenda and contribute to high standard and comprehensive regional undertakings would significantly advance APEC's agenda on social inclusion and foster the work of other initiatives under APEC. These undertakings have to consider the different levels of development among APEC economies and, in some cases, mechanisms for transition.

One point to consider is having commitments on the implementation of labor rights alongside cooperation activities and mechanisms for dialogue between the economies. APEC economies may need to consider having different provisions depending on the role of women in trade, for example workers, entrepreneurs, or others. In this regard, APEC economies may wish to include:

1. Commitments promoting, at least, the implementation of women's labor rights on equal remuneration and non-discrimination with respect to employment and occupation are implemented and enforced at the domestic level.
2. Active engagement of APEC economies to encourage enterprises to adopt corporate social initiatives or policies to address gender equality, including working with APEC Business Advisory Council (ABAC).

3. Active engagement of APEC economies to promote public awareness among their public officials and private sectors as well as society on gender equality.
4. Cooperation activities among APEC economies.
5. Different instances of dialogue and consultations to address matters arising under the chapter.

Also, APEC economies may wish to evaluate to include a gender perspective in initiatives in other fields, such as, trade facilitation, government procurement, trade in services, and digital trade.

Moreover, high standard and comprehensive undertakings may promote gender equality in its operation by having inclusive rosters of adjudicators and promoting that women are selected to serve in panels or tribunals.

Finally, regarding other groups whose potential has not been realized, APEC economies may wish to strengthen cooperation, capacity building activities, and inclusiveness of groups with unrealized economic potential, such as MSMEs, women, persons with disabilities, or Indigenous communities, that also face barriers in international trade by:

1. Recognizing these populations' rights and capacity building projects enabling them to participate in trade.
2. Fostering accessibility projects for persons with disabilities, for example, to make available in various formats (Braille, electronic, audio) trade platforms, documents and materials; implementing capacity building programs to enhance skills in trade-related areas; encouraging enterprises to adopt inclusive employment practices and promoting awareness to eliminate misconceptions.
3. Facilitating remote and rural communities to access to larger markets and expand digital connectivity; capacity building programs offering training and enhancing skills; and technical and financial assistance.

## ***Conclusions***

Advancing the FTAAP agenda on trade and women to contribute to high standard and comprehensive regional undertakings should focus on encouraging the implementation of labor rights and corporate social policies, promoting public awareness, cooperation and dialogue. In addition, supporting women's participation in trade concerning specific areas, such as trade facilitation, government procurement, trade in services and digital trade, can also be taken into account in APEC initiatives to advance efforts on the FTAAP agenda.

In addition, initiatives could emphasize cooperation and capacity building aiming at improving participation in trade of Indigenous Peoples, persons with disabilities, and those from remote and rural communities, considering the characteristics and specific needs of each group.

These types of actions fully align with Aotearoa Plan of Action's economic driver of strong, balanced, secure, sustainable, and inclusive growth, particularly in advancing gender equality and economic empowerment of women and intensifying capacity building in inclusive human resource development.

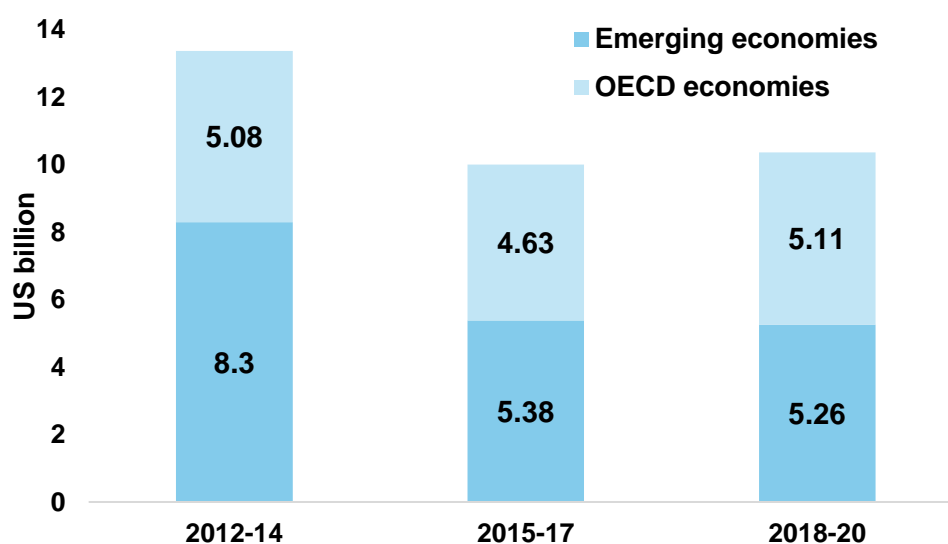
### 2.2.5. Fisheries subsidies

#### Context

The contribution that trade can make to address global environmental concerns related to the depletion of marine resources and to the disruption of marine ecosystems, including as a result of the provision of certain forms of harmful subsidies to fishing and fishing-related activities, has been long recognized in international fora.<sup>27</sup>

According to the OECD Fisheries Support Estimate Database, 40 economies reported as support (without specifying whether such support is harmful or not) to the fisheries sector amounts to about 10.4 billion dollars on average for the period 2018-2020. An estimate for harmful fisheries subsidies calculated an amount of up to USD 35 billion in 2019.<sup>28</sup>

**Figure 7. Total support to fisheries in 2012-2020, annual average<sup>29</sup>**



Source: 'Fisheries Support Estimate for 40 economies'. <https://doi.org/10.1787/9c3ad238-en>

In this regard, negotiations to address harmful fisheries subsidies have taken place in the WTO. As a result, in June 2022, during the 12th WTO Ministerial Conference, Members adopted the Agreement on Fisheries Subsidies, in which Members agreed, in addition to enhanced transparency on fisheries subsidies, to prohibit subsidies to vessels or operators engaged in illegal, unreported, and unregulated (IUU) fishing or fishing related activities; subsidies for fishing or fishing related activities regarding overfished stocks; and subsidies to fishing or fishing related activities on the unregulated high seas. The Agreement represented a significant stride toward promoting ocean resources' sustainability.

<sup>27</sup> The United Nations Sustainable Development Goal 14.6 states: "By 2020, prohibit certain forms of fisheries subsidies which contribute to overcapacity and overfishing, eliminate subsidies that contribute to illegal, unreported, and unregulated fishing and refrain from introducing new such subsidies, recognizing that appropriate and effective special and differential treatment for developing and least developed countries should be an integral part of the World Trade Organization fisheries subsidies negotiations."

<sup>28</sup> Robert Arthur, et al. "The cost of harmful fishing subsidies", International Institute for Environmental and Development, (March 2019), <https://www.iied.org/sites/default/files/pdfs/migrate/16654IIED.pdf>

<sup>29</sup> It is important to note that the OECD Fisheries Support Estimate uses a definition of subsidy that differs from that used by the WTO.

Moreover, under two RTA/FTAs (CPTPP and USMCA), 12 APEC economies have committed to prohibit fisheries subsidies to vessels or operators that engage in IUU fishing and fisheries subsidies that negatively affect fish stocks in overfished conditions. These two agreements also include a provision to further review the obligations, with the aim of eliminating subsidies that contribute to overfishing and overcapacity.

The WTO Agreement on Fisheries Subsidies has three relevant issues to be addressed in the near term:

1. The WTO Members' decision to continue and conclude negotiations to discipline certain additional fisheries subsidies, particularly those that contribute to overfishing and overcapacity.
2. A sunset clause stipulating that, absent the adoption of comprehensive disciplines within four years of the entry into force of the agreement, and unless otherwise decided by the General Council, it will be terminated.<sup>30</sup>
3. Its entry into force requires acceptance by two thirds of WTO Members (currently 111). As of September 2024, 84 Members including the EU have deposited instruments of acceptance (15 of them are APEC economies).

Members came close to finalizing the so-called 'second wave' negotiations (item 1 above) at the 13th WTO Ministerial Conference in Abu Dhabi. Separately, work is underway to establish the WTO Committee on Fisheries Subsidies. As part of the efforts to advance the FTAAP agenda, APEC economies may contribute to WTO's current efforts by reflecting the disciplines already agreed under the Agreement on Fisheries Subsidies in future integration processes.

Finally, in a related area, cooperation efforts regarding sustainable fisheries management are being developed under APEC's Ocean and Fisheries Working Group (OFWG).<sup>31</sup>

### ***Principal issues***

The WTO negotiations for comprehensive disciplines to address certain forms of harmful fisheries subsidies continues in parallel with implementation of phase one. In light of the importance of these issues, and the fact that 12 APEC economies have already assumed commitments on the elimination of certain forms of harmful fisheries subsidies in two RTA/FTAs, APEC economies may wish to consider the incorporation of fisheries subsidies disciplines in high standard and comprehensive undertakings by:

1. Explicitly committing to prohibit subsidies to vessels or operators that engage in IUU fishing and subsidies that negatively affect overfished stocks through provisions at the regional level.
2. Establishing disciplines on fisheries subsidies contributing to overfishing and overcapacity, with a view to undertake commitments at the regional level.
3. Making those obligations binding and enforceable.

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<sup>30</sup> WTO Agreement on Fisheries Subsidies, Article 12 "Termination of Agreement if comprehensive disciplines are not adopted".

<sup>31</sup> APEC members are conducting intensive discussions in the Ocean and Fisheries Working Group (OFWG) to address issues related to sustainable fisheries management, conservation of marine resources and the impact of fisheries on the environment. More recently, the discussions of the 21<sup>st</sup> OFWG meeting in Seattle (29-30 July, 2023) focused on the implementing plans for the 2019 Roadmap on Combating IUU Fishing. This Roadmap is based in two objectives: building technical capacities and strengthening institutional capacities.

4. Exploring a cooperation and capacity-building agenda to implement these commitments.

### ***Conclusions***

As part of the efforts to advance the FTAAP agenda, APEC economies may wish to encourage discussions to consider collective high standard and comprehensive regional initiatives assuming binding commitments to prohibit fisheries subsidies to vessels or operators that engage in IUU fishing and fisheries subsidies that negatively affect overfished stocks, as well as disciplines on subsidies that contribute to overfishing and overcapacity.

Finally, reducing and eliminating fisheries subsidies would align with Aotearoa Plan of Action's economic driver of strong, balanced, secure, sustainable, and inclusive growth, particularly with the collective action of working towards the sustainable resource management of marine resources and fisheries.

#### **2.2.6. Fossil fuel subsidies**

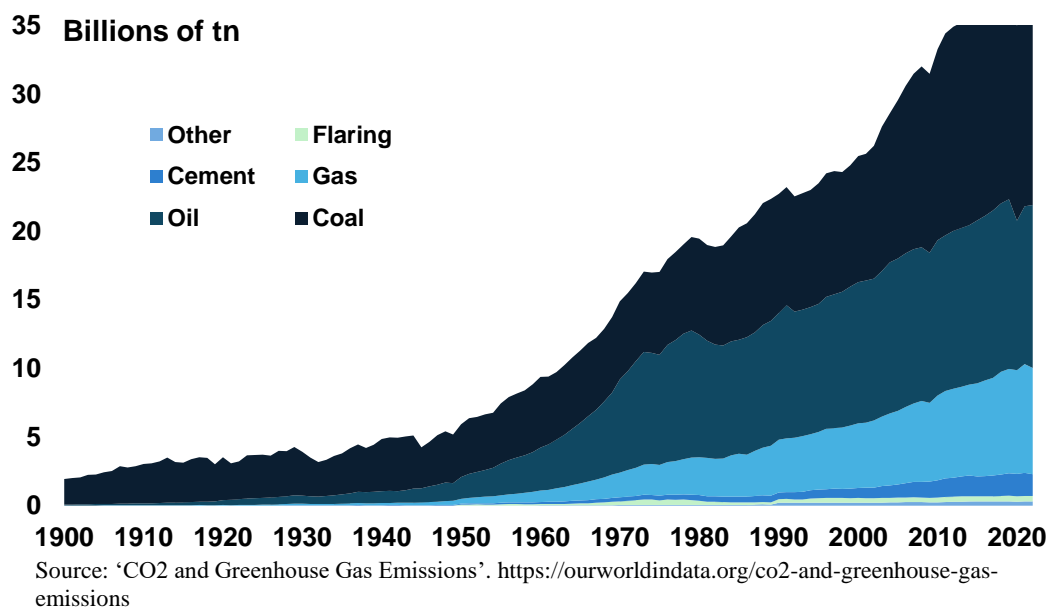
##### ***Context***

Fossil fuel combustion significantly contributes to greenhouse gas emissions and climate change. Rationalizing fossil fuel subsidies can contribute to global efforts to mitigate climate change by reducing the consumption of fossil fuels, promoting cleaner energy alternatives, and supporting the transition to a more sustainable and low-carbon energy system.

Fossil fuel subsidies can distort market forces and hinder the development of a level playing field for various energy sources. Its rationalization promotes market efficiency by allowing prices to reflect the actual cost of production and consumption.

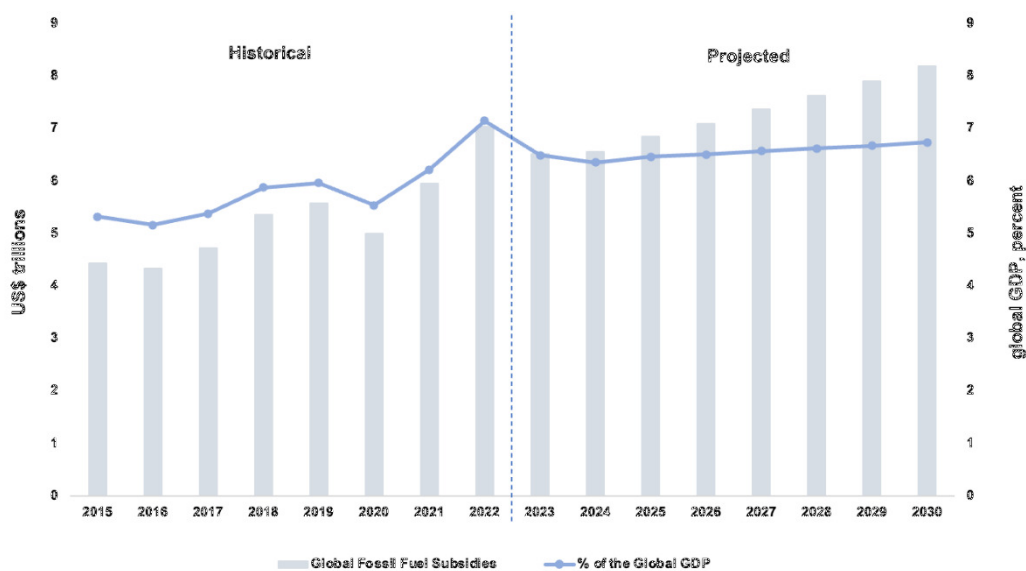
Carbon dioxide emissions linked to energy and industrial production can originate from various fuel sources (Figure 8). According to the United Nations, oil, gas and coal fuels significantly dominate as contributors to global climate change, comprising over 75 percent of global greenhouse gas emissions and nearly 90 percent of all carbon dioxide emissions.

**Figure 8. Global CO2 emissions by fuel or industry type**



According to recent analysis by the IMF, global fossil fuels subsidies are estimated to account for USD 7 trillion in 2022 and will rise to USD 8.2 trillion in 2030. This represents 7.1 and 6.7% of the global GDP, respectively (Figure 9).

**Figure 9. Global fossil fuel subsidies**



Source: 'Energy Subsidy Template'. <https://www.imf.org/en/Topics/climate-change/energy-subsidies>.

In December 2021, 48 WTO members cosponsored the Fossil Fuel Subsidy Reform Initiative to rationalize and phase out inefficient fossil fuel subsidies and encourage further sharing of information and experiences among WTO members. Only two APEC economies participate in this initiative.

APEC Energy Working Group's (EWG) Strategic Plan 2019-2023 envisions a region that will rationalize and phase out inefficient fossil fuel subsidies that encourage wasteful consumption while providing energy services to those in need and advance clean energy, by exchange of information and data and joint research.

### ***Principal issues***

APEC economies may wish to advance the FTAAP agenda by encouraging dialogue on fossil fuel subsidies provisions to understand the diversity of viewpoints among APEC members. Such provisions should rely on APEC cooperation activities towards its eventual reduction and/or elimination, as some APEC economies may face sensitivities in assuming binding commitments towards eliminating fossil fuel subsidies, as reflected in the lack of APEC economies' participation in the WTO Fossil Fuel Subsidies REFORM (FFSR) Initiative.

### ***Conclusions***

APEC economies may wish to consider supporting cooperation commitments regarding the reduction and/or elimination of fossil fuels subsidies if they are able to undertake such commitments. This aligns with the Aotearoa Plan of Action collective action to cooperate in developing, encouraging, and exchanging best practices and promote capacity-building programs, including through the work on the FTAAP agenda, to address all environmental challenges.

## **2.2.7. Trade in essential goods and services**

### ***Context***

The Covid-19 pandemic has had significant trade and economic consequences worldwide, such as global economic contraction, disruption of supply chains, international trade decline, and accelerated digital transformation, among others.

The WTO overview of developments in the international trading environment<sup>32</sup> shows that since the outbreak of the pandemic, 458 trade and trade-related measures in goods were implemented by WTO members and observers (Table 2); 25 measures were of a trade facilitating nature and 203 (44.3%) were trade-restrictive. Of the 203 trade-restrictive measures implemented, 85% (174) were export-oriented, while of the 255 trade-facilitating measures implemented, 82% (211) were import-oriented.

WTO explains that the Covid-19 export-restrictive measures were in the form of temporary export bans or prohibitions, export license requirements or export authorization mechanisms targeting a variety of goods such as personal protective equipment, drugs, vaccines, diagnostics, medical supplies and products, and certain food products. This significantly affected the flow of regional and global value chains for essential products to combat the pandemic.

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<sup>32</sup> "Overview of developments in the international trading environment" (mid-October 2022 to mid-October 2023), Annual report by the Director-General. WTO.



**Table 2. Number of Covid-19 trade and trade-related measures since the beginning of the pandemic**

	Facilitating	Phased out	Restrictive	Phased out	Total
<b>Import</b>	211	115	20	11	231
<b>Export</b>	28	12	174	154	202
<b>Other</b>	16	6	9	7	25
<b>Total</b>	255	133	203	172	458

Source: 'Overview of developments in the International Trading Environment', Annual Report by the Director General (mid-October 2022 to mid-October 2023).

International and multilateral coordination efforts have been put in place since the beginning of the pandemic. As a result, during the 12th WTO Ministerial Conference held in June 2022, WTO members adopted the "Ministerial Declaration on the WTO Response to COVID-19 Pandemic and Preparedness for Future Pandemics". The declaration tasks relevant WTO bodies to continue or initiate work to analyze lessons learned and challenges experienced during the Covid-19 pandemic, including in areas such as balance of payments, development, export restrictions, food security, intellectual property, regulatory cooperation, services, tariff classification, technology transfer, trade facilitation, and transparency. At the same time, members adopted a Ministerial Decision on the TRIPS Agreement, which set forth clarifications and a waiver of certain intellectual property protections for Covid-19 vaccines.

For its part, APEC has produced 22 initiatives, declarations, and statements in six main areas: supply chains for essential goods and services; securing access to Covid-19 vaccines and other products; safe resumption of cross-border travel; increasing transparency for Covid-19 response measures; analysis, exchanges, and best practices on Covid-19 response and recovery; and building resilience and inclusion in APEC communities.

APEC economies must be prepared to adequately react to minimize undue trade disruptions when the next pandemic emerges. This could also apply to any event that could significantly disrupt the economy and trigger an emergency, such as natural disasters. The following topics are the key issues to discuss:

1. Disruption in the supply chain of essential goods.
2. Disruption of trade in services.
3. Difficulties in supply chain logistics.
4. Digital transformation, including e-commerce and working distance.
5. Transparency in export restrictions.
6. Regulatory bottlenecks affecting trade in essential goods.

Taking advantage of the wide and deeper discussions held in APEC to advance the FTAAP agenda, economies may wish to consider commitments related to trade in essential goods and services in high standard and comprehensive regional undertakings.

### ***Principal issues***

Many of the areas that require discussion, including through the efforts to advance the FTAAP agenda, are of horizontal application (transparency, regulatory measures, trade facilitation).

Taking this into consideration, an initiative on essential goods and services, including vaccines, therapeutics and diagnostics, among others, should consider including the following aspects:

1. A section on trade and health. Some APEC economies may face sensitivities in adopting specific binding commitments. This was, among others, one of the difficulties that WTO members faced during the negotiation of the WTO response to Covid-19, and may reappear during the discussion of other initiatives in this area.
2. APEC economies may wish to consider implementing temporary measures issued by the World Health Organization (WHO) Director-General under the International Health Regulations (IHR) upon the determination of a pandemic emergency to help control and stop the international spread of disease.
3. Trade facilitation measures, including streamlining customs procedures and decreasing and simplifying documentation requirements.
4. Facilitating service operations of suppliers of those medical essential products, including business and medical personnel. Other trade services, such as logistics, and freight transport, could be included.
5. Transparency in export restrictions.
6. Regulatory cooperation, ensuring that the proportionality of a measure is according to the risk involved and addressing harmonization, mutual recognition, and equivalence.
7. Adopting measures to maintain resilient regional value chains of food products and include provisions addressing the adverse effects of natural disasters.

### **Conclusions**

The discussion on trade in essential goods has a horizontal dimension. APEC economies may consider two possible approaches: (i) an initiative focused on essential goods and services, and (ii) a sectoral and temporal approach to be included in current undertakings that would be triggered when the emergency is announced and for as long as it lasts. APEC members may wish to consider commitments related to maintaining resilient regional value chains of essential goods such as foods and medical goods and addressing the adverse effects of natural disasters.

Finally, provisions to face emergencies such as pandemics and disruptions in the flow of essential goods would align with Aotearoa Plan of Action's economic driver of strong, balanced, secure, sustainable, and inclusive growth, particularly with the collective action of cooperating on supporting the safe, secure, and efficient operation of resilient essential goods-related supply chains.

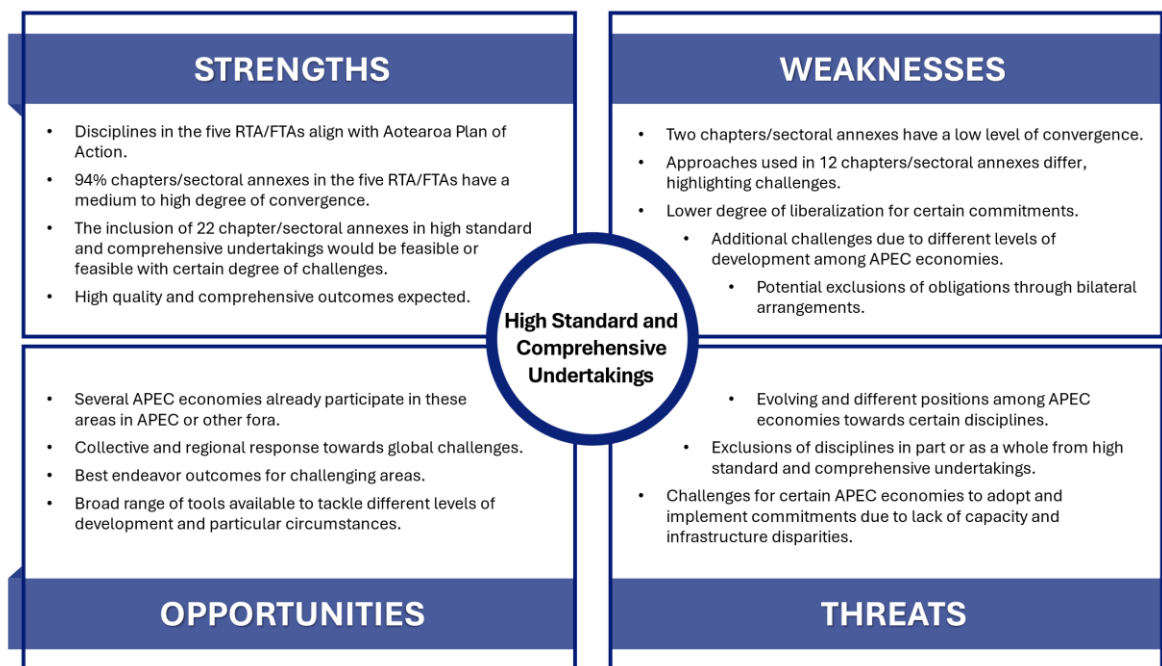
### **2.3. SECTION 3: KEY FINDINGS AND RECOMMENDATIONS**

This section presents the main findings resulting from the extensive analysis conducted throughout the report. It also provides a set of recommendations, most of them alternatives to undertake commitments that (i) in various cases were already devised by APEC members in the context of the five RTA/FTAs analyzed, and (ii) efforts, some of them already tested in APEC dynamics, that are being used in the discussions of the emerging trends; all of which may be useful, from a technical perspective, to approach the challenges presented in outstanding areas. These areas could be included in the efforts to advance the FTAAP agenda and contribute to high standard and comprehensive regional undertakings.

Finally, progressing the FTAAP agenda requires discussions to contribute to high standard and comprehensive regional undertakings. They should consider all the factors involved in creating the necessary conditions to design a successful strategy. In this regard, the report assesses the Strengths and Weaknesses, as well as Opportunities and Threats (SWOT) drawn from the main

findings. By evaluating these factors, this section aims at providing a better understanding of the current and future trade and investment landscape in the achievement of this initiative. Importantly, this SWOT also informs the recommendations provided for to address the factors indicated.

Figure 10. SWOT analysis

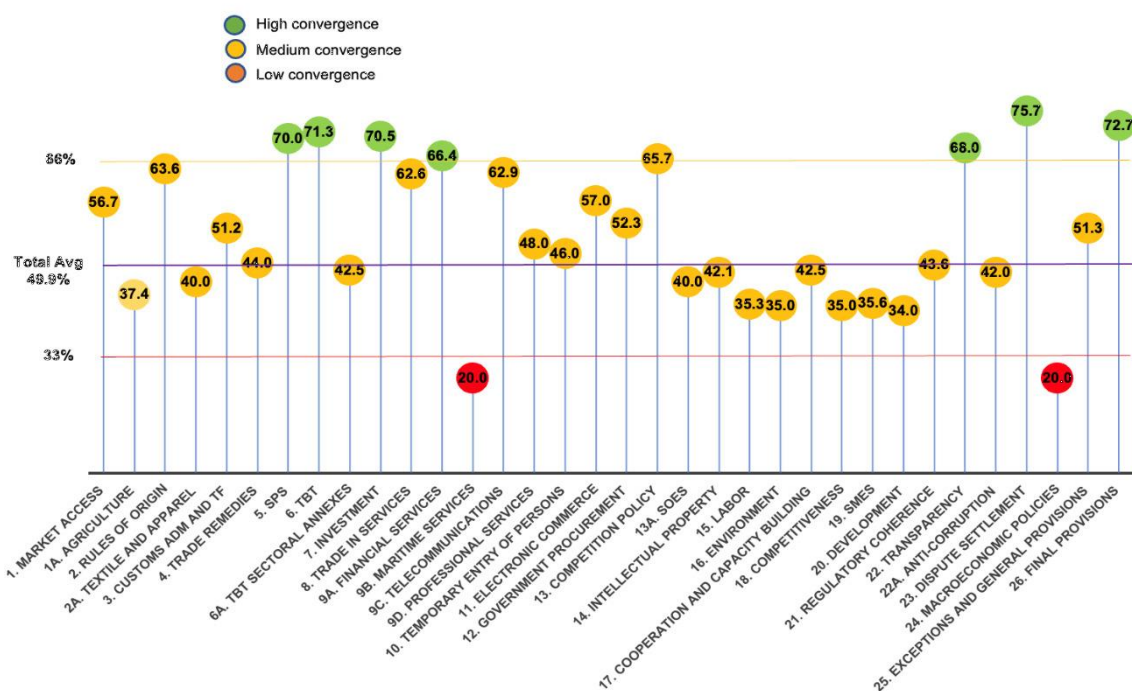


### 2.3.1. Findings

#### RTA/FTAs

First, an analysis to determine the degree of convergence among each of the 34 chapters/sectoral annexes contained in five RTA/FTAs was conducted. As a result, the analysis concluded that 32 chapters/sectoral annexes have medium to high levels of convergence (25 and seven, respectively) among themselves, and only two chapters/sectoral annexes (maritime services and macroeconomic policies) have a low level of convergence (Figure 11). A medium to high convergence in 94% of the chapters/sectoral annexes would be an initial indicator of the broad common ground that already exists between the APEC economies that participate in the five RTA/FTAs. Still, despite the medium to high levels of convergence, there are some areas in each of these chapters where some different approaches are undertaken in these RTA/FTAs. Discussions in APEC to advance the FTAAP agenda could take into account these areas in order to contribute to high standard and comprehensive regional undertakings.

Figure 11. Level of convergence by chapter



Second, for at least 17 APEC economies which are part of the five RTA/FTAs, the inclusion of 22 of the 34 chapters/sectoral annexes could be either feasible, or feasible with a certain degree of challenge, and 12 chapters/sectoral annexes could be challenging, in a collective process towards high standard and comprehensive undertakings. APEC could further advance the FTAAP agenda by encouraging dialogue in these areas and get a better understanding of the diversity of viewpoints. Of the latter, particularly challenging areas are those on labor, environment, SOEs, anti-corruption, textiles and apparel, maritime services, and macroeconomic policies.

Other areas, traditionally incorporated in the RTA/FTA rulebook, such as financial services, temporary entry of persons, e-commerce and government procurement could also seem challenging, as indicated in Table 1, if the goal of addressing such disciplines is reaching substantive liberalization commitments; but could be less challenging if the aim is reaching a more modest outcome on those areas. These areas could also be discussed in the efforts to advance the FTAAP agenda.

Finally, the analysis includes the number of APEC economies that have already undertaken commitments in each chapter/sectoral annex in the context of the five RTA/FTAs. 17 APEC economies have already assumed obligations, in varying degrees, in 21 out of 34 chapters/sectoral annexes included in the scope of such RTA/FTAs. At the other end, there is very low convergence in some areas. For example, maritime services and macroeconomic policies are only included in one of the RTA/FTAs analyzed in this study, with just three APEC economies participating in it. To summarize, a large majority of APEC economies have committed to obligations for 62% of the totality of chapters/sectoral annexes analyzed (see Table 1).

### ***Innovative approaches***

An analysis of the recent trade policy trends was carried out under Section 2 (Innovative approaches) of this report to identify those issues that represent new challenges. Some issues are being discussed, or have been agreed upon recently, in other bilateral, regional or multilateral configurations, and seek to respond disruptions affecting current trade and investment developments: the Covid-19 pandemic and its aftermath; the increasing environmental concerns; and the acceleration of the digital economy. Other recent issues shaping trade and investment discussions around the world were also identified and determined worth considering in the efforts to advance the FTAAP agenda and contribute to high standard and comprehensive regional undertakings.

As mentioned, spaces of discussion surveyed to assist in the identification of trends included multilateral/plurilateral discussions at WTO; ongoing regional negotiations; agreements where at least one APEC economy has participated, either concluded or already put into force recently; and initiatives being conducted in certain APEC fora and other regional or plurilateral organizations in support of innovative approaches. Moreover, these innovative approaches align with the Aotearoa Plan of Action and APEC Putrajaya Vision 2040. The seven areas identified as worth being considered as innovative approaches by APEC economies to advance the FTAAP agenda and contribute to high standard and comprehensive regional undertakings.

Table 3 identifies the seven aforementioned innovative approaches on the basis of the current trade and investment landscape. It also includes the number of APEC economies that have subscribed commitments under said approaches or are contemplating such approaches, as well as examples of initiatives where those areas are being discussed.

**Table 3. Innovative approaches**

<b>Innovative approach</b>	<b>Number of APEC economies that have already addressed it</b>	<b>Referential initiatives</b>	<b>Details for suitable approach</b>
<b>Supply chain resilience</b>	<ul style="list-style-type: none"> <li>In recent years, approximately 16 APEC economies have participated individually in different bilateral, regional (Asia-Pacific, the Americas and North America) and multilateral discussions on supply chains resilience.</li> </ul>	<ul style="list-style-type: none"> <li>WTO, APEC, OECD, ADB, the IADB.</li> </ul>	<ul style="list-style-type: none"> <li>Provisions on transparency, information sharing, regional collaboration, regulatory cooperation, infrastructure, monitoring, and response to supply chain difficulties, institutional framework, and confidentiality.</li> </ul>
<b>Investment facilitation</b>	<ul style="list-style-type: none"> <li>17 APEC economies participating in the WTO IFD Agreement.</li> </ul>	<ul style="list-style-type: none"> <li>WTO, OECD, UNCTAD, ASEAN. - Investment Facilitation Framework.</li> </ul>	<ul style="list-style-type: none"> <li>Provisions on investment related to single information portal containing measures and information, applications and authorization procedures; assistance and advisory services to investors; sustainable investment and domestic supplier databases; and assistance and support for capacity building.</li> </ul>

<b>Digital economy</b>	<ul style="list-style-type: none"> <li>• 19 APEC economies participate in the WTO e-commerce negotiations.</li> <li>• Seven APEC economies participate in the ASEAN DEFA negotiations.</li> <li>• Three APEC economies participate in the DEPA.</li> </ul>	<ul style="list-style-type: none"> <li>• WTO.</li> <li>• Singapore-UK Digital Economy Agreement (2022).</li> <li>• Korea-Singapore Digital Partnership Agreement (2023).</li> <li>• New Zealand-European Union FTA (2023).</li> <li>• 2023 APEC Leader's Golden Gate Declaration.</li> <li>• APEC Non-Binding Guidelines on Logistics-related Services that Support the Movement of Essential Goods During a Public Health Emergency.</li> </ul>	<ul style="list-style-type: none"> <li>• Provisions related to e-invoicing and e-payments; information and communications products that use cryptography; online safety and security; cross-border data flows; data innovation; and other emerging issues such as artificial intelligence, FinTech, LawTech, digital identities, and digital inclusion.</li> <li>• Additionally, to consider other areas where previous commitments are being expanded, such as logistics; paperless trading; competition in the digital economy; standards, technical regulations, and conformity assessment procedures; and possibly more challenging areas related to cross-border data flows.</li> </ul>
<b>Inclusive Trade</b>	<ul style="list-style-type: none"> <li>• 11 APEC economies participating in CPTPP, and three in USMCA.</li> <li>• Three APEC economies in the PA Gender Technical Group.</li> <li>• Six APEC economies participating in the GTAGA.</li> <li>• Five APEC economies signed the Joint Declaration for Inclusive and Sustainable Trade and then launched the Inclusive Trade Action Group.</li> <li>• Four APEC economies signed the IPETCA.</li> <li>• 12 APEC economies endorsed the WTO Buenos Aires Declaration on Trade and Women's Economic Empowerment.</li> </ul>	<ul style="list-style-type: none"> <li>• CPTPP</li> <li>• USMCA.</li> <li>• UN, OECD, WTO.</li> <li>• GTAGA.</li> <li>• APEC Putrajaya Vision 2040 and Aotearoa Plan of Action.</li> <li>• La Serena Roadmap for Women and Inclusive Growth.</li> <li>• San Francisco Principles on Integrating Inclusivity and Sustainability into Trade and Investment Policy.</li> </ul>	<ul style="list-style-type: none"> <li>• Provisions on women-related issues focusing on encouraging the implementation of labor rights, encouraging corporate social policies, promoting public awareness, cooperation, and dialogue.</li> <li>• Enhanced provisions targeting women's participation in trade related to areas such as trade facilitation, government procurement, trade in services and digital trade.</li> <li>• Provisions on cooperation and capacity building aiming at improving trade insertion of Indigenous peoples, persons with disabilities, and those from remote and rural communities, considering the characteristics and specific needs of each group.</li> </ul>

<b>Fisheries subsidies</b>	<ul style="list-style-type: none"> <li>All 21 APEC economies are part of the WTO Fisheries Subsidies.</li> <li>11 APEC economies are part of CPTPP, and three of USMCA.</li> </ul>	<ul style="list-style-type: none"> <li>WTO.</li> <li>APEC's OFWG.</li> </ul>	Provisions to prohibit subsidies for IUU and overfished stocks and disciplines on subsidies to prevent overfishing and overcapacity.
<b>Fossil Fuels Subsidies</b>	Two APEC economies participate in the WTO Fossil Fuel Subsidy Reform Initiative.	<ul style="list-style-type: none"> <li>WTO.</li> <li>APEC EWG Strategic Plan 2019-2023.</li> </ul>	Provisions on cooperation activities supporting efforts towards the eventual elimination of fossil fuel subsidies.
<b>Trade and essential goods and services</b>	21 APEC economies participated in the WTO Response to the current and future pandemics and Ministerial Decision on the TRIPS Agreement.	<ul style="list-style-type: none"> <li>WTO.</li> <li>APEC has produced 22 initiatives, declarations, and statements in six main areas.</li> </ul>	Provisions on trade and essential goods and services. Temporary approach could be explored, this could be triggered if an emergency is announced as for as long as it lasts. Additionally, provisions related to maintaining resilient regional value chains of foods and medical goods, and addressing the adverse effects of natural disasters.

### 2.3.2. Recommendations towards advancing the FTAAP agenda to contribute to high standard and comprehensive regional undertakings

The following subsections provide recommendations to address issues and challenges derived from the findings in both the five RTA/FTAs analyzed and in the innovative approaches that were identified. These recommendations can serve as tools conducive to consensus-building, recognizing sensitivities or the need for flexibility when undertaking obligations, given the differences in treaty practice among APEC members, particular circumstances in APEC economies, including levels of development, while promoting ambitious results towards high standard and comprehensive undertakings.

#### *Elements to address findings on RTA/FTAs*

In striving for comprehensive and high standard outcomes, there is ample background work that has been already undertaken by APEC economies that gives ideas on how to create conditions for common ground to further advance the FTAAP agenda.

#### *Model measures, other initiatives, and APEC infrastructure*

Between 2005 and 2009, APEC economies engaged in drafting model measures for RTAs. Such exercise consisted of agreeing on guidelines in a range of issues addressed under RTA/FTAs, such as trade facilitation, dispute settlement, trade in goods, transparency, technical barriers to trade, cooperation, government procurement, e-commerce, SPS measures, rules of origin (ROO), temporary entry of business persons, safeguard, environment and competition policy to achieve high standard, WTO-consistent trade agreements in the region.<sup>33</sup> These model measures could be considered as a catalogue of best practices in negotiating RTA/FTAs.

<sup>33</sup> At their 2005 Jeju meeting, APEC Ministers Responsible for Trade instructed Senior Officials to develop a possible model measure on Trade Facilitation for RTAs. Following its endorsement, the Economic Leaders requested the development of model measures for as many commonly accepted FTA chapters as possible by 2008. As of 2009, 15 model measures had been approved. See paragraph seven of the 2005 Leaders' Declaration, [https://www.apec.org/meeting-papers/leaders-declarations/2005/2005\\_aelm](https://www.apec.org/meeting-papers/leaders-declarations/2005/2005_aelm)

In addition, subsequent additional guidelines have also been agreed upon at relevant APEC fora and sub fora, in other RTA/FTA-relevant areas such as SMEs, environmental goods and services, and good regulatory practices. It is worth mentioning that several of such initiatives have been endorsed at the highest level in APEC.<sup>34</sup> As part of the activities to advance the FTAAP agenda, APEC economies could consider reviewing and retrofitting the model measures exercise and other endorsed guidelines, where applicable, and use them as reference, or even as a potential template for high standard and comprehensive regional undertakings. In doing so, Economies could use APEC groups, particularly the Committee on Trade and Investment (CTI) and its subcommittees, to update related work.

### ***ABAC views for an FTAAP***

Discussions on the FTAAP have been recurring for at least a couple of decades. ABAC has been at the forefront of such discussions, and has long advocated its views in numerous documents, outlining challenges and risks, desired scope and coverage of the FTAAP, and recommendations from the private sector. Issues which ABAC pinpoints as relevant for an FTAAP relate to including WTO-consistent and WTO-plus, high standard, transparent, and trade-creative rules related to movement of goods, services, and capitals; achieving comprehensive coverage, including by considering reasonable transitions to attain maximum liberalization in time and minimizing exceptions; aiming at ambitious outcomes to ensure open, seamless, non-discriminatory, sustainable and inclusive trade in the region, underpinned by resilient supply chains.<sup>35</sup>

In reflecting on actions to further advance the FTAAP agenda, APEC economies could consider ABAC's most recent related recommendations as a reference, including those addressing supply chain resilience, further liberalizing trade in environmental goods and services, advancing on digitalization and innovation, ensuring conditions for sustainable growth, among others.

### ***Tools used in the five RTA/FTAs analyzed***

Through their work in the five RTA/FTAs analyzed in this study, participating APEC economies have devised a broad array of tools which prove useful to accommodate potential concerns when it comes to both market access and text provisions.

#### **1. Market access offers**

For areas such as goods, services, financial services, investment, temporary entry, and government procurement, which entail specific liberalization commitments, examples of the tools used include:

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<sup>34</sup> See Annexes A, B, C and D of the 2011 Leaders' Declaration, [https://www.apec.org/meeting-papers/leaders-declarations/2011/2011\\_aelm](https://www.apec.org/meeting-papers/leaders-declarations/2011/2011_aelm)

<sup>35</sup> For earlier considerations regarding an FTAAP, see "Preliminary Assessment of the Proposal for a Free Trade Area of the Asia-Pacific (FTAAP)", ABAC 2004, <https://www2.abaconline.org/documents/41909d1b72720.pdf>. For a recent account of ABAC's considerations on an FTAAP, see "Equity, Sustainability, Opportunity. Report to APEC Economic Leaders, 2023"; <http://www2.abaconline.org/assets/2023/ABAC-Report-to-APEC-Economic-Leaders-2023.pdf>.



- a. Non-reciprocal phasing-out periods, extra-long phase-out periods, non-linear tariff phase-outs, tariff-rate quotas in agriculture, partial liberalization commitments, exclusion in very extraordinary cases for extremely sensitive areas (for example, for trade in goods in various agreements).
- b. Phasing-in commitments, grace periods for liberalization commitments to kick-in (for cases in goods, services (for example, RCEP allows some of its Parties to submit their schedules of non-conforming measures within certain periods of time and subject to certain conditions), financial services, investment, temporary entry, government procurement, in various agreements).
- c. Work programs, periodic review clauses to deepen liberalization commitments (for example, for goods in general; or services under AANZFTA and RCEP, which set out future negotiations on additional commitments that Parties “may negotiate” and have the results incorporated into the schedule of Parties’ commitments; or air services in CPTPP, which establishes that each Party may consider working towards liberalizing those services), financial services, investment, temporary entry, government procurement (for example CPTPP and USMCA), SOEs (for example USMCA and CPTPP on the negotiation of incorporation of sub-central SOEs in six months or five years, respectively).
- d. Side letters to accommodate specific concerns of a Party or some Parties, without affecting the rights and obligations of other Parties to the RTA/FTA (for example, under the TPP negotiations a Party agreed a different tariff phase-out period in a specific product with another Party, but during the CPTPP negotiations, they agreed that the Party would grant the same tariff treatment as the other members. Thus, this agreement was reflected in a side letter. Other CPTPP Parties recognized in side letters that domestic laws and regulations on electronic payment services are compliant with the provisions of the Agreement).

## 2. Other text provisions

- a. Grace periods for regulations to be compliant with the agreement (for example, in CPTPP, a two-year extension to a Party to bring into compliance subsidy programs contributing to overfishing and overcapacity; and two-year non-application of specific e-commerce obligations to certain Parties in CPTPP).
- b. Best endeavor clauses to undertake obligations (for example, for reduction of agriculture domestic support in CPTPP; border inspections to facilitate import and export processing in USMCA; trade in goods provision in CPTPP regarding participation in the WTO’s Information Technology Agreement; for services in PA, which encourages its Parties to work together on methodologies and publication of statistics based on international standards).
- c. Work programs, periodic review clauses, to undertake new commitments (for example, in RCEP the Parties committed to enter into discussions on ISDS no later than two years after the date of entry into force of the Agreement).
- d. Cooperation efforts, on a best endeavor basis, to develop collaborative agendas to build capacity to undertake commitments.
- e. Side letters or memorandum of understanding to accommodate specific sensitivities or circumstances applicable to a Party or some Parties (for example, in CPTPP and USMCA, in areas as customs cooperation, geographical indications, traditional knowledge, culture, and e-commerce).

- f. Special and differential treatment (for example, AANZFTA and RCEP set out activities to increase participation of ASEAN Parties when joining those agreements; also, AANZFTA and RCEP establish a special and differential treatment provision regarding disputes).
- g. Exceptions on particular obligations or areas to dispute settlement (for example, e-commerce in AANZFTA and RCEP; macroeconomic policies in USMCA, where a Party may have recourse to DS only with respect to transparency provisions; trade remedies in CPTPP, USMCA and RCEP where Parties shall not recourse to dispute settlement for matters related to antidumping and countervailing duties; government procurement in RCEP).

### ***Elements to address findings on innovative approaches***

The seven areas identified in this study are novel issues in the rulebook for international trade and investment, as they seek to address areas where hard law is mostly emerging, at best. It may be because of their unusual or at times challenging nature, that several of these innovative approaches to trade are appealing to non-conventional processes to build consensus and facilitate economies to reach understandings. This section outlines some of those processes, which could serve as a reference to APEC members in moving forward the FTAAP agenda. In addition, some of the tools already described in the RTA/FTA recommendations' section above could also supplement work to undertake commitments in these areas.

### ***Plurilateral, on the basis of voluntary participation***

The WTO's Joint Statement Initiatives (JSI) on e-commerce (under discussion) and on investment facilitation (concluded), are of a plurilateral nature (i.e. only WTO interested members partake in such discussions). This plurilateral approach attracted attention of members, as negotiations in each of these initiatives advanced, momentum gathered, and new participants kept adding up, seeking to reflect their own interests and somehow influence the discussions. To ensure a sound point of departure for these initiatives, a minimum critical mass of initial participants was needed.

Initiatives with a flexible approach from the start of conversations, which acknowledge the importance of capacity building and technical assistance, and allow participants to decide on which topics they take part in, could assist APEC members to consider how to provide impetus in moving forward the FTAAP agenda and contribute to high standard and comprehensive regional undertakings.

Within the APEC context, it is worth recalling that, on occasion of the assessment of progress towards fulfilling the Bogor Goals of free and open trade in the region for five APEC economies in 2010 (the target year for industrialized economies), eight developing economies voluntarily decided to also undergo such evaluation of progress made, well ahead of the formal commitment for developing economies, scheduled for 2020.<sup>36</sup> At that time, this demonstrated the willingness of several developing economies

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<sup>36</sup> "Assessment of Achievements of the Bogor Goals in 2010", December 2021, <https://www.apec.org/About-Us/About-APEC/Achievements-and-Benefits/2010-Bogor-Goals>. Other voluntary exercises which APEC economies have used in the past to advance in particular issues and encourage incremental participation include the "Pathfinder initiatives", where a group of interested economies have been able to move forward in areas such as supply chain connectivity (baseline de minimis value), and remanufactured goods. See "2011 APEC Ministerial Meeting Declaration", Annexes A and D, [https://www.apec.org/meeting-papers/annual-ministerial-meetings/2011/2011\\_amm](https://www.apec.org/meeting-papers/annual-ministerial-meetings/2011/2011_amm).

to voluntarily inject momentum into APEC's agenda to promote the free flow of goods, services and investment.

A plurilateral approximation to negotiating commitments outside APEC, on the basis of voluntary participation (a core, well tested principle of APEC), could be a useful reference for APEC members to consider how to move forward the FTAAP agenda in these areas. Attaining critical mass to start discussions could be doable in issues such as supply chain resilience, investment facilitation, fisheries subsidies, and inclusive trade since an important number of APEC members are already taking part in similar efforts elsewhere, but participation from all major APEC economies should be ensured.

### ***Provision of capacity building linked to phasing-in commitments***

In the context of the WTO Trade Facilitation Agreement, WTO members assumed commitments in three categories according to a self-assessment approach. The first category was on immediate implementation upon the Agreement's entry into force, the second with a phase-in period of implementation, and the third category phasing-in obligations linked to support for capacity building. This method could be a reference for innovative issues where despite being particularly challenging, it is desirable to commit comprehensively to obligations from the start, for example, in areas such as the digital economy (issues including data flows, data localization, or source code), fisheries subsidies (in provisions that would go beyond the WTO Agreement, such as disciplines for subsidies to prevent overfishing and overcapacity), and supply chain resilience (in provisions to monitor and respond to supply chain difficulties).

### ***Efforts, as part of a work program under a chapter on cooperation***

For certain issues, APEC economies may consider voluntary, best endeavor efforts, detailing actions/initiatives to be assumed as part of an FTAAP work program on cooperation contributing to high standard and comprehensive regional undertakings. This could be the case for fossil fuel subsidies' reduction; interest could be built and increased using APEC's Energy Working Group under the Steering Committee on ECOTECH.

### ***A temporary, sectoral approach to emergency responses***

Once they appear, emergencies have the potential to have disruptive effects (in particular, those that are health-related), with cross-border consequences that require articulating swift and coordinated responses. Despite the immediate pressing effects of these events, economies may struggle to engage at the outset in collaborative efforts to articulate responses to emergencies. For example, some APEC members were not convinced of the merits of participating in efforts to provide a multilateral response, from a trade angle, to the Covid-19 pandemic, under the so-called Trade and Health initiative adopted in the context of WTO.

In anticipation of a potential new emergency situation, developing a catalogue of parameters on horizontal issues of goods and services (transparency, regulations and trade facilitation), that enable APEC economies to cooperate in providing regional, organized responses, leveraging on trade rules, to contribute in easing or minimizing

the disruptive effects of such unforeseen events, would be not only desirable, but critical.

For instance, to ease possible concerns, such parameters to respond to an eventual sanitary emergency would have to start from the understanding that, whatever the measures, they would be of a temporary nature. This would be so as it is assumed that sanitary emergencies would also be of a non-permanent duration (for as long as it lasted). It is also assumed that a response would entail a response mostly in specific sectors (for example, pharmaceuticals, medicines). Once the emergency conditions no longer prevail, economies would have the option of withdrawing the measures adopted to address the emergency and restore them to their original status.

Efforts to elaborate a catalogue of parameters, well in advance of a potential event, would develop a sense of ownership around such parameters among APEC members.

Having a set of provisions in a trade instrument could allow for trade measures to be used as part of the response to emergencies. To encourage dialogue and communication, APEC economies could discuss these options as part of the efforts to advance the FTAAP agenda and contribute to high standard and comprehensive regional undertakings.

## **2.4. CONCLUSIONS**

This report has conducted a comparative analysis of the content and scope for 34 chapters/sectoral annexes of five comprehensive and ambitious RTA/FTAs in the Asia Pacific region in which 17 APEC economies are signatories. The analysis found that a large majority of the chapters/sectoral annexes analyzed (32, equivalent to 94% of the chapters/annexes) have medium to high levels of convergence among themselves, and only one chapter (macroeconomic policies) and one sectoral annex (maritime services) have a low level of convergence.

Without prejudging on the scope, nature, process or appropriate platform to work towards any future high standard and comprehensive undertakings, the comparative analysis identifies areas where APEC could do more work to further advance the FTAAP agenda. The study found that, for the 17 APEC economies which are part of at least one of the five RTA/FTAs assessed, the inclusion of 22 of the 34 chapters/sectoral annexes in this process could be either feasible, or feasible with a certain degree of challenge, and 12 chapters/sectoral annexes could seem challenging at the outset of such a process. On the latter, this would be so given the difference in substance of the several issues at stake. Particularly challenging areas would seem to be labor, environment, SOEs, anti-corruption, textiles and apparel, maritime services, and macroeconomic policies.

In other words, a large majority of APEC economies have committed to obligations for 62% of the chapters/sectoral annexes analyzed.

In addition, through the analysis of emerging and future trends potentially shaping international trade and investment, including the Covid-19 pandemic, the increasing environmental concerns, and the acceleration of the digital economy, this report identifies seven areas that several APEC economies are already discussing, or have recently agreed upon in other bilateral, regional or multilateral configurations. These innovative approaches to emerging

trade trends identified are: supply chain resilience; investment facilitation; digital economy; inclusive trade; fisheries subsidies; fossil fuel subsidies; and trade in essential goods and services. The report argues that APEC economies could engage in regional discussions on these areas to respond to emerging trends, by expanding and updating the trade and investment rulebook in the region and thus strengthening the case in advancing the FTAAP agenda to contribute to high standard and comprehensive regional undertakings.

The abovementioned findings of the report speak of the broad commonalities that already exist between most APEC economies under the five largest RTA/FTAs in the region. Indeed, conclusions can be drawn that extensive and detailed technical work is well advanced by a large majority of APEC economies in terms of negotiating comprehensive, high-standard obligations, and ambitious liberalization commitments in these agreements. These facts should serve as an important reference in the discussions to advance the FTAAP agenda.

Additionally, the participation of several APEC economies in the seven areas related to current and emerging challenges in other regional, plurilateral or multilateral initiatives shows the interest that members attach to finding new ways to respond to pressing issues, and there is potential fertile ground to bring new angles to respond to emerging trends in trade into APEC. The innovative approaches should also represent an important reference for APEC to build momentum to advance the FTAAP agenda and contribute to high standard and comprehensive regional undertakings.

Importantly, both the chapters/sectoral annexes reviewed, and the innovative approaches to address the current and emerging challenges were contrasted against the Aotearoa Plan of Action, and they align to, and indeed contribute to, different objectives and actions within the three drivers.

Technical recommendations on how to consider flexibilities to address challenges, build capacity, take into account different levels of development, handle sensitivities and other particular circumstances, are drawn from the tools previously devised and used by economies in past and current negotiations. Recommendations in the report to address challenges also rely on well tested approaches previously used in the APEC dynamics. The report provides a non-exhaustive catalog of tools and creative measures that members have resorted to for these purposes.

Finally, whilst political decisions and geopolitical challenges cannot be disregarded in the discussion of the FTAAP agenda, APEC members should come to terms with the fact that they have been able to create themselves technical solutions to address challenges and achieve ambitious standards to liberalize trade and investment flows under alternative regional configurations. The result of such dedicated efforts and achievements should be used as input for processes seeking to progress in FTAAP agenda and contribute to high standard and comprehensive regional undertakings.

### 3. PART B: DETAILED COMPARATIVE ANALYSIS OF CHAPTERS

#### 3.1. MARKET ACCESS FOR GOODS

##### Overview

The five RTA/FTAs include a chapter related to market access. Although the chapter title is called in three different ways,<sup>37</sup> the disciplines cover trade in goods between the Parties. This chapter is an essential component in an RTA/FTA to reach the objective for a comprehensive market liberalization.

This chapter establishes the conditions for reducing or eliminating customs duties for originating goods, as well as for goods that fall under certain circumstances. The five RTA/FTAs contain disciplines that ensure non-discriminatory treatment between domestic and imported goods; non-application of restrictions or prohibitions to the export or import of goods; reduction or proper and transparent application of non-tariff measures; and setting up a forum to facilitate discussions, when appropriate, for addressing any issues arising under the chapter implementation.

**Table 4. Summary matrix of chapter on market access for goods**

No.	Provision	Level of convergence	Comments
1	Scope	Medium-High (80%)	Included in CPTPP, PA, USMCA and RCEP. The four RTA/FTAs concur on the application of the chapter to trade in goods among the Parties.
2	National treatment	Medium-High (80%)	The five RTA/FTAs include NT binding obligations. However, CPTPP, PA and USMCA specify regional or state level of government application and identify exceptions for specific measures and Parties. Given these last reservations, convergence is medium-high.
3	Reduction and/or elimination of customs duties	High (100%)	The five RTA/FTAs establish similar binding disciplines on the reduction or elimination of tariffs. However, the differences are included in the schedules of tariff commitments of each Party. CPTPP, PA and USMCA determine no tariff increases or new tariffs for originating goods; CPTPP and RCEP refer that an importer can claim the MFN duty for originating goods, with specific nuances.
4	Acceleration of tariff commitments	High (100%)	The five RTA/FTAs have similar binding provisions related to negotiating the acceleration of tariff commitments, with some slight differences in the results: extend the acceleration to the other Parties (AANZFTA, PA and RCEP) or just inform the other Parties (CPTPP).
5	Waiver of customs duties	Medium (60%)	Included in CPTPP, PA and USMCA. The three RTA/FTAs provide that Parties shall not condition any waiver of a customs duty on the fulfillment of a performance requirement.
6	Drawback and duty deferral programs	Low (20%)	This binding provision is only in USMCA, limiting the use of duty deferral programs.

<sup>37</sup> In two RTA/FTAs (CPTPP and USMCA) it is called “National treatment and market access for goods”. In other two RTA/FTAs, it is named “Trade in goods”; and in the last one (PA), it is just referred to as “market access”.

7	Goods re-entered after repair and alteration	Medium (60%)	Included in CPTPP, PA and USMCA. A binding provision that grants duty-free treatment, under certain conditions, to goods re-entered after the repair or alteration in another Party.
8	Duty-free entry of commercial samples	Medium-High (80%)	This binding provision is included in CPTPP, PA, USMCA and RCEP. The four RTA/FTAs grant duty-free for commercial samples. The coverage in CPTPP, PA and USMCA includes commercial samples of negligible value or printed advertising materials and defines conditions to grant duty-free treatment. In RCEP, the coverage only applies to samples of no commercial value.
9	Temporary admission of goods	Medium-High (80%)	Binding language. Included in the five RTA/FTAs. There is a correspondence in granting duty-free treatment to the temporary admission of particular goods for specific purposes, under certain conditions. RCEP does not have specifications about the kind of products to which the provisions apply and does not contain provisions that prevent cases in which an imported good under these terms cannot be returned.
10	Temporary admission for containers	Medium (60%)	Included in CPTPP, PA, RCEP, USMCA. This is a binding provision. USMCA contains provisions related to facilitate customs procedures for these goods. There is also a slight difference in the scope: CPTPP includes vehicle, containers, or pallets; PA only containers; for USMCA vehicle, or shipping container or other substantial holder; and in RCEP, containers and pallets. Given these differences, the level of convergence was adjusted to medium.
11	Import and export restrictions	Medium-High (80%)	The five RTA/FTAs are similar in ensuring the non-application of prohibitions or restrictions on imports or exports (except for those included in WTO Article 11). Main differences: CPTPP, USMCA and PA identify exceptions for certain goods and Parties; and indicate non-requirement of contractual relations with a company in its territory for the distribution of products. Considering the exceptions included in some RTA/FTAs, the level of convergence was revised downwards.
12	Non-tariff measures (NTM)	Medium (60%)	Included in AANZFTA, PA and RCEP. The three RTA/FTAs contain binding provisions for NTM, but there are slight differences in the language.
13	Remanufactured goods	Medium-Low (40%)	Only CPTPP and USMCA include similar binding provisions to treat remanufactured goods as new goods.
14	Import licensing	High (100%)	The five RTA/FTAs concur on having binding commitments for transparency, predictability, notification, and publication of import license procedures. There are some differences in the procedures which do not represent a substantive variation for the convergence.
15	Export licensing	Medium-Low (40%)	Included in CPTPP and USMCA. The two RTA/FTAs have similarities in terms of binding commitments related to transparency, predictability, notification, publication and request of information for export licensing procedures.
16	Administrative fees, charges, and formalities	Medium-High (80%)	The five RTA/FTAs converge with the following binding provisions: fees and charges shall be in accordance with the provisions of the General Agreement on Tariffs and Trade 1994 (GATT 1994); details on the fees and charges shall be publicly available, and no consular transactions shall be requested in connection with the importation of a good. CPTPP requires that fees and charges on an ad-valorem basis are not levied, with a transition period to one Party (Mexico). USMCA determines that customs user fees to originating goods shall not be applied. The specific differences mentioned imply a medium-high convergence.

17	Taxes, duties, or charges to export	Medium (60%)	Included in CPTPP, PA and USMCA. The three RTA/FTAs concur in not applying export taxes, except in a specific case. In CPTPP and PA there are additional limited exceptions for certain products from some Parties.
18	Customs valuation	Medium-Low (40%)	Included in PA and RCEP. This is a commitment to follow WTO Customs Valuation Agreement (CVA) principles, the main difference relates to the CVA incorporation into the Agreement (PA) or application <i>mutatis mutandis</i> (RCEP).
19	Modifications of concessions	Medium-Low (40%)	Binding provision included in AANZFTA and RCEP. Both RTA/FTAs concur in defining a procedure where a Party can modify or withdraw, under exceptional circumstances, a tariff concession.
20	Publication	Medium-High (80%)	Included in AANZFTA and CPTPP. Both RTA/FTAs contain binding commitments regarding the publication of regulations, with slight nuances. Although the other three RTA/FTAs do not have specific provisions in this chapter, there are commitments in this area within the chapter on trade facilitation and/or transparency. Taking into account this circumstance the level of convergence was modified upwards.
21	Technical discussions / consultations	Medium (60%)	A binding provision included in AANZFTA, CPTPP and RCEP. They contain a scheme to conduct discussions or specific consultations to examine or review measures that impact or adversely affect trade. However, there are some slight differences in the procedures.
22	Committee on trade in goods	Medium-High (80%)	Included in AANZFTA, CPTPP, PA and USMCA. The four RTA/FTAs agree on having a committee that supervises the application and implementation of the chapter. There are some differences regarding the structure, activities, and scope.
23	Application	Low (20%)	This best endeavor provision is only included in AANZFTA for the observance of the chapter provisions by regional and local governments and authorities.
24	Trade in information technology products	Low (20%)	Included only in CPTPP. This provision requires a binding participation in the WTO Information Technology Agreement, with a transition period for one Party (Brunei Darussalam). However, for two Parties (Chile and Mexico) determines a best endeavor engagement for becoming participants.
25	Most-favored-nation rates duty on certain goods	Low (20%)	This provision is only included in USMCA, establishing duty-free MFN tariffs for specific computing parts and components, which also are considered as originating goods.
26	Tariff differentials	Low (20%)	Included only in RCEP. These binding provisions establish the application of tariff differentials. Although no other RTA/FTA contains an article in this regard, CPTPP and USMCA contain conditions for goods with tariff differentials, but they are included in the general notes of the tariff phase-out schedule of the appropriate Party.
27	Classification of goods	Low (20%)	This binding provision is only in RCEP, prescribing that the classification of goods is in conformity with the Harmonized System.
28	Goods in transit	Medium-High (80%)	Included only in RCEP. This binding provision determines the facilitation of customs clearance for goods in transit. Other RTA/FTAs offer similar benefits in the trade facilitation chapter. In view of this, the level of convergence was defined as a medium-high.
29	Transposition of schedules of tariff commitments	Medium-Low (40%)	This binding provision is included in AANZFTA and RCEP, ensuring that transposition to the Harmonized System is made without impairing the existing tariff concessions. AANZFTA includes the adoption of a methodology and procedures for the transposition.



30	Sectoral initiatives	Low (20%)	Only RCEP includes a provision that defines the possibility to initiate work programs to improve access and facilitate trade in unnamed sectors.
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The overall average is of 56.7%, resulting in a medium level of convergence for the chapter.

## Conclusions

For the five RTA/FTAs, most of the provisions in the market access chapter are binding and subject to DS procedures.

The market access chapter is included in the five RTA/FTAs, which means that at least 81% of APEC members with 17 of APEC economies have already subscribed related provisions under this chapter.

Although this chapter has a medium level of convergence, it is important to highlight that in several key provisions there are similarities in the five RTA/FTAs.

Provisions where there are no similarities, or they are minimal, refer to topics that confirm WTO rights and obligations of particular interest to the Parties of an RTA/FTA, or market access issues considered as new generation ones, such as remanufactured goods, and export license procedures.

In light of the Aotearoa Plan of Action, provisions on market access for goods relate to the trade and investment driver, more directly with the first objective which refers to achieving a free, open, fair, non-discriminatory, transparent, and predictable trade and investment environment. Moreover, specific provisions are linked with the objective that supports the rules agreed at WTO to achieve predictability of international trade flows, among others.

APEC economies can consider including several of the type of provisions contained in the five RTA/FTAs for this chapter in the discussions to advance the FTAAP agenda and contribute to high standard and comprehensive regional undertakings. Issues on trade liberalization matters, such as categories and tariff phase-out schedules; modification of concessions; specific exclusions for the import and export restrictions; taxes, duties, or charges to export could trigger a sensitive discussion.

### 3.1.1. Agriculture

#### *Overview*

Some provisions related to agriculture are included in the five RTA/FTAs. Nevertheless, only USMCA and CPTPP include broad provisions related to agriculture, agricultural biotechnology, and tariff-rate quotas. The only provision shared by all five agreements relates to export subsidies, which reaffirms the WTO commitment to eliminate and not reimplement those kinds of subsidies.

For this reason, this analysis primarily focuses on USMCA and CPTPP chapters. As both agreements are structured similarly, differences are few. While CPTPP includes additional provisions on export credits, export credit guarantees or insurance, and agricultural export state enterprises, USMCA contains a provision on international cooperation consultative committees on agriculture and domestic support.

**Table 5. Summary matrix of chapter on agriculture**

No.	Provision	Level of convergence	Comments
<b>Agriculture</b>			
1	Scope	Medium (60%)	Included in CPTPP, USMCA and PA. In PA, it defines the scope of the agriculture export subsidies.
2	International cooperation	Low (40%)	CPTPP and USMCA include a provision to collaborate in WTO. For USMCA, it is a binding provision; for CPTPP, it is non-binding and limited to export competition.
3	Export competition	High (100%)	Binding provision. Included in the five RTA/FTAs. USMCA also contains a binding commitment to hold consultations.
4	Export credits, export credit guarantees or insurance	Low (20%)	Only CPTPP establishes the binding commitment to collaborate in WTO to develop disciplines in export competition.
5	Agricultural export state trading enterprises	Low (20%)	Only CPTPP establishes the binding commitment to work together in WTO on export trading enterprises.
6	Export restrictions – food security	Medium-Low (40%)	USMCA and CPTPP include identical binding provisions to notify, in addition to the WTO commitment, when implementing an export prohibition or restriction.
7	Domestic support	Low (20%)	Non-binding provision, included only in USMCA.
8	Committee on agricultural trade	Medium-Low (40%)	Binding provisions, included in USMCA and CPTPP.
9	Consultative committees on agriculture	Low (20%)	Binding provision, included only in the USMCA.
10	Agricultural special safeguards	Medium-Low (40%)	USMCA and CPTPP include identical, binding provisions.
11	Transparency and consultations	Low (20%)	Non-binding provision, included only in USMCA.
<b>Agricultural biotechnology</b>			
12	Contact points	Medium-Low (40%)	Binding provision, included in USMCA and CPTPP. Nevertheless, the scope for the information to be exchanged is different. While USMCA's scope is the Agricultural Biotechnology section, CPTPP is limited to low level presence occurrence (LLP).
13	Trade in products of agricultural biotechnology	Medium-Low (40%)	Provision included in USMCA and CPTPP. Making public information, documentation, and requirements for authorization of a product of agricultural biotechnology is non-binding. Reducing the likelihood of trade disruption from LLP is binding for USMCA, and non-binding for CPTPP.
14	LLP	Medium-Low (40%)	CPTPP and USMCA include binding provisions to facilitate the management of any LLP. Nevertheless, for CPTPP, such commitment is subject to its Parties' laws and regulations and is limited to the availability to provide a summary of the risk or safety assessment.
15	Working Group for Cooperation on Agricultural Biotechnology	Medium-Low (40%)	USMCA and CPTPP include a binding provision to establish working groups for information exchange and cooperation on trade-related issues associated with products of modern biotechnology (CPTPP), or products of agricultural biotechnology (USMCA).

<b>Tariff-rate quota administration</b>			
16	Scope and general provisions	Medium-Low (40%)	USMCA and CPTPP state that the scope is for those tariff rate quotas (TRQs) included in their respective agreement and does not apply to those set out under WTO.
17	Administration and eligibility	Medium-Low (40%)	USMCA and CPTPP include similar binding provisions. USMCA goes beyond in (i) establishing a 30-day period for consultation when a party is seeking to introduce a new or additional condition, limit, or eligibility criteria and (ii) that such criteria will not include the quota applicant's economy's origin, or require physical presence.
18	Allocation	Medium-Low (40%)	USMCA and CPTPP include similar binding provisions. USMCA includes an additional binding provision to not discriminate against new importers.
19	Return and reallocation of TRQs	Medium-Low (40%)	USMCA and CPTPP include similar binding provisions.
20	Transparency	Medium-Low (40%)	USMCA and CPTPP include similar binding provisions.

The overall average is of 37.4%, resulting in a medium level of convergence for the chapter.

### **Conclusions**

At the chapter level, this chapter has a medium level of convergence among the five RTA/FTAs. Notably, while agriculture-related provisions are present in the five RTA/FTAs, if we leave aside the issue of export subsidies (which is a reaffirmation of an existent multilateral commitment), an agriculture chapter is present in two RTA/FTAs (CPTPP and USMCA), involving 12 APEC economies, meaning that at least 57% of APEC members have adopted agriculture provisions.

The general objective of such agricultural provisions is to facilitate and promote agricultural trade among their Parties by reducing trade barriers, supporting innovation in agriculture, and enhancing cooperation and information exchange, which aligns with multiple objectives under Aotearoa Plan of Action's drivers of trade and investment and sustainable growth, particularly progressing liberalization of trade in goods by reducing unnecessary barriers; promoting agricultural and food trade, agricultural sustainability and innovation; and working towards the sustainable resource management of agriculture. While export subsidies and tariff rate quota administration are two areas with common elements across the RTA/FTAs examined for this report, areas covered by few agreements, such as biotechnology, could be included in APEC's efforts to advance the FTAAP agenda.

## **3.2. RULES OF ORIGIN AND ORIGIN PROCEDURES**

### **Overview**

The five RTA/FTAs include a chapter on rules of origin and origin procedures. This chapter is a critical component not only for the determination of origin of the goods and the preferential tariff treatment, but also for strengthening capacities for the certification and verification procedures.

The chapter structure comprises seven main areas: origin criteria, other instances for origin, certification procedures, verification of origin, consultations and cooperation, the product-

specific rules of origin (PSR) and other annexes and appendices linked to the article provisions. This analysis is focused on the disciplines contained in the articles.

The comparison of the disciplines in this chapter confirmed not only the high level of convergence on issues of importance to customs and other competent authorities, and foreign trade operators, such as claims for preferential treatment, third-party invoicing, waiver of certification of origin, obligations relating to importation, denial of preferential tariff treatment, confidentiality, review and appeal, and goods wholly produced or obtained, but also the broad coverage of disciplines ensuring that tariff preferential benefits are maintained in the respective region.

**Table 6. Summary matrix of chapter on rules of origin and origin procedures**

No.	Provision	Level of convergence	Comments
1	Originating goods / origin criteria	High (100%)	The five RTA/FTAs contain this provision. USMCA stipulates additional provisions for particular cases.
2	Goods wholly produced or obtained	High (100%)	The five RTA/FTAs concur in the binding general criteria. CPTPP and USMCA include aquaculture as an additional criterium.
3	Regional value content	High (100%)	The five RTA/FTAs have binding provisions defining methods to determine the regional value content (RVC). The main difference lies in the diverse methodologies included in each RTA/FTA, and the applicable thresholds contained in the PSRs.
4	Non-originating materials used in production	Medium-Low (40%)	Included in CPTPP and USMCA, establishing binding provision for using certain values integrated in the non-originating materials in the RVC calculation.
5	Value of materials used in production	High (100%)	Included in five RTA/FTAs. CPTPP and USMCA define the provisions in a specific article, but the rest of the RTA/FTAs refer to this topic in the RVC article.
6	Further adjustments to the value of materials	Medium-Low (40%)	Included in CPTPP and USMCA, prescribing optional adjustments for the determination of the value of the materials, expenses that may be deducted from the value of the non-originating materials. RCEP also includes clauses on the matter in the article on the calculation of the Regional Value Content. The CPTPP also identifies costs that may be added to the value of the originating materials.
7	Automotive goods	Medium-Low (40%)	Only CPTPP and USMCA have detailed provisions for the automotive sector, which are complemented in the annexes and appendices of the respective chapters.
8	Accumulation	Medium-High (80%)	The five RTA/FTAs have provisions allowing accumulation of materials. However, there are some differences: PA conditions the application to preferential duty-free treatment in all Parties. CPTPP, PA and USMCA grant accumulation to goods produced by one or more producers. CPTPP and USMCA allow accumulation in productive processes carried out in non-originating materials. Finally, the RCEP includes a review process of this provision. Thus, an adjustment was made to the level of convergence.
9	De minimis	Medium-High (80%)	The five RTA/FTAs concur on a de minimis binding provision, allowing a limited use of non-originating materials under specific circumstances. There are slight differences related to the value of the good to calculate the percentage. Exclusions apply for the use of specific materials in particular products in CPTPP and USMCA; and PA conditions the application in agro-industrial goods. These particular differences imply an adjustment to the level of convergence.

10	Fungible goods or materials	High (100%)	The five RTA/FTAs agree on a binding provision to treat fungible material as originating, based on: physical segregation or the use of generally accepted accounting principles. CPTPP, PA, USMCA and RCEP concur on also applying this provision to fungible goods. CPTPP, PA, USMCA and RCEP include, as an additional requirement, the use of the selected inventory management method throughout the fiscal year.
11	Intermediate materials	Medium-High (80%)	Included in PA and USMCA, defining that non-originating materials in a self-produced material (used in the production of a good) will not be taken into account for the purpose of calculating the RVC of the good, even though the USMCA defines conditions to this provision. CPTPP and RCEP have a similar provision in the materials used in production articles with a broader application. Considering these provisions, the level of convergence was adjusted.
12	Indirect materials	High (100%)	The five RTA/FTAs concur that an indirect material shall be considered as originating without regard to where it was produced. AANZFTA and RCEP specify that the material value shall be the cost registered in the accounting records of the good's producer.
13	Sets of goods	Medium (60%)	Included in CPTPP, PA and USMCA. The three RTA/FTAs provide that a set of goods is originating only if each good in the set is originating, or if the value of all the non-originating goods in the set does not exceed a percentage of the value of the set. Some slight differences: for CPTPP and USMCA, the PSRs also apply, the percentage with respect to the set value is 10%, and the percentage for textile or apparel sets is in terms of weight; in PA this provision prevails over the PSRs (per article 4.14), and the percentage with respect to the set value is 12%.
14	Accessories, spare parts, tools and instructional or other information materials	High (100%)	The five RTA/FTAs have similar provisions for this kind of goods or materials, presented with the final good, specifying that they shall be disregarded when determining a change in tariff classification (CTC) rule; however, their value shall be taken into account (as originating or non-originating) when the final good is subject to an RVC.
15	Packaging materials and containers for retail sale	High (100%)	The five RTA/FTAs have quite similar provisions for packaging materials and containers for retail sale, stipulating that they shall be disregarded when determining a CTC rule; however, their value is taken into account (as originating or non-originating) when the final good is subject to an RVC. CPTPP, PA, USMCA and RCEP also disregard these materials when the good is wholly obtained or produced.
16	Packing materials and containers for shipment	High (100%)	The five RTA/FTAs provide that packing materials and containers for transportation and shipment of a good shall not be considered in determining the origin of any good.
17	Treatment of recovered materials used in production of a remanufactured good	Medium-Low (40%)	This provision is only in CPTPP and USMCA, related to treat recovered materials in the region as originating when they are used in the production of, and incorporated into, a remanufactured good.
18	Unit of qualification	Low (20%)	Included only in RCEP establishing that a particular good is considered a basic unit when determining classification under the Harmonized System, and in the case of a consignment with a number of identical goods classified under a single tariff line, each good shall be individually taken into account in determining the origin.
19	Minimal operations and processes / non-	Medium (60%)	Included in PA, USMCA and RCEP, providing that a good shall not be considered to be an originating good when certain non-qualifying operations are carried out in the production of the

	qualifying operations		good. The list of non-qualifying operations is different in each RTA/FTA.
20	Transit and transshipment / direct consignment	High (100%)	The five RTA/FTAs confluence in establishing that an originating good retains its originating status during the transportation into the importing Party, if the good does not pass through a non-Party, or when it is transported through one or more non-Parties but does not undergo any operation outside the region (other than a list of specific operations) and remains under the control of the customs administration in the non-Party. CPTPP, PA and RCEP require to demonstrate compliance with the appropriate customs documents.
21	Treatment for certain goods	Low (20%)	Included only in RCEP, determining that, upon request of a Party, the Parties can conduct discussions on the treatment for certain goods under the rules of origin chapter and conclude such discussions within three years from the start of the discussions. Any result on the treatment for certain goods shall be subject to consensus.
22	Exhibitions	Low (20%)	Included only in PA, establishing that an originating good imported into another Party after its exhibition in a non-Party keep its originating status provided that it remains under customs control in the non-Party.
23	Claims for preferential treatment	High (100%)	The five RTA/FTAs provide that the basis to claim preferential treatment is a certification/proof of origin, but differences arise in the types of certification/proof of origin.
24	Certificate of origin	Medium (60%)	The five RTA/FTAs define binding processes for the issuance of the certification/proof of origin. However, there are substantial differences related to the issuance persons, the blank format used or minimal data information and the way of issuance. So, the level of convergence was adjusted.
25	Basis of a certification of origin	Medium-High (80%)	The five RTA/FTAs have binding provisions related to the basis for the certification/proof of origin. The main similarity is that there shall be supporting information and documentation to demonstrate that the good is originating. However, the way in which such information is requested, gathered, examined or reviewed depends on the type of certification (according to the RTA/FTA), so the applicable procedures and requirements differ. This implied adjustments in the level of convergence.
26	Back-to-back certificate or proof of origin	Medium-Low (40%)	Included in AANZFTA and RCEP, detailing the possibility of issuing a back-to-back certificate or proof of origin, under certain conditions.
27	Duplicate of the certificate of origin	Medium-Low (40%)	Under this provision, included in AANZFTA and PA, the issuing authority may issue a duplicate of a certificate of origin, under certain circumstances and specific criteria.
28	Third-party invoicing	High (100%)	This is a binding provision. The five RTA/FTAs grant tariff preferential treatment to originating goods invoiced in a non-Party, with slight differences.
29	Approved exporter	Low (20%)	Included in RCEP, determining the minimum requirements and criteria that the competent authorities must establish to authorize approved exporters. CPTPP contains provisions for approved exporters applicable to the Parties opting for temporary certification procedures. Considering the interim character of this particular alternative, there is an adjustment to the level of convergence.
30	Discrepancies	High (100%)	The five RTA/FTAs concur, with slight differences, in establishing that a certification of origin shall not be rejected due to minor errors or discrepancies.
31	Waiver of certification of origin	High (100%)	The five RTA/FTAs do not require a certification/proof of origin for a merchandise whose import customs value does not exceed a specific amount. The difference lies in the amount waived.

32	Obligations relating to importation	High (100%)	The five RTA/FTAs provide that for the purposes of claiming preferential tariff treatment, the importer shall make a declaration that the good qualifies as originating; have a valid certification/proof of origin at the time of the declaration and provide the certification/proof of origin to the importing Party if required. There are slight differences considering the types of certification/proof of origin.
33	Obligations relating to exportation	Medium (60%)	Three RTA/FTAs (CPTPP, PA and USMCA) define some binding obligations to the exporters regarding the certification of origin. Provisions differ considering the self-certification and the certification by authority or body or approved exporter. However, the common element is to inform in case the certification contains or is based on incorrect information.
34	Record keeping requirements	Medium-High (80%)	The five RTA/FTAs concur to maintain records to demonstrate that the good qualifies as originating. Records shall be kept, including in electronic form, for a specific period of time. AANZFTA and RCEP establish three years, while the period for CPTPP, PA and USMCA is five years. This implied adjusting the level of convergence.
35	Verification of origin	Medium-High (80%)	The five RTA/FTAs provide that the verification process be conducted by means of a written request for information, and verification visits to the premises of the exporter or producer of the good. Taking into account the type of certification/proof of origin in the five RTA/FTAs, there are differences in the proceedings such as: request for information; contact the appropriate persons; request permission to conduct a visit; carry out the verification in the premises of the exporter or importer, among others. Given such differences, the level of convergence was adjusted.
36	Suspension of preferential tariff treatment	Medium-Low (40%)	Included in AANZFTA and RCEP. The two RTA/FTAs indicate that a Party may suspend preferential treatment to a good that is under an origin verification action. CPTPP, PA and USMCA contain provisions for the suspension of preferential treatment, but this applies when verifications of origin for identical goods indicate a pattern of conduct related to the provision of false or unsupported documentation. Taking into account the differences in the scope there is an adjustment in the level of convergence.
37	Denial of preferential tariff treatment	High (100%)	The five RTA/FTAs concur in defining binding provisions to deny preferential tariff treatment, especially when the good does not qualify as an originating good, or the importer, exporter or producer fails to respond to a written request of information or relevant requirements.
38	Refunds and claims for preferential tariff treatment after importation	Medium-High (80%)	Included in CPTPP, PA, USMCA and RCEP. The four RTA/FTAs allow the refund of any excess duties paid for an originating good if the importer did not make a claim for preferential tariff treatment at the time of importation, within a specified period of time, subject to requirements. The differences are focused on the period of time.
39	Penalties	Medium-High (80%)	This binding provision is included in CPTPP, PA, USMCA and RCEP. All concur in establishing or maintaining appropriate penalties or other measures for violations of its laws and regulations relating to this chapter. In the case of the CPTPP, this provision is not binding.
40	Confidentiality	High (100%)	Included in AANZFTA, CPTPP, PA and USMCA. The four RTA/FTAs agree that information received shall be kept confidential. Although RCEP does not have this particular provision, the article of confidentiality in the general provisions and exceptions chapter applies for this purpose. This explains the high level of convergence.

41	Advance rulings relating to origin	Medium-Low (40%)	Included only in USMCA, establishing the issuance of a written advanced ruling on origin. The other RTA/FTAs include this procedure in the customs administration and trade facilitation chapter; thus, the five RTA/FTAs include approaches for the advanced ruling issuance.
42	Review and appeal	High (100%)	Included in PA and USMCA, convergent in having access to administrative and judicial review for a determination issued by authorities. The other RTA/FTAs have similar provisions in the customs administration and trade facilitation chapter. Given that, the level of convergence is adjusted
43	Uniform regulations	Low (20%)	Included only in USMCA to define the adoption of uniform regulations for the interpretation, application, and administration of several chapters to provide practical guidance to ensure better compliance.
44	Notification of treatment	Low (20%)	Included only in USMCA, defining provisions for the notification of determinations, rulings and administrative policies.
45	Committee on rules of origin and origin procedures	Medium-High (80%)	Included in AANZFTA, CPTPP, PA and USMCA. The four RTA/FTAs agree in having a forum to follow up the implementation of the chapter, define future work, and serve as a forum for consultations and discussions, among others.
46	Sub-Committee on origin verification	Low (20%)	Included only in USMCA.
47	Short supply committee (SSC)	Low (20%)	Included only in PA to evaluate requests for the authorization of a temporary waiver for use of non-originating fibers, yarns or fabrics in the production of textile and apparel goods.
48	Consultations	Medium-Low (40%)	Included only in AANZFTA and RCEP, to ensure effective, uniform and consistent administration of the chapter.
49	Electronic system for origin information exchange	Low (20%)	Included only in RCEP.
50	Transitional provisions for goods in transit	Medium-Low (40%)	Included in AANZFTA and RCEP, defining transitional provisions and conditions for tariff preferential treatment to originating goods that were in transit or bonded storage on the date of entry into force.
51	Communication language	Low (20%)	Included only in RCEP, providing that communications between importing and exporting Parties shall be in English.
52	Contact points	Low (20%)	Included only in RCEP, designating contact points for the implementation of the chapter and the notification to the other Parties of the contact details.
53	Transposition of product-specific rules	Medium-High (80%)	Article included in RCEP. However similar undertakings are contained in PA, CPTPP and USMCA as part of the committee functions.
54	Amendments to annexes	Medium-High (80%)	In RCEP, it refers to the possibility that the RCEP joint committee may endorse, by consensus, amendments relating to PSRs and the minimum information requirements. PA, CPTPP and USMCA consider possible amendments or modifications of the chapter and the PSRs annex as part of the committee functions.
55	Settlement of disputes	Low (20%)	Included only in AANZFTA, defining a bilateral consultation process in case of a dispute related to origin determination, classification of goods or other matters.
56	Action against fraudulent acts	Low (20%)	Included only in AANZFTA, establishing binding provisions to cooperate with the appropriate authorities of the other Party or Parties when there is a suspicion of fraudulent acts related to the certificate of origin.



The overall average is of 63.6%, resulting in a medium level of convergence for the chapter.

## Conclusions

For the five RTA/FTAs, most of the provisions in the rules of origin and origin procedures chapter are binding and subject to the DS procedures.

This chapter has an overall medium level of convergence. Some key elements in the chapter were identified with a high level of convergence, such as origin criteria; goods wholly produced or obtained; regional value content; indirect materials; transit and transshipment / direct consignment; claims for preferential treatment; third-party invoicing; waiver of certification of origin; denial of preferential tariff treatment; review and appeal, among others.

One of the main issues that leads to horizontal differences in this chapter is the variety of certification or proof of origin types that are handled in the five RTA/FTAs. This difference represents certain impacts on other issues such as the basis for verification.

The five RTA/FTAs encompass a total of 17 APEC economies, meaning that at least 81% of APEC members have committed to obligations related to the chapter of rules of origin and origin procedures.

In relation to the Aotearoa Plan of Action, the provisions on rules of origin and origin procedures are linked to the trade and investment driver, more directly with the first objective referring to achieving a free, open, fair, non-discriminatory, transparent and predictable trade and investment environment, and with the collective action on increasing trade predictability and openness by improving economies' transparency through trade measures and policies.

In general, noting the different positions in the RTA/FTAs analyzed in this study regarding rules of origin and origin procedures, some challenges in specific topics such as accumulation of process, self-certification, special verification procedures, treatment of recovery materials, and certification by the importer, would require further attention as part of the discussions to advance the FTAAP agenda and achieve high standard and comprehensive regional undertakings.<sup>38</sup>

### 3.2.1. Textiles and apparel

#### *Overview*

Two RTA/FTAs (CPTPP and USMCA) include a chapter on textiles and apparel goods. Under these provisions, the Parties concur in establishing specific provisions for the sector in three main areas: rules of origin, verification procedures and special schemes that provide flexibility to grant the preferential tariff treatment. While AANZFTA, PA and RCEP do not have a chapter regarding this sector, general provisions in other chapters concerning trade remedies, customs administration and trade facilitation, market access, rules of origin, and origin procedures apply nonetheless.

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<sup>38</sup> While the analysis of product-specific rules (PSR) was not part of the scope of the project, divergences in PSR among FTAs could affect significantly whether goods can be conferred origin or not, and benefit from preferential treatment, under each of the FTAs.

**Table 7. Summary matrix of chapter on textiles and apparel**

No.	Provision	Level of convergence	Comments
1	De minimis on rules of origin	Medium (60%)	Binding language. The five RTA/FTAs rely on de minimis thresholds for textile and apparel goods to qualify as originating. There are some differences: AANZFTA and RCEP apply the de minimis based on the weight or the value of all non-originating materials used in the production of the good, while CPTPP, PA and USMCA rely only on the total weight of the non-originating materials. In addition, CPTPP and USMCA include a different approach regarding the rules for elastomeric yarn. This implied an adjustment in the level of convergence.
2	Treatment of sets	Medium-Low (40%)	Binding provision, included in CPTPP and USMCA.
3	Handmade, folkloric, or indigenous handcraft goods	Medium-Low (40%)	Binding provision, included in CPTPP and USMCA.
4	Special provisions	Low (20%)	Binding provision, included in CPTPP, PA and USMCA, but the approach differs among them. CPTPP provides special treatment to goods listed in a short supply list, while the PA has the possibility to request a waiver through a CSS for the use of non-originating materials required to produce a good. USMCA grants preferential tariff treatment for certain textile and apparel goods that use non-originating materials entering under tariff preference levels (TPLs) provisions.
5	Review and revision of rules of origin	Medium-High (80%)	Binding provision, included only in USMCA. However, the other RTA/FTAs have provisions on rules of origin revisions applying horizontally, but without specific details on the procedure to follow.
6	Emergency actions	Low (20%)	Included only in CPTPP, prescribing that Parties may take emergency actions when a textile or apparel good benefiting from the preferential treatment is being imported in such quantities as to cause serious damage to a domestic industry. For the remaining RTA/FTAs safeguard measures provided in the appropriate chapter apply to textile and apparel goods, however it is important to consider differences in scope, application and procedures. See Section 4. Trade remedies
7	Cooperation	Medium-Low (40%)	Binding provision, included in CPTPP and USMCA. Both establish a mechanism where the Parties cooperate to assist each other in the enforcement of their respective measures concerning customs offenses for trade in textile or apparel goods. USMCA Parties cooperate through the activities provided in customs administration and trade facilitation chapter. Cooperation among the Parties is also regulated by specific chapters in the remaining RTA/FTAs (AANZFTA, PA and RCEP). See Section 3. Customs administration and trade facilitation.
8	Monitoring	Low (20%)	Only CPTPP establishes programs to identify and address textile and apparel customs offenses.
9	Verification	Medium-Low (40%)	Binding provision, included in CPTPP and USMCA to conduct unannounced verification

			visits with respect to textile or apparel goods, pursuant to their provisions on origin verification, and their associated procedures. Both agreements share similar wording. The remaining RTA/FTAs use for the sector the verification procedures that are regulated by specific chapters. See Section 2 Rules of origin.
10	Determinations	Medium-Low (40%)	Binding provision, included in CPTPP and USMCA. Parties may deny a claim for preferential tariff treatment for a textile or apparel good. Whilst the other agreements do not include a chapter on textiles and apparel, it is possible for Parties to deny a claim for preferential tariff treatment for textiles and apparel following their provisions on the matter in the chapter on rules of origin and origin procedures.
11	Committee	Medium-Low (40%)	Binding provisions, included in CPTPP and USMCA.
12	Confidentiality	Medium-Low (40%)	CPTPP prescribes that the information provided to another Party pursuant to the chapter at issue designated as confidential shall keep that nature, while USMCA grounds the provision under Article 5.12 Confidentiality. The provision is also regulated by specific chapters in the rest of the RTA/FTAs. See Sections 2. Rules of origin and 3. Customs administration and trade facilitation.

The overall average is of 40%, resulting in a medium level of convergence for the chapter.

### **Conclusions**

With a few exceptions, the provisions in this chapter are binding and subject to DS procedures.

At the chapter level, the textiles and apparel chapter has a medium level of convergence for the two RTA/FTAs, including the specific provisions on textile and apparel goods defined in other chapters in the other three RTA/FTAs. The RTA/FTAs that include this chapter encompass 12 APEC economies, which means that at least 57% of APEC members have already subscribed provisions related to textile and apparel goods.

In addition, these provisions aim to establish rules in three main areas: rules of origin, verification procedures, and special schemes that provide flexibilities to grant the tariff preferential treatment. The alignment with the Trade and Investment driver of the Aotearoa Plan of Action is evident, including with the objectives to progress liberalization of trade in goods by reducing barriers and strengthening trade facilitation, and to increase trade predictability and openness.

Finally, noting that trade in textile and apparel goods involve sectors that are labor intensive, discussing provisions related to textile and apparel in APEC's efforts to advance the FTAAP agenda to contribute to high standard and comprehensive regional undertakings is recommended.

### 3.3. CUSTOMS ADMINISTRATION AND TRADE FACILITATION

#### Overview

The five covered RTA/FTAs include a chapter on customs administration and trade facilitation. The provisions share similarities on the importance of making trade across borders more predictable and expedite, while ensuring their safety and security; the transparency and simplification on the procedures and formalities; and the promotion of cooperation among the customs administrations of the participating Parties, including the exchange of information and documents for trade in goods. To this end, most of the actions foreseen under the chapters included in these five agreements are based on enforceable commitments.

**Table 8. Summary matrix of chapter on customs administration and trade facilitation**

No.	Provision	Level of convergence	Comments
1	General provisions	Medium (60%)	Binding language. There are detailed provisions in RCEP and AANZFTA concerning the covered matters and structure. The topics contained are implicit across the provisions included in USMCA, CPTPP and PA.
2	Customs procedures and trade facilitation	Medium-High (80%)	Binding language. AANZFTA, CPTPP, USMCA and RCEP have similar wording and structure, but USMCA provides additional elements such as: requirements to differentiate import, export and transit procedures, and the review of such procedures to ensure their efficiency.
3	Publication	Medium-High (80%)	Best endeavor and binding language. Included in all five agreements with differences in degree of detail, as USMCA and RCEP comprise in-depth information to be publicly issued and updated to enable interested parties to be aware of. AANZFTA, CPTPP and RCEP provide to make publicly available their customs laws and general administrative decisions without specifying in detail.
4	Enquiry points	Medium-High (80%)	Binding language. Included in all five agreements with same structure, except for USMCA, which provides for the non-requirement of payments of fees for answering enquiries and the obligation to respond within a reasonable period of time to such enquiries.
5	Administrative guidance	Low (20%)	Binding language. Only in USMCA, providing for the adoption of administrative procedures whereby Parties' customs offices may request guidance from their customs administration regarding the correct application of customs laws.
6	Advance rulings	Medium (60%)	Binding language. Included in all five agreements. Divergences rely on: deadlines for issuing the rulings; the procedures for refusal on specific cases; the dates on which modifications or revocations become effective; permissive obligations acquiring legal or non-legal representation in the territories for the issuing Parties; the adoption of uniform procedures throughout the Parties' territories on the issuance of advance rulings; treatment conferred to Parties

			regarding determinations of origin; among others. These differences render the convergence medium.
7	Advice or information regarding duty drawback or deferral programs	Medium-Low (40%)	Binding language. Only in CPTPP and USMCA. Parties agree to provide advice or information on the facts contained in the request on the application of duty drawback or other types of relief sharing same structure.
8	Authorized economic operator (AEO)	Low (20%)	Best endeavor and binding language. RCEP provides in detail the trade facilitation measures that Parties confer to authorized operators. USMCA and PA agree to maintain and strengthen AEO programs according to World Customs Organization (WCO) standards. Divergences in approach render the convergence low
9	Automation and single windows	Medium-High (80%)	Best endeavor and binding language. Included in the five agreements with same structure by accepting and recognizing the use of information technology to expedite customs procedures. Additionally, the Parties to the PA and USMCA agreed to implement single windows systems. PA provision related to single window is more ambitious than USMCA as PA Parties work further in the interoperability of the tool. Nuances in single windows provisions render the convergence to medium-high.
10	Border inspection	Low (20%)	Best endeavor. Only USMCA promotes efficient processing of imports and exports, including coordination among different border agencies in the examination of goods.
11	Committee on Trade Facilitation and Sub-Committee on Customs Enforcement	Low (20%)	Binding language. Only in USMCA, by requiring Parties to engage in different activities such as the exchange of information, sharing views on cases involving tariff classification, customs valuation, consult and resolve issues relating trade facilitation chapter, among others. Whereas the sub-committee addresses issues related to potential or real customs offences.
12	Confidentiality and specific confidential information	Medium (60%)	Binding language. AANZFTA, CPTPP, PA and USMCA share a similar structure by providing for confidential treatment when a Party allows access to information designed as confidential to another Party. However, only CPTPP and USMCA agree on the exchange of specific confidential information if the Parties have reasonable suspicion of unlawful activities. These differences render the provision medium.
13	Consultations and contact points	Medium (60%)	AANZFTA Parties endeavor to encourage consultations, whereas RCEP binding provision allows Parties to request consultations regarding any significant customs matter. Concerning contact points, although USMCA, RCEP, and CPTPP Parties recognize their designation in a binding nature, the scope of the provision in the three agreements differs: RCEP Parties design them for the purposes of the chapter, while USMCA and CPTPP for specific matters, as for the exchange of confidential information and specific confidential information. These differences render the provision medium.

14	Customs brokers	Low (20%)	Binding language, only included in USMCA, by allowing importers and any other person to self-file a customs declaration and other documentation without the services of a customs broker.
15	Customs compliance verification requests	Medium-Low (40%)	Binding language. PA and USMCA Parties set out requests to conduct verifications in any Party's territory to assist the requesting Party to determine whether a customs offense is occurring or has occurred, but PA provision differs in structure as it defines such requests as mutual assistance and includes more extensive commitments regarding the form and content of this assistance, the information to be contained in the requests, among others.
16	Customs cooperation	Medium-High (80%)	Best endeavor. Included in the five agreements. However, USMCA approach includes additional elements as cooperation on enforcement, Parties assistance to detect, prevent, or address potential or real customs offenses and the development of customs enforcement initiatives. These differences render the convergence medium-high.
17	Express shipments	Medium-High (80%)	Binding language. Included in CPTPP, PA, USMCA and RCEP. The Parties agree on basic provisions for express consignments, but differences arise in USMCA as it incorporates additional elements as the specific fixed amounts to ensure shipments not to be subject to tax and duties at the point of importation, <sup>39</sup> and the adoption of fewer formalities to shipments valued at specific rates. This last renders the convergence medium-high.
18	Penalties	Medium-Low (40%)	Binding language. PA presents less extensive commitments in relation to CPTPP and USMCA, which share similar structure regarding basic commitments and new elements, as potential conflicts of interest when imposing penalties and procedures for issuing written explanations of penalties to the parties to whom penalties are imposed. These nuances render the convergence medium-low.
19	Post-clearance audit	Medium-Low (40%)	Binding language. Included in USMCA and RCEP with similar structure, highlighting the adoption of such audits to ensure compliance with the Parties' customs laws, providing for the conduct of these audits in a risk-based manner.
20	Protection of trade information	Low (20%)	Binding language, only in USMCA, by providing for the appliance of measures governing the collection and disposal of information that Parties collect from traders.
21	Release of goods	Medium (60%)	Binding language. Included in PA, USMCA, CPTPP and RCEP. Parties agree on basic provisions for the release of goods. However, USMCA and CPTPP include additional elements regarding the conditioned release of goods, whereas RCEP adds provisions for perishable goods. These differences render the convergence medium.

<sup>39</sup> A similar obligation is included in CPTPP, but the obligation on periodical review of the fixed amount is suspended.

22	Review and appeal	Medium-High (80%)	Binding language. Included in the five agreements with similar structure, but USMCA and RCEP contain additional elements such as the coverage of administrative and judicial appeals in the territories of the Parties, and petitions to further appeal, among others. These nuances render the convergence medium-high.
23	Risk management	High (100%)	Binding language. Included in the five agreements with similar scope and structure. There is correspondence in the importance of the adoption of risk management systems for customs control.
24	Standards of conduct	Low (20%)	Binding language, only in USMCA, by agreeing to deter the Parties' customs officials from engaging in activities that may result in the use of their public position for monetary gains.
25	Transit	Low (20%)	Binding language, only in USMCA, providing for traffic in transit definitions, its formalities, and requirements for its efficient operation.

The overall average is of 51.2%, resulting in a medium level of convergence for the chapter.

## Conclusions

At the chapter level, the customs administration and trade facilitation provisions have a medium level of convergence for the five RTA/FTAs. However, most of all the chapters' provisions are included in all five of the analyzed agreements, which means that at least 81% of APEC members have already undertaken related commitments.

In addition, provisions on customs administration and trade facilitation seek to ensure predictability, consistency, and transparency in the application of customs laws and regulations of the Parties. They align with the promotion of seamless connectivity, resilient supply chains and responsible business conduct objective under Aotearoa Plan of Action's Trade and Investment driver. The possibilities for further convergence towards high standard and comprehensive regional undertakings in this regard would seem feasible. Discussions around trade facilitation and customs administration provisions do not represent major challenges, as the convergence with respect to common provisions is high. However, some divergences may arise in terms of depth, commitments, and coverage of topics, as the structure and scope of these provisions are not the same in the five agreements. These divergences would require more detailed attention in APEC's efforts to advance the FTAAP agenda.

### 3.4. TRADE REMEDIES

#### Overview

Four RTA/FTAs (AANZFTA, CPTPP, USMCA and RCEP) contain provisions on safeguards and three (CPTPP, USMCA and RCEP) on antidumping and subsidies. Only USMCA contains provisions on cooperation on preventing duty evasion of trade remedy laws that cover safeguards, antidumping and subsidies. In terms of wording and scope, the provisions are similar, but the structure is different – e.g., while in AANZFTA the provisions are in different chapters, in CPTPP, USMCA and RCEP these provisions are under sections within the same chapter – and the level of detail varies. Safeguard measures are one area that depends on the market access needs of Parties and there is no common approach to the regulation of global safeguards. Under the AANZFTA, Australia and New Zealand agreed that the chapter on

safeguard measures shall not create rights and obligations between them. Regarding antidumping and countervailing duties, the four RTA/FTAs are similar in terms of not affecting the rights and obligations under WTO agreements on these matters and prescribe additional provisions.

Only USMCA includes a unique mechanism that replaces judicial review of final antidumping and countervailing duty determinations with binational panel reviews.

**Table 9. Summary matrix of chapter on trade remedies**

No.	Provision	Level of convergence	Comments
<b>Safeguards</b>			
1	Global safeguards	Medium-High (80%)	Binding language. AANZFTA, CPTPP, RCEP and USMCA have similar wording and structure, but USMCA provides additional elements, such as requirements to differentiate import, export and transit procedures; and the review of such procedures to ensure their efficiency. CPTPP also prescribes certain rules if the originating goods are under a tariff rate quota or another safeguard measures under that treaty.
2	Imposition of a transitional safeguard measure	Medium (60%)	Binding language. ANZFTA, CPTPP and RCEP allow the imposition of safeguard measures during transitional periods. Bilateral safeguards are not contained in USMCA.
3	Standards for a transitional safeguard measure	Medium (60%)	Binding language. AANZFTA, CPTPP and RCEP establish provisions regulating the periods of time of maintenance of the measure, its duration and application.
4	De minimis and special treatment	Medium-Low (40%)	Binding language, included in AANZFTA and RCEP, regarding an exclusion from safeguards when imports of a Party do not exceed three per cent of the total imports (de minimis) and if Parties in such situation do not account for not more than nine per cent. Only RCEP specifies originating goods of any least developed Party <sup>40</sup> shall not be affected by any provisional or transitional safeguard measure.
5	Provisional safeguard measures	Medium-Low (40%)	Binding language, included in AANZFTA and RCEP. A Party may impose a provisional measure based on a preliminary determination of damage or a threat to cause serious injury to the domestic industry.
6	Investigation procedures and transparency requirements	Medium (60%)	Binding language, included in AANZFTA, CPTPP and RCEP, similar in that an investigation is required to impose a safeguard measure, and incorporate some provisions of the Agreement on Safeguards.
7	Notification and consultation	Medium (60%)	Binding language, included in AANZFTA, CPTPP and RCEP, and prescribe notification obligations on safeguards measures during the transition period.
8	Compensation	Medium (60%)	Binding provision, included in AANZFTA, CPTPP and RCEP, convergent in the right to the Party affected by the safeguard measure to receive a compensation.
9	Other provisions	Medium-Low (40%)	Binding language. Only RCEP contains a specific provision regarding transitional safeguard measures with two elements, one of which is covered in the

<sup>40</sup> For purposes of this report, following the APEC style guide, the actual name of this provision was adapted and corresponds to RCEP Article 7.6(2) which can be found at <https://rcepsec.org/wp-content/uploads/2020/11/Chapter-7.pdf>



			general provisions of three RTA/FTAs (CPTPP, PA and USMCA).
10	Administration of emergency action proceedings	Low (20%)	Binding language. Only contained in USMCA, regulating determinations of serious injury, or threat thereof, in emergency action proceedings to a competent investigating authority.
<b>Antidumping and countervailing duties</b>			
11	Antidumping and countervailing duties	Medium (60%)	Binding language. CPTPP, USMCA and RCEP state that rights and obligations of WTO on antidumping and countervailing duties are not affected. CPTPP and USMCA establish provisions on practices that are included in an annex (see the next subparagraph).
12	Practices relating to antidumping and countervailing duty proceedings	Low (20%)	Included in CPTPP and USMCA, which contain an annex on practices relating to antidumping and countervailing duty proceedings; however, the provisions of each annex are different. Some RCEP provisions contained in other articles are similar to a certain extent but are not entirely equivalent. Accordingly, this provision is rated as low.
13	Notification and consultations	Medium-Low (40%)	Binding language, only included in RCEP in a specific article, but also developed in CPTPP and USMCA in a less detailed fashion. Accordingly, this provision is rated as medium-low.
14	Prohibition of zeroing	Low (20%)	Binding language. Only contained in RCEP.
15	Disclosure of the essential facts	Medium-Low (40%)	Binding language. Only contained in a specific provision in RCEP, but CPTPP and USMCA also develop this provision to a certain extent. Accordingly, this provision is rated as medium-low.
16	Treatment of confidential information	Medium-Low (40%)	Binding language. Included only in RCEP in a specific provision, but also there is a similar provision in CPTPP and USMCA. Accordingly, this provision is rated as medium-low.
17	Non-application of dispute settlement	Medium (60%)	Binding language. CPTPP, USMCA and RCEP establish that no Party shall recourse to dispute settlement for any matter arising under section on antidumping and countervailing duties or the annex on practices relating to antidumping and countervailing duty proceedings.
18	Review and dispute settlement in antidumping and countervailing duty matters	Low (20%)	Binding language. Only USMCA contains an entire and detailed section on this subject by which each Party shall replace judicial review of final antidumping and countervailing duty determinations with binational panel reviews.
<b>Safeguards, antidumping and subsidies</b>			
19	Cooperation on preventing duty evasion of trade remedy laws	Low (20%)	Binding language, only in USMCA.

The overall average is of 44%, resulting in a medium level of convergence for the chapter.

Regarding the average per section: the average for safeguard provisions is 49% since this section is contained in four RTA/FTAs (AANZFTA, CPTPP, USMCA and RCEP) which results in medium level of convergence and the average for antidumping and countervailing duties provisions is 37.7% considering that this section appears in three RTA/FTAs (CPTPP,

USMCA and RCEP). Only USMCA contains a provision related to duty evasion covering safeguards, antidumping and subsidies which represents 20%.

## Conclusions

In general, the provisions in these chapters are binding. However, while provisions on safeguards are subject to DS procedures, the provisions on antidumping and countervailing duties are not. Only USMCA contains a provision covering safeguards, antidumping and subsidies, which is subject to DS procedures.

At the chapter level, the chapter has a medium level of convergence. Despite that, the agreements that include provisions on trade remedies encompass 17 APEC economies, which means that at least 81% of APEC members have already subscribed to provisions related to this chapter.

The trade remedies matter is in line with the Aotearoa Plan of Action objective of continuing to work together to deliver, a free, open, fair, non-discriminatory, transparent and predictable trade, in particular with the collective action on the collective action on increase trade predictability and openness by improving economies' transparency through trade measures and policies.

Trade remedies could be a sensitive subject, and requires further attention in the efforts to advance the FTAAP agenda and contribute to high standard and comprehensive regional undertakings, such as provisions on safeguard measures or some on antidumping and countervailing duty proceedings (the latter not subject to DSM). Similarly, as part of the FTAAP agenda, the diversity in viewpoints in certain aspects of the free trade agreements analyzed in this study motivate a space for dialogue to get a better understanding of the issues, such as the binational panels included in USMCA, or the prohibition of zeroing contained in RCEP.

## 3.5. SANITARY AND PHYTOSANITARY MEASURES

### Overview

The SPS chapter is included in the five RTA/FTAs. Its provisions are based on the WTO SPS Agreement; therefore, chapter provisions are mostly binding and encompass others related to new commitments established in these RTA/FTAs, such as science and risk analysis, adaptation to regional conditions, equivalence, transparency and import checks.

The SPS chapters in the five agreements are similar in indicating that Parties are free to implement necessary measures for the protection of human, animal and plant life or health, provided that such measures are not inconsistent with provisions of those chapters. In relation to the enforceability of the chapter, DS procedures are excluded in AANZFTA, and apply to the rest of the agreements.

**Table 10. Summary matrix of chapter on sanitary and phytosanitary measures**

No.	Provision	Level of convergence	Comments
1	Scope	High (100%)	All the agreements establish a clear limit on the application of the chapter. Binding provision.
2	Objectives	High (100%)	Guaranteeing human, animal, or plant life or health is a shared objective in the five agreements.

3	General provisions	High (100%)	Binding provision related to members' commitments to the SPS Agreement.
4	Implementation	Low (20%)	Only RCEP includes this provision to permit mutual agreements among the parties to determined understandings and details for applying the chapter. Non-binding language.
5	Science and risk analysis	Medium-High (80%)	Binding provision presented in four agreements, except in AANZFTA. Any SPS measure must be science-based.
6	Enhancing compatibility of SPS measures	Low (20%)	This provision is only in USMCA with binding language to equalize SPS measures among members and autonomy of each member to define the level of protection.
7	Adaptation to regional conditions	High (100%)	Binding provision in all agreements that recognize the regionalization of internal sanitary conditions of one Party when SPS measures are applied by other Party.
8	Harmonization	Low (20%)	This provision is only present in PA with binding language to promote working on mutual SPS issues.
9	Equivalence	High (100%)	The five agreements contain this binding provision, to assure a similar level of protection among SPS measures of the members.
10	Import checks	Medium (60%)	Binding provision contained in CPTPP, USMCA and RCEP, that aims to expedite the importation process.
11	Certification	Medium (60%)	CPTPP, USMCA, and RCEP contain this binding provision to guarantee that imported goods comply with SPS measures.
12	Emergency measures	Medium (60%)	Binding language is present in CPTPP, USMCA and RCEP to notify to other Parties when a Party implements this kind of measure.
13	Transparency	Medium-High (80%)	Four contain this binding provision, except for AANZFTA, which is binding and establishes a process to give transparency to the design and implementation of SPS measures.
14	Competent authorities and contact points	High (100%)	Binding language. The five RTA/FTAs recognize these figures to facilitate the management of SPS issues.
15	Cooperation	High (100%)	All agreements include this binding provision to explore further cooperation among the Parties (collaboration, exchange of information, technical assistance and capacity building).
16	Information exchange	Medium-High (80%)	AANZFTA, CPTPP, PA and USMCA include this provision with non-binding language to request information between parties on SPS issues.
17	Audits	Medium-High (80%)	Binding provision included in four agreements reflects the right of the importing Party to audit the exporting Party's competent authorities.
18	Control, inspection and approval procedures	Low (20%)	Only PA contains this provision.
19	Committee on SPS measures	High (100%)	All agreements include this binding provision.
20	Technical working groups	Low (20%)	Only USMCA contains this binding provision. The groups are the first instance to attempt to review issues related to SPS measures.
21	Technical consultations	High (100%)	Binding provision included in all RTA/FTAs. This mechanism is the first instance and an alternative way to reach a solution to differences among the Parties.
22	Dispute settlement	Medium-High (80%)	Binding language. The mechanism is activated differently in four RTA/FTAs, and is excluded from AANZFTA.

The overall average is of 71.8%, resulting in a high level of convergence for the chapter.

## Conclusions

Most of the provisions on SPS measures are binding. With respect to the enforceability of the chapter, DS procedures are applied to four of the agreements. This mechanism is non-applicable in AANZFTA.

At the chapter level, there is a high level of convergence. However, most of the provisions are included in all analyzed agreements, which means that at least 17 APEC economies, or 81% of APEC members, have already undertaken commitments related to SPS.

Considering that the main objective of sanitary and phytosanitary provisions is to facilitate trade among the Parties while protecting human, animal or plant life or health in the territory of each Party, this goal is aligned to the first driver of the Aotearoa Plan of Action "Trade and Investment" to deliver a free, open, fair, non-discriminatory, transparent, and predictable trade and investment environment.

Finally, given the need for free trade flows to be secure to guarantee the protection of human, animal, and plant life and health through SPS measures, the incorporation of this kind of measures in the efforts to advance the FTAAP agenda to contribute to high standard and comprehensive regional undertakings seems feasible.

### 3.6. TECHNICAL BARRIERS TO TRADE

#### Overview

The five RTA/FTAs incorporate a TBT chapter confirming the centrality that APEC economies attach to this issue. TBT chapter provisions are based on the WTO TBT Agreement. Provisions such as incorporation of TBT Agreement, conformity assessment, transparency, cooperation and trade facilitation and, information exchange and technical discussions tend to converge overall, while divergence among the five agreements can be found in provisions such as standards, compliance period for technical regulations and conformity assessment procedures, and implementing arrangements.

The TBT chapters in AANZFTA, CPTPP, PA and USMCA are subject to DS procedures.<sup>41</sup> Under RCEP, DS procedures are non-applicable at the entry into force of the agreement, but a future application is subject to a review process.

**Table 11. Summary matrix of chapter on technical barriers to trade**

No.	Provision	Level of convergence	Comments
1	Objectives	Medium-High (80%)	Binding provision, included in AANZFTA, CPTPP, PA and RCEP, corresponds with the main objective of increasing and facilitating trade by eliminating or avoiding unnecessary TBT.
2	Scope	High (100%)	Binding language, included in the five RTA/FTAs, highly convergent. CPTPP and RCEP offer more detail on the scope.
3	Incorporation of the TBT Agreement	Medium-High (80%)	There are different levels of relationship with the TBT Agreement in the five RTA/FTAs, ranging

<sup>41</sup> AANZFTA: article 3. scope and coverage of chapter 17. consultations and dispute settlement; CPTPP: article 28.3. scope of chapter 28. dispute settlement; PA: article 17.3. scope of chapter 17. dispute settlement; USMCA: article 31.2 scope of chapter 31. dispute settlement; RCEP: Article 6.14 dispute settlement.

			from incorporating specific provisions (CPTPP, USMCA and RCEP), ratifying the rights and obligations of the members (AANZFTA and RCEP), to its full incorporation (PA).
4	International standards, guides, and recommendations	Medium-High (80%)	Except for AANZFTA, the rest of the RTA/FTAs include this binding provision and converge with the institutional and technical foundations (decisions and recommendations adopted by the WTO committee on TBT) to determine whether an international standard, guide, or recommendation exists.
5	Standards	Medium-Low (40%)	Binding language, included in AANZFTA and RCEP with similar wording and structure, but RCEP provides an additional provision related to the modifications to the contents or structure of the relevant international standards.
6	Technical regulations	Medium-High (80%)	Except for CPTPP, the four RTA/FTAs include this binding provision, with differences in degree of detail.
7	Conformity assessment	High (100%)	Binding language, included in the five RTA/FTAs, highly convergent.
8	Transparency	High (100%)	Binding language, included in the five RTA/FTAs.
9	Compliance period for technical regulations and conformity assessment procedures	Medium-Low (40%)	Binding language, included in CPTPP and USMCA, is similar regarding the interval between the publication of a measure and its entry into force.
10	Cooperation and trade facilitation	High (100%)	Binding provision, included in the five RTA/FTAs. CPTPP, PA and USMCA include details on cooperation and trade facilitation, while AANZFTA and RCEP only on cooperation.
11	Information exchange and technical discussions	Medium-High (80%)	The five RTA/FTAs include this binding provision. CPTPP and USMCA offer more details on these issues.
12	Committee on TBT	Medium-High (80%)	Binding language. The committee (subcommittee in AANZFTA) is presented in four RTA/FTAs (except RCEP).
13	Contact points	Medium-High (80%)	Binding provision, included in AANZFTA, CPTPP, USMCA and RCEP.
14	Sectoral annexes	Medium (60%)	Only CPTPP, PA and USMCA include sectoral annexes. In CPTPP and PA there is the possibility of including new sectoral annexes, while in the USMCA the sectoral annexes are limited to those contained in the chapter of sectoral annexes.
15	Implementing arrangements	Low (20%)	Only RCEP contains this non-binding provision on bilateral or plurilateral arrangements to establish areas of cooperation of mutual interest for applying the chapter.
16	Dispute settlement	Low (20%)	Only RCEP includes this binding provision. In accordance with the DS chapter of the other agreements, the TBT chapter is subject to the DS procedures.

The overall average is of 71.3%, resulting in a high level of convergence for the chapter.

## Conclusions

In most cases, binding language is present in TBT provisions. With respect to the enforceability of the chapter, TBT provisions are subject to DS procedures in AANZFTA, CPTPP, PA and USMCA. However, for CPTPP, USMCA and RCEP, incorporated provisions from the WTO TBT Agreement are not subject to DS procedures. Under the RCEP, DS procedures are non-applicable at the entry into force of the agreement, but a future application is subject to a review process.

Notwithstanding that the five RTA/FTAs have included a TBT chapter as part of their obligations, which emphasizes the importance that APEC economies attach to this subject, the chapter has a medium level of convergence. This is so in light of differences in areas such as standards, compliance period for technical regulations and conformity assessment procedures, and implementing arrangements. However, most of the provisions are included in the five RTA/FTAs, which means that at least 17 APEC economies, or at least 81% of APEC members, have already undertaken commitments regarding TBT.

The TBT provisions seek to facilitate trade ensuring that standards, technical regulations, and conformity assessment procedures do not create unnecessary obstacles to trade, enhancing transparency, and promoting greater regulatory cooperation and good regulatory practice. This goal is aligned to Aotearoa Plan of Action's drive related to trade and investment to deliver a free, open, fair, non-discriminatory, transparent, and predictable trade and investment environment.

The centrality that APEC economies attach to transparency in TBT regulations to prevent unnecessary restrictions to the flow of goods among APEC economies, would make it feasible to facilitate the development of initiatives to advance the FTAAP agenda in this area.

### 3.6.1. Sectoral annexes

#### *Overview*

As a complement of the TBT chapter, CPTPP, PA and USMCA include sectoral annexes which contain specific provisions for eleven sectors: (i) wine and distilled spirits; (ii) information and communication technology; (iii) pharmaceuticals; (iv) cosmetics; (v) medical devices; (vi) proprietary formulas for prepackaged and food additives; (vii) organic products; (viii) chemical substances; (ix) energy performance standards, (x) food supplements, and (xi) household cleaning products.

As shown in Table 12, two annexes are common to three agreements, three annexes are common to two agreements, and the remainder of annexes are included in either CPTPP or USMCA. In the case of the PA, the annexes relating to medical devices, food supplements, and household cleaning products have not yet entered into force as they have not been ratified by all PA Parties and are therefore not part of the analysis (Table 12).

**Table 12. Sectoral annexes included in the RTA/FTAs**

No.	Sectoral annexes	CPTPP	PA	USMCA
1	Cosmetics	✓	✓	✓
2	Information and communication technology	✓		✓
3	Pharmaceuticals	✓		✓
4	Medical devices	✓	✓ <sup>1/</sup>	✓
5	Wine and distilled spirits	✓		
6	Proprietary formulas for prepackaged food and food additives	✓		
7	Organic products	✓		
8	Chemical substances			✓
9	Energy performance standards			✓
10	Food supplements		✓ <sup>2/</sup>	
11	Household cleaning products		✓ <sup>3/</sup>	

The Free Trade Commission of the Additional Protocol to the Pacific Alliance Framework Agreement by Decision approved the corresponding sectoral annex through:

<sup>1/</sup> Decision 12 on 19 June 2021.

<sup>2/</sup> Decision 9 on 10 December 2020.

<sup>3/</sup> Decision 11 on 30 April 2021.

Once each Annex has been ratified by all Parties, it will enter into force 60 days after the date of the last ratification notified by the Parties to Colombia, as depositary Party.

In CPTPP and PA, sectoral annexes are included as an annex of the TBT chapter, so they are part of this chapter. In USMCA, they are presented under Chapter 12 (sectoral annexes). CPTPP and PA explicitly leave open the possibility of integrating additional sectoral annexes, while the scope of USMCA is limited to the sectoral annexes specified in Chapter 12.

Table 13 describes the summary of those sectoral annexes that are common in CPTPP, PA and USMCA.

**Table 13. Summary matrix of chapter on sectoral annexes**

No.	Provision	Level of convergence	Comments
<b>Cosmetics</b>			
1	Scope	Medium-Low (40%)	Binding provision, included in CPTPP and USMCA.
2	Competent authorities	Medium-Low (40%)	Binding provision, included in CPTPP and USMCA, highly convergent.
3	Enhancing regulatory compatibility	Medium-Low (40%)	Binding provision, included in CPTPP and USMCA, similar in calling to improve the alignment of regulations and regulatory activities for cosmetic products.
4	Application of regulatory controls	Medium (60%)	CPTPP, PA and USMCA include this binding provision and correspond on the importance of establishing regulatory controls to ensure national treatment to the goods traded between the Parties.
5	Ingredients review system	Low (20%)	Binding provision. Only PA includes this system to recognize and/or prohibit ingredients.
6	Labeling	Medium-Low (40%)	PA and USMCA share this binding provision and recognize the importance of having a label containing information about ingredients of the cosmetics products and the requirements for consumer protection. CPTPP does not require labeling to the use of labelling with a marketing authorization or notification number.
7	Elimination of the certification of free sale	Medium-Low (40%)	CPTPP and PA contain this binding provision to facilitate the free sale of cosmetics.

8	Good manufacture practices	Medium (60%)	Binding provision. CPTPP, PA and USMCA correspond on the basis of good manufacturer practices.
<b>Pharmaceuticals</b>			
9	Scope	Medium-Low (40%)	CPTPP and USMCA include this binding provision, highly convergent.
10	Competent authorities	Medium-Low (40%)	Binding provision. Both RTA/FTAs include the designation of responsible authorities and avoid unnecessary duplication of authorities' functions and regulatory requirements.
11	Enhancing regulatory compatibility	Medium-Low (40%)	Binding provision, included in CPTPP and USMCA, similar in calling to improve the alignment of regulations and regulatory activities for pharmaceutical products.
12	Application of regulatory controls	Low (20%)	Binding provision, included only in USMCA.
13	Marketing authorizations	Medium-Low (40%)	CPTPP and USMCA include a similar language in this binding provision and concur in establishing a detailed procedural requirement for marketing approval processes.
<b>Medical devices</b>			
14	Scope	Medium-Low (40%)	CPTPP and USMCA include this binding provision, highly convergent.
15	Competent authorities	Medium-Low (40%)	Binding language, included in CPTPP and USMCA. Both consider the designation of responsible authorities and avoid unnecessary duplication of authorities' functions and regulatory requirements.
16	Enhancing regulatory compatibility	Medium-Low (40%)	CPTPP and USMCA include this binding provision with a very similar language to improve the alignment of regulations and regulatory activities for medical devices.
17	Application of regulatory controls	Low (20%)	Binding provision, included only in USMCA. It considers the importance of establishing regulatory controls to ensure national treatment to the medical devices traded between the Parties.
18	Marketing authorizations	Medium-Low (40%)	Both CPTPP and USMCA include similar language in this binding provision and concur in establishing a detailed procedural requirement for marketing approval processes.
<b>Information and communication technology</b>			
19	ICT goods that use cryptography	Medium-Low (40%)	Binding language. Both agreements concur in the scope and exclusions for this kind of goods.
20	Electromagnetic compatibility of ITE products	Medium-Low (40%)	CPTPP and USMCA include this binding provision and which is similar on language and scope.
21	Regional cooperation activities on telecommunications equipment	Medium-Low (40%)	CPTPP and USMCA include this binding provision with a very similar language to improve the alignment of regulations and regulatory activities for medical devices.
22	Terminal equipment	Low (20%)	Only USMCA includes this binding provision.

The level of convergence for these sectoral annexes is medium, in the case of cosmetics with an overall average of 42.5%, and a low level for pharmaceuticals, medical devices and ICT, with an overall average of 36%, 36% and 35% respectively.



For the sectoral annexes that are contained exclusively in CPTPP (proprietary formulas for prepackaged food and food additives, and organic products) and in USMCA (chemical substances, and energy performance standards), the overall level for each annex is 20%, resulting in a low level of convergence.

### Conclusions

In general, the sectoral annexes contain binding language, and are also subject to DS procedures, as an extension of the TBT chapter.

At the sectoral annex level, only the cosmetics annex has a medium level of convergence, and the rest of them register a low level.

Considering that sectoral annexes are a complement of the TBT chapter, and their commitments are designed to promote effective regulation to facilitate trade between the parties, these annexes are also aligned to Aotearoa Plan of Action's drive related to trade and investment to deliver a free, open, fair, non-discriminatory, transparent, and predictable trade and investment environment. However, sectoral annexes could be challenging for APEC economies, noting their divergent interests in certain sectors.

## 3.7. INVESTMENT

### Overview

The five RTA/FTAs include a chapter on investment. These chapters set out substantive obligations to protect investors of the Parties and their covered investments. Except for RCEP, the rest establish ISDS in some form. This means that substantive obligations are binding and can be enforced through the ISDS or the means set out in each agreement's chapter on dispute settlement. Notwithstanding that the RCEP does not have ISDS, the chapter is not excluded from the dispute settlement chapter of the agreement. In addition, the RCEP established a commitment for the Parties to enter into discussions about ISDS as part of a future work program. Finally, under the AANZFTA, Australia and New Zealand agreed that this chapter shall not create rights and obligations between them.<sup>42</sup>

**Table 14. Summary matrix of chapter on investment**

No.	Provision	Level of convergence	Comments
1	Scope, relation with other chapters	High (100%)	The five RTA/FTAs shared understanding of the application of the chapter. Clarifications and exclusions vary among them.
2	Definitions	Medium-High (80%)	The definitions that are similar to the five chapters share main features. Definitions related to ISDS are not included in RCEP.
3	National treatment	High (100%)	NT is similar in the five RTA/FTAs, covering pre- and post- establishment and including an "in like circumstance" comparator, but some chapters introduced clarifications.

<sup>42</sup> See letters exchanged between Australia's Minister for Trade and New Zealand's Minister for Trade on the application of the AANZFTA between Australia and New Zealand available at <https://www.dfat.gov.au/trade/agreements/in-force/aanzfta/official-documents/Pages/official-documents>

4	Most-favored-nation treatment	Medium-High (80%)	Except for AANZFTA, MFN treatment is similar in the other four RTA/FTAs. MFN covers pre- and post- establishment and includes an “in like circumstance” comparator. Some chapters introduce clarifications. RCEP excludes some economies.
5	Treatment of investment	High (100%)	The five RTA/FTAs include a qualified Fair and Equitable Treatment (FET) clause subject to Customary International Law (CIL), but some chapters introduce clarifications.
6	Compensations for losses/Treatment in case of armed conflict or civil strife	High (100%)	The five RTA/FTAs provide for NT and MFN under armed conflict or civil strife. AANZFTA and RCEP include state of emergency.
7	Expropriation and compensation	High (100%)	The five RTA/FTAs include similar rules, including an Annex on Expropriation. There are variations for determining indirect expropriation.
8	Transfers	High (100%)	The main rules governing transfers are similar in the five RTA/FTAs, i.e., freely, without delay and in a freely usable currency. Clarifications in particular aspects differ between CPTPP/PA/USMCA and AANZFTA/RCEP.
9	Performance requirements	Medium-High (80%)	Included in the five RTA/FTAs. However, AANZFTA approach is different in that it refers to the WTO TRIMS Agreement. It is worth noting that Parties to AANZFTA also have agreed on an approach similar to the other RTA/FTAs in the context of RCEP.
10	Senior management and boards of directors	Medium-High (80%)	Except for AANZFTA, the rest of the RTA/FTAs include a similar provision on SMBD. It is worth noting that Parties to AANZFTA also have agreed on an approach similar to the other RTA/FTAs in the context of RCEP.
11	Reservations / Non-conforming measures	High (100%)	Included in five RTA/FTAs. AANZFTA limits the reservations to NT. CPTPP, PA and USMCA establish reservations on NT, MFN, PRs and SMBD.
12	Subrogation	Medium-High (80%)	Except for PA, the rest RTA/FTAs include the provision. It is worth noting that Parties to PA have agreed to it in CPTPP and USMCA.
13	Special formalities and information requirements	High (100%)	The five RTA/FTAs contain the provision in similar terms.
14	Denial of benefits	High (100%)	The five RTA/FTAs include the provision. There are common assumptions to deny benefits, but CPTPP, USMCA and RCEP include additional cases.
15	Transparency	Medium-High (80%)	Only included in AANZFTA. However, taking into account that the chapters on transparency of the other four RTA/FTAs cover most of its content, the level of convergence is medium-high.
16	Special and differential treatment for the newer ASEAN members	Low (20%)	Only included in AANZFTA.
17	Work program	Medium-Low (40%)	This provision refers to specific to issues under AANZFTA or RCEP under discussion that may be incorporated into the chapters.
18	Committee on Investment/Implementation	Medium (60%)	Included in three RTA/FTAs. For RCEP, the Committee is established in the Services chapter.
19	Investment and environmental, health and other regulatory objectives	Medium (60%)	Included in three RTA/FTAs with similar language.

20	Corporate social responsibility	Medium (60%)	Included in three RTA/FTAs with a non-binding language.
21	Security exceptions	Medium (60%)	The provision is only included in RCEP. However, this provision is identical to CPTPP and USMCA security exception of the chapter on general provisions and exceptions, which means that under these agreements it would apply to the investment chapter. It is worth noting that Parties to AANZFTA and PA have agreed to it in the other RTA/FTAs.
22	Promotion of investment/Facilitation of investment	Medium-Low (40%)	The facilitation of investment provision is only included in RCEP considering that RCEP does not have ISDS. Promotion of investment is only included in RCEP and PA. Both provisions are non-binding.
23	Screening regime and dispute settlement	Medium (60%)	The provision is only included in CPTPP, RCEP and PA. In the case of CPTPP, the provision is only applicable to Australia, Canada, Mexico and New Zealand. These FTA/RTAs exclude the provision from dispute settlement mechanisms.
24	Public order	Low (20%)	Only included in PA. Binding language.
25	Consultation and negotiation	Medium-High (80%)	The provisions are similar in four RTA/FTAs, however, USMCA does not provide for a period to celebrate consultations (though USMCA does require submission of a notice of intent to the respondent at least 90 days before the submission of a claim to arbitration).
26	Submission of a claim to arbitration	Medium (60%)	Included in four RTA/FTAs. AANZFTA and USMCA (except for disputes related to covered government contracts between the United States and Mexico) limit the coverage of the substantive obligations that may be subject to a claim.
27	Consent of each Party to arbitration	Medium (60%)	Included expressly in three RTA/FTAs.
28	Conditions and limitation of consent of each Party	Medium-High (80%)	Included in four RTA/FTAs. The time limitations differ among RTA/FTAs. USMCA requires prior domestic litigation under certain circumstances.
29	Selection of arbitrators	Medium-High (80%)	Included in four RTA/FTAs. Except for AANZFTA, the rest set out similar rules. The USMCA includes provisions on double hatting and an explicit reference to the IBA rules.
30	Conduct of the arbitration	Medium (60%)	Included in four RTA/FTAs. There are important differences in the scope of the provision of AANZFTA with respect to CPTPP, PA and USMCA.
31	Transparency of arbitral proceedings	Medium-High (80%)	Included in four RTA/FTAs. The level of transparency of documents is greater under CPTPP, PA and USMCA.
	Governing law	Medium-High (80%)	Included in four RTA/FTAs. Under CPTPP, PA and USMCA the governing law refers to the agreement, applicable rules of international law and interpretative decision. AANZFTA includes in addition other agreements applicable between the Parties and domestic law.
32	Interpretation of annexes	Medium (60%)	Included in three RTA/FTAs. Although AANZFTA does not contain this provision, it would be possible to request an interpretation pursuant to the provision on governing law.
33	Expert reports	Medium	Included in three RTA/FTAs with similar language.

		(60%)	
34	Consolidation	Medium-High (80%)	Included in four RTA/FTAs. CPTPP, PA and USMCA set out a specific procedure for consolidation of claims.
35	Awards	Medium-High (80%)	Included in four RTA/FTAs. CPTPP, PA and USMCA provide for State – State dispute settlement if the respondent fails to comply with a final award.
36	Service of documents	Medium (60%)	Included in three RTA/FTAs with similar language.
37	Public debt annex	Medium (60%)	Included in three RTA/FTAs with similar language.

The overall average is of 71.0%, resulting in a high level of convergence for the chapter.

## Conclusions

With a few exceptions, the provisions on this chapter are binding and can be enforced through ISDS under AANZFTA, CPTPP, PA and USMCA or the means set out in each agreement's chapter on dispute settlement. In the case of RCEP, these provisions are enforceable through the means set out in the chapter on dispute settlement under RCEP or other agreements.

At the chapter level, the substantive investment protection provisions have a high level of convergence for the five RTA/FTAs, which include 17 APEC economies meaning that at least 81% of APEC members have already subscribed related commitments to the chapter. Nonetheless, for ISDS, the level of convergence is medium. ISDS is only included in four RTA/FTAs. Setting aside limitations on the scope of ISDS under USMCA (restricted access for claims other than disputes related to covered government contracts between the United States and Mexico)), CPTPP (exclusions for tobacco control measures and side letters), RTA/FTAs providing “general access” to foreign investors to ISDS include 15 APEC economies, which represent 71.4% of APEC members.

Whilst a welcoming investment climate can help attract high quality, durable investment, even those RTA/FTAs which include provisions on ISDS reflect different approaches, underlying the distinct positions of the Parties to these agreements. In this regard, further capacity-building initiatives and other activities to further advance the FTAAP agenda may be needed in this area.

In addition, given that the overall objective of investment-related provisions is to protect foreign investors and their investments in the territories of the other Parties, the objective accords with Aotearoa Plan of Action's drivers to promote the flow of quality investment through investment facilitation and liberalization.

## 3.8. CROSS-BORDER TRADE IN SERVICES

### Overview

The five RTA/FTAs contain a chapter on CBTS and reflect important similarity in wording among the provisions. However, while two RTA/FTAs (AANZFTA and RCEP) use a positive-list approach to liberalization commitments, the rest use a negative-list one. Most provisions are binding, and subject to DS procedures.

**Table 15. Summary matrix of chapter on cross-border trade in services**

No.	Provision	Level of convergence	Comments
1	Scope	High (100%)	Binding language. High convergence of covered matters and structure, except for the scheduling approaches.
2	National treatment	High (100%)	There is huge convergence and similar wording with binding language, with additional guidance (two FTAs on formal and identical treatment, and three FTAs on like circumstances).
3	Most-favored-nation treatment	Medium-High (80%)	Binding language. Only one FTA does not have a provision but establishes a consultation stage for the treatment granted to non-Parties.
4	Market access	High (100%)	Binding language. High convergence in wording, but with different scheduling approaches.
5	Local presence	Medium-High (80%)	Binding language. High convergence in wording and binding nature, save for one FTA.
6	Domestic regulation	High (100%)	High convergence among FTAs. USMCA includes expanded disciplines, while the earlier FTA/RTAs refer to a review after WTO GATS conclusion of work on this subject matter to determine whether results should be incorporated.
7	Recognition	High (100%)	A permissive provision that is very similar in wording across the FTAs.
8	Denial of benefits	High (100%)	A permissive provision that has similarly binding wording.
9	SMEs	Low (20%)	Only in USMCA as a best endeavor to enhance opportunities for the SMEs.
10	Transparency	High (100%)	Binding language, but content varies in all FTAs. Equivalent provisions are contained in different chapters applicable not only to trade in services.
11	Development and application of regulations administrative processes	High (100%)	Different chapters of the FTAs by establishing similar obligations contained in horizontal chapters reach the same result.
12	Disclosure of confidential information	High (100%)	Binding language. Save for AANZFTA, the FTAs regulate this matter in the chapter related to general provisions.
13	Monopolies and exclusive service suppliers	Medium-Low (40%)	Two FTAs have a general rule on monopolies and two on postal monopolies.
14	Business practices	Medium-Low (40%)	A consultation stage is granted when business practices could affect trade in services with the aim of eliminating them.
15	Payments and transfers	High (100%)	Binding language. A common provision, which varies only regarding the scheduling approach.
16	Subsidies	Medium (60%)	WTO negotiating results on this matter could trigger the review with the aim of determining whether those results should be incorporated. PA provides the exchange of information regarding subsidies.
17	Complementary services	Low (20%)	PA contains an obligation to update and exchange information on their service providers with the aim of promoting the formation of value chains in the business sector.
18	Safeguard measures	Medium-Low (40%)	WTO negotiating results on this matter could trigger the review.
19	Statistics on trade in services	Low (20%)	PA encourages to work on methodologies and publication of statistics.
20	Additional commitments	Medium-Low (40%)	Considering the positive approach of scheduling, negotiations could be held.

21	Transparency list	High (100%)	Binding language. The lists of commitments shall be made public regarding Party's existing measures maintained at the central government level which are inconsistent with NT or MA.
22	Review of commitments	Medium-Low (40%)	Future negotiations could be performed considering the positive-list approach of scheduling.
23	Non-conforming measures	High (100%)	Binding language. Reflecting different approaches of scheduling each FTA describes the elements of the reservations.
24	Modifications of schedules	Medium-Low (40%)	Binding language. Parties are explicitly entitled to modify their commitments. Despite the fact that three FTAs do not have that explicit right, if there is an agreement between Parties, they could modify the schedules.
25	Transition	Low (20%)	As flexibility, certain Parties would be allowed to submit their schedules of non-conforming measures after a certain period.
26	Increasing participation for newer ASEAN members	Medium-Low (40%)	Certain activities are allowed to increase participation of ASEAN Parties when joining to those agreements as part of the special and differential treatment.
27	Cooperation	Low (20%)	Included only in RCEP to improve domestic services capacity and efficiency and competitiveness cooperation is foreseen.
28	Treatment and protection of commercial presence	Low (20%)	Binding language. AANZFTA applies three provisions from the Chapter on Investment (i.e., treatment of investment, compensation for losses and transfers) to measures affecting trade in services.
29	Other matters (air services)	Low (20%)	CPTPP recognizes the importance of air services, hence Parties may consider working towards liberalizing those services.
30	Committee	Medium-Low (40%)	Binding language. Only in AANZFTA and PA, by requiring Parties to engage in different activities such as review of implementation, functioning and finding improvements.

The overall average of 62.6%, resulting in a medium level of convergence for the chapter.

## Conclusions

The level of convergence of this chapter is medium. The fundamental difference is that two RTA/FTA's use a positive-list approach for scheduling sector commitments and three use a negative-list approach.

A services chapter is present in all RTA/FTAs, thus covering 17 APEC economies, which means that at least 81% of APEC members have already undertaken related commitments under the chapter.

A CBTS chapter is in line with the objective of the Aotearoa Plan of Action related to the importance of delivering a free, open, fair, non-discriminatory, transparent and predictable trade and investment environment.

Recognizing the different approaches concerning services liberalization, APEC economies could embark on activities to get a better understanding of those approaches (for instance, positive, negative and mixed lists) and identify ways to achieve high standard and comprehensive understandings on cross-border trade in services.

### 3.9. SECTORAL CHAPTERS ON TRADE IN SERVICES

#### 3.9.1. Financial services

##### Overview

The five RTA/FTAs contain a chapter or annex (to the CBTS or Trade in Services chapters) on financial services. All five RTA/FTAs contain articles on the treatment of certain information, transparency, transfer of information, recognition and exceptions. There is a huge similarity in terms of scope and wording among the provisions used by CPTPP, PA and USMCA such as national treatment, most-favored-nation treatment, market access and senior management and board of directors. These provisions are not covered specifically in the Financial Services Annexes in AANZFTA and RCEP, but these annexes instead draw upon the obligations for market access, national treatment, and most-favored nation treatment that are found in the Trade in Services chapters of these agreements. Also, another difference is that CPTPP, PA and USMCA permit ISDS regarding the financial services sector.

**Table 16. Summary matrix of chapter on financial services**

No.	Provision	Level of convergence	Comments
1	Scope	Medium (60%)	Binding wording. All RTA/FTAs contain the scope, but the coverage differs among those agreements.
2	National treatment	Medium (60%)	Binding wording. CPTPP, PA and USMCA contain this obligation. CPTPP and PA refer to the most favorable treatment granted at the regional or state level. CPTPP and USMCA provide detailed wording regarding “like circumstances”.
3	Most-favored-nation treatment	Medium (60%)	Binding wording. This obligation appears in CPTPP, PA and USMCA, with similar wording.
4	Market access	Medium (60%)	Binding wording. In CPTPP and USMCA there is a high degree of similarity in terms of scope. USMCA adds in this article a local presence provision regarding mode I.
5	Cross-border trade	Medium (60%)	Binding wording. CPTPP and PA establish a detailed obligation, while USMCA adopts a standstill obligation by which a Party can only maintain measures in force by 1 January 1994.
6	New financial services	Medium-High (80%)	Binding wording. CPTPP, PA, USMCA and RCEP contain articles on new financial services.
7	Treatment of certain information	High (100%)	Binding wording. The five RTA/FTAs contain articles that address the treatment of information.
8	Senior management and board of directors	Medium (60%)	Binding wording. CPTPP, PA and USMCA contain this obligation.
9	Non-conforming measures	Medium (60%)	Binding wording. CPTPP, PA and USMCA allow to maintain reservations in the schedules of the Parties.
10	Exceptions	High (100%)	Binding wording. Even if it is present in all RTA/FTAs, its content varies due to the fact that CPTPP, PA and USMCA establish more obligations. The wording in these three RTA/FTAs CPTPP, PA and USMCA is very similar.
11	Recognition	High (100%)	Binding wording. The five RTA/FTAs contain this provision using a very similar wording.

12	Transparency and administration of certain measures	High (100%)	Binding wording. The five RTA/FTAs contain similar provisions regarding transparency and administration of measures.
13	Self-regulatory organizations	Medium (60%)	This provision appears in four RTA/FTAs (CPTPP, PA, USMCA and RCEP). This provision requires Parties to ensure that their SROs observe that Party's obligations under the national treatment obligation; while CPTPP, PA and USMCA also do so for the MFN obligation, and USMCA refers to all obligations of the chapter.
14	Payment and clearing systems	Medium-High (80%)	Four RTA/FTAs (CPTPP, PA, USMCA and RCEP) contain an almost identical version of this provision.
15	Expedited availability of insurance information	Medium-Low (40%)	Only included in CPTPP and USMCA.
16	Transfer of information	High (100%)	The five RTA/FTAs contain a similar provision with certain wording variations.
17	Location of computing facilities	Low (20%)	This provision is only in USMCA.
18	Performance of back-office functions	Low (20%)	This provision only appears in CPTPP.
19	Specific commitments	Medium (60%)	CPTPP and PA contain an explicit article on specific commitments, while USMCA sets out similar provisions throughout the chapter.
20	Committee	Medium (60%)	CPTPP, PA and USMCA establish a committee on financial services.
21	Consultations	Medium-High (80%)	CPTPP, PA, USMCA and RCEP contain a specific provision on consultations regarding matters affecting financial services.
22	Contact points	Medium-Low (40%)	RCEP uses the contact points while CPTPP, PA and USMCA use responsible authorities for financial services, but CPTPP and USMCA refer to contact points for the purposes of specific requests for information on any non-conforming measure.
23	Dispute settlement	Medium-High (80%)	The five RTA/FTAs establish provisions on dispute settlement matters but the level of specificity varies. Accordingly, the level of convergence is medium-high.
24	Investment disputes in financial services	Medium (60%)	CPTPP, PA and USMCA provide access to ISDS related to financial services in certain circumstances.
25	Authorities responsible for financial services	Medium (60%)	CPTPP, PA and USMCA identify per Party the authorities responsible for financial services.

The overall average is of 66.4%, resulting in a medium level of convergence for the chapter.

## Conclusions

Almost all provisions are binding, and all are subject to DS procedures between Parties. CPTPP, PA and USMCA also include ISDS procedures.



The level of convergence of the chapter on financial services is medium. The five RTA/FTAs that include this chapter cover 17 economies, which means that at least 81% of APEC members have subscribed commitments under the chapter.

The fact that financial services is present in the five RTA/FTAs shows the interest of adopting commitments. Many areas show reasonable degree of convergence, such as the treatment of certain information, transparency, transfer of information, recognition and exceptions. However, more work is required in areas as national treatment, most-favored-nation treatment, market access, senior management and board of directors, and locating of computing facilities, which could be included in APEC's efforts to advance the FTAAP agenda. As mentioned above regarding trade in services, recognizing the different approaches concerning services liberalization, APEC economies could embark on activities to get a better understanding of those approaches (for instance, positive, negative and mixed lists) and identify ways to achieve high standard and comprehensive regional understandings on financial services.

In the light of the Trade and Investment driver of the Aotearoa Plan of Action, in particular with the objective related to the importance of a free, open, fair, non-discriminatory, transparent and predictable trade and investment environment, APEC economies might consider certain provisions as a minimum to be included in any high standard and comprehensive undertakings.

### 3.9.2. Maritime services

#### Overview

Only PA contains a specific chapter on maritime services. These provisions apply to measures affecting international maritime transport services and services related to maritime transport. Those provisions are binding and applicable, in addition to the provisions contained in chapters on cross-border trade in services and investment.

**Table 17. Summary matrix of chapter on maritime services**

No.	Provision	Level of convergence	Comments
1	Scope of application	Low (20%)	Binding language. Only PA contains this provision.
2	Participation in transport	Low (20%)	Binding language. Only PA contains this provision.
3	National treatment	Low (20%)	Binding language. Only PA contains this provision.
4	Agents and representatives	Low (20%)	Binding language. Only PA contains this provision.
5	Recognition of ship documentation	Low (20%)	Binding language. Only PA contains this provision.
6	Recognition of crew travel documents of a Party's ship	Low (20%)	Binding language. Only PA contains this provision.
7	Jurisdiction	Low (20%)	Binding language. Only PA contains this provision.
8	Electronic exchange of information	Low (20%)	Binding language. Only PA contains this provision.
9	Competitiveness in the maritime industry	Low (20%)	Binding language. Only PA contains this provision.
10	Cooperation	Low (20%)	Non-binding language. Only PA contains this provision.

11	Points of contact	Low (20%)	Binding language. Only PA contains this provision.
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The overall average is of 20%, resulting in a low level of convergence for the chapter.

## Conclusions

At the chapter level, the convergence is low since it is only contained in PA, which includes three APEC economies, which means that at least 14% of APEC members have already undertaken related commitments under this chapter.

Provisions on maritime services are in line with the Aotearoa Plan of Action's driver on Trade and Investment, specifically with the objective of continuing to work together to deliver, a free, open, fair, non-discriminatory, transparent and predictable trade, with the collective action on progress services liberalization, facilitation and cooperation.

It may be challenging for APEC economies to pursue an initiative on maritime services in light of the low convergence for the chapter. However, due consideration could be given to the inclusion of marine services in the discussions to advance the FTAAP agenda and contribute to high standard and comprehensive regional undertakings, in particular on ways to continue progressing on maritime services liberalization and cooperation.

### 3.9.3. Telecommunications

#### Overview

The five RTA/FTAs contain either a chapter or an annex on telecommunications. These chapters share a similar scope, as they are applicable to measures by a Party affecting trade in public telecommunications services. While the level of convergence ranges from medium to high in several provisions, in others, the level of convergence is medium to low, as not every RTA/FTA goes as far or as detailed in areas such as approaches to regulation, access and use of services, obligations relating to suppliers, roaming, resale, submarine cables, and conditions for the supply of value-added services, among others.

**Table 18. Summary matrix of chapter on telecommunications**

No.	Provision	Level of convergence	Comments
1	Scope	Medium-High (80%)	Binding language. Provision included in the five RTA/FTAs, highly similar but with differences, including with respect to trade in public telecommunications services and broadcast or cable distribution of radio or TV programming. All indicate that the provisions of the chapter/annex cannot be interpreted to require or prevent a Party from acting in specific, listed situations.
2	Approaches to regulation	Medium (60%)	Non-binding language. Included in CPTPP, RCEP and USMCA. It is highly convergent on the core approach. CPTPP and USMCA go further by indicating that a Party may forbear, to the extent provided for in its law, from applying a regulation if its telecommunication regulatory body determines that enforcement is not necessary.
3	Access and use	Medium (60%)	Binding language, except for (i) taking measures necessary to ensure security / confidentiality, and to protect personal information ("may take"); and (ii) conditions for access to and use of public telecommunication networks ("may include").

			Provision included in CPTPP, PA, USMCA and RCEP, highly convergent. CPTPP, PA and USMCA provide additional details on the obligation to ensure that enterprises are permitted to (i) provide services over leased/owned circuits to individual or multiple end-users; and (ii) perform switching, signaling, conversion and other functions. PA includes additional obligations for the use of networks in emergency situations. RCEP includes one additional possible condition for access and use of public telecommunications network, i.e. a restriction on connection of leased or owned circuits, for the purpose of safeguarding public service responsibilities of suppliers, and of protecting technical integrity of networks.
4	Obligations relating to suppliers of public telecommunications services	Medium (60%)	Binding language. Included in CPTPP, PA, USMCA and RCEP, with varying degrees of detail. All contain an obligation of providing interconnection, but with certain nuances, as RCEP does not include "at reasonable rates". All convergent in number portability, and access to numbers, but PA includes additional measures regarding stolen mobile equipment, promotion of broadband, and net neutrality. USMCA includes additional obligations regarding resale, roaming and dialing parity.
5	International mobile roaming	Medium (60%)	Included in CPTPP, PA, USMCA and RCEP. Binding language for the core obligation ("shall endeavor to cooperate"). Non-binding for CPTPP, USMCA and RCEP ("may take"), and binding for PA ("shall"), on steps to enhance/promote transparency and competition. In addition, for the specific case where a Party chooses to regulate roaming rates/conditions, CPTPP and RCEP indicate that such Party shall ensure access to other Parties (certain conditions apply). All convergent with the core obligation to promote transparent, reasonable rates for international mobile roaming services, and to take measures regarding transparency and competition. CPTPP and RCEP include more specific information regarding access to regulated roaming rates under certain conditions by other Parties, if applied by a Party.
6	Treatment by major suppliers of public telecommunications services	Medium-High (80%)	Binding language. Included in CPTPP, PA, USMCA and RCEP, highly convergent. USMCA adds the term "to itself" when referring to the treatment that the major supplier must accord to subsidiaries, among others.
7	Competitive safeguards	High (100%)	Binding language. Included in the five RTA/FTAs, highly convergent. AANZFTA refers to transitional arrangements, applicable to specific Parties.
8	Resale	Medium (60%)	Binding language, except for CPTPP and RCEP, which use the term "may" regarding which services are to be offered for resale. Included in CPTPP, PA, USMCA and RCEP, all ensuring for major suppliers not to impose restrictions on the resale of services, in varying degrees of specificity. The four RTA/FTAs provide that major suppliers must not impose unreasonable or discriminatory conditions or limitations on such resale. CPTPP and PA also refer to offering such services at "reasonable rates". CPTPP and RCEP indicate that Parties may determine which services must be offered for resale by major suppliers. CPTPP and USMCA indicate that resale of public telecommunications services shall not be prohibited. Such differences render the provision with a medium convergence.
9	Unbundling of network elements by major suppliers	Medium (60%)	Binding language. CPTPP, PA, USMCA and RCEP; it include an obligation of ensuring access to network elements on an unbundled basis. RCEP uses "shall endeavor to ensure that a major supplier offers access", as opposed to "shall provide its

			telecommunications regulatory body with the authority", as used by the rest. These nuances imply a medium level of convergence.
10	Interconnection with major suppliers	Medium-High (80%)	Binding language. Included in the five RTA/FTAs, highly convergent. CPTPP, PA, and USMCA are more prescriptive regarding the public availability of interconnection offers and agreements.
11	Leased circuits services	Medium-High (80%)	Binding language. Included in the five RTA/FTAs, highly convergent. CPTPP, PA and USMCA go further by indicating that authority must be provided to regulatory bodies to enforce the provision at a capacity-based, cost-oriented prices.
12	Co-location	Medium-High (80%)	Binding language. Included in the five RTA/FTAs, highly convergent. CPTPP, PA and USMCA go further by explicitly indicating access to unbundled network elements. On the obligation to provide alternatives, RCEP uses "shall endeavor to ensure", as opposed to "shall ensure", as used by the rest. These nuances imply a medium-high level of convergence.
13	Access to poles, ducts, and conduits	Medium (60%)	Binding language. Included in CPTPP, PA, USMCA and RCEP; similar to an extent in the obligation of ensuring access to infrastructure in question in reasonable, non-discriminatory, transparent terms. RCEP uses "shall endeavor to ensure", as opposed to "shall ensure", as used by the rest. CPTPP and RCEP also indicate that a Party may determine which structures its major suppliers require to provide access to. These nuances imply a medium level of convergence.
14	Submarine cable systems	Medium-Low (40%)	Binding language. Included in CPTPP, USMCA and RCEP. It is similar in the objective, but with nuances: CPTPP and USMCA clarify that access to landing stations must be consistent with provisions of interconnection with major suppliers; leased circuits; and co-location. RCEP clarifies that access must be provided with reasonable and non-discriminatory treatment. Party-specific clarifications are made in each agreement.
15	Independent regulatory bodies, government ownership	Medium (60%)	Binding language. Included in the five RTA/FTAs, largely convergent on the obligation of ensuring that the regulatory body is separate, and not accountable to any supplier. CPTPP, PA and USMCA go further by explicitly indicating that such body must not hold any interest in any supplier. In addition, for further clarity, USMCA states that the regulatory body of Mexico is autonomous from the Executive branch of government. On government ownership, CPTPP, PA and USMCA indicate that no Party shall provide more favorable treatment to a supplier in its territory, in relation to a like supplier of another Party, on the basis that it is owned by a Party. This is not included in AANZFTA or in RCEP. PA includes an additional provision on mutual and technical cooperation among Parties.
16	Universal service	High (100%)	Binding language. Included in the five RTA/FTAs, highly convergent. AANZFTA and RCEP further indicate that universal service obligations shall not be regarded as anti-competitive.
17	Licensing	Medium-High (80%)	Binding language. Included in the five RTA/FTAs, highly convergent. AANZFTA additionally refers to the public availability of fees and period of validity of a license. Beyond denial of a license, CPTPP, USMCA and RCEP refer to other specific reasons, such as imposition of supplier-specific conditions, refusal to renew, or revocation of a license.
18	Allocation and use of scarce resources	Medium-High (80%)	Binding language. Included in the five RTA/FTAs, highly convergent, but with certain nuances: AANZFTA and RCEP do not mention allocation of rights-of-ways; AANZFTA does not refer to the use of market-based approaches when assigning spectrum; and RCEP provides additional examples of spectrum allocation mechanisms.

19	Enforcement	Medium-Low (40%)	Binding language. Included in CPTPP and USMCA, highly convergent. USMCA also includes the ability to impose corrective orders.
20	Resolution of telecommunications disputes	Medium-High (80%)	Binding language. Included in the five RTA/FTAs, similar language that ensure having recourse to the telecommunications regulatory body to resolve disputes related to core obligations of the respective chapters. CPTPP, PA and USMCA elaborate further and provide subsections on appeal to reconsider determinations of a regulatory body; and on establishing judicial review considerations regarding non-compliance and enforcement. A clause on reconsideration of a decision or determination by a regulatory body that affects the interests of a company is included in CPTPP, but currently suspended. CPTPP and USMCA also provide for issuing a written explanation by the regulatory body if it declines to initiate action on a request to resolve a dispute.
21	Transparency	Medium (60%)	Binding language. Included in the five RTA/FTAs. CPTPP, PA, USMCA and RCEP provide obligations to have regulatory bodies and allow an opportunity to comment on proposals, but RCEP is more general, and uses "shall endeavor to ensure", as opposed to "shall ensure", as used by the rest; while CPTPP, PA and USMCA are more prescriptive. PA establishes additional measures regarding quality service. AANZFTA only indicates that required information is also made available on the internet.
22	Flexibility in the choice of technology	Medium (60%)	Binding language. Included in CPTPP, PA, USMCA and RCEP. Except for PA, all provide that any measure restricting choice does not create unnecessary obstacles to trade. CPTPP and USMCA also indicate that measures restricting choice must be consistent with the transparency article. PA includes additional measures on the protection of end users of telecommunication services. CPTPP also clarifies that a Party may make its financing of the development of advanced networks conditional on the use of technologies that meet its public policy interests. This last would render this provision with a medium level of convergence, despite being in four agreements.
23	Relation to other chapters	Medium (60%)	Binding language. Included in CPTPP, PA and USMCA, highly convergent.
24	Relation to international organizations	Medium-Low (40%)	Non-binding language. Included in CPTPP and RCEP, highly convergent.
25	Committee	Medium-Low (40%)	Use of binding language, except on possible invitation of representatives other than of the Parties, including from the private sector, where the term "may invite" is used. Included in CPTPP and USMCA, highly convergent.
26	Conditions for the supply of value-added services	Low (20%)	Combination of binding language ("shall"), regarding transparency and non-discrimination for certain requirements to value-added services providers, and non-binding language ("should/may"), regarding not imposing same requirements as those to public telecom providers, or for imposing remedies. Only included in USMCA.
27	Transitional arrangements	Low (20%)	Non-binding language. Included only in AANZFTA, allowing for delay in application of certain key obligations (details by Party included in an Appendix), given different stages of development of Parties.

The overall average is of 62.9%, resulting in a medium level of convergence for the chapter.

## Conclusions

With a few exceptions, the provisions on the telecommunications' chapters/annexes are generally binding. Regarding the settlement of disputes, DS procedures apply to these chapters/annexes in the five RTA/FTAs.

Despite the fact that the five RTA/FTAs have included a telecommunications chapter/annex as part of their obligations, which confirms the importance that APEC economies attach to this subject, the chapter has an overall medium level of convergence. This is so as some agreements go further or get into more details than others, as in approaches to regulation, access and use of services, obligations relating to suppliers, roaming, resale, submarine cables, independent regulatory bodies, and conditions for the supply of value-added services, among others. The five RTA/FTAs encompass a total of 17 APEC economies, which means that at least 81% of APEC members have already undertaken obligations related to this chapter.

The alignment of the telecommunications chapter/annex with multiple objectives under Aotearoa Plan of Action's three drivers is evident, including ensuring that Asia-Pacific remains the most interconnected regional economy, promoting seamless connectivity, advancing economic policies to promote innovation and productivity, and fostering an enabling environment that is market-driven.

There are many common elements among the five RTA/FTAs on telecommunications issues that could facilitate to advance the FTAAP agenda and contribute to high standard and comprehensive regional undertakings

### 3.9.4. Professional services

#### Overview

Four RTA/FTAs (CPTPP, PA, USMCA and RCEP) contain an annex on professional services. These annexes share a similar scope, as they are applicable to measures affecting international trade in professional services on mutual recognition, licensing or registration procedures.

The structure of the annexes is only based in general provisions, without dividing their content in specific topics. In order to facilitate the analysis and understanding of these commitments for purposes of this study, the provisions are classified into the following topics: recognition of professional qualifications, licensing, or registration; mutual recognition agreements; temporary or project-specific licensing or registration regime; provision of information, and professional services working group.

**Table 19. Summary matrix of chapter on professional services**

No.	Provision	Level of convergence	Comments
1	Recognition of professional qualifications, licensing, or registration	Medium (60%)	Binding provision. CPTPP, USMCA and RCEP set out that the Parties shall consult with their relevant bodies to seek to identify professional services where at least two of the Parties are mutually interested in establishing a dialogue in issues that relate to the recognition of professional qualifications, licensing or registration. The Parties to these agreements agreed to encourage their relevant bodies to establish dialogues with the relevant bodies of another Party or Parties with a view to recognizing professional qualifications, licensing, or registration. PA

			<p>approach differs as it establishes that Parties shall encourage their relevant bodies to elaborate mutually accepted criteria and standards for licensing and certification of professional services suppliers and to present to the subcommittee on services recommendations regarding mutual recognition. PA and RCEP provide a list of areas on which mutual recognition may be based: education, examination, experience, conduct and ethics, professional development and re-certification, scope of practice, local knowledge and consumer protection).</p> <p>USMCA provides a list of matters that the relevant bodies of its Parties may consider under the aforementioned dialogues. RCEP includes an additional element by establishing that Parties shall encourage their relevant bodies to refer to international frameworks in developing common standards and criteria for professions. These nuances render the convergence medium.</p>
2	Mutual recognition agreement (MRA)	Medium (60%)	<p>Binding provision. CPTPP, USMCA and RCEP include this provision encouraging the relevant bodies of their Parties to consider agreements that relate to professional services in the development of agreements on the recognition of professional qualifications, licensing, and registration. USMCA establishes an appendix to guide an MRA discussion if decided by the Parties. PA contains a similar provision in Article 9.10 (Recognition).</p>
3	Temporary or project-specific licensing or registration regime	Medium (60%)	<p>Permissive provision. CPTPP, USMCA and RCEP agree that the Parties may consider taking steps to implement a temporary or project specific licensing or registration regime based on a foreign supplier's home licensing or recognized professional body membership, without the need for further written examination. RCEP clarifies that its Parties may grant such licensing or registration, if appropriate.</p> <p>PA's approach differs as it provides that when convened by the Parties, each one of them shall encourage their relevant bodies in their territories to develop procedures for the issuance of temporary licensing. This last point renders the convergence medium.</p>
4	Provision of information	Low (20%)	<p>Binding provision. If requested by a Party, RCEP requires the requested Party to provide information concerning standards and criteria for licensing and certification of professional services suppliers or relating to the appropriate regulatory to consult such information.</p>
5	Professional services working group	Medium-Low (40%)	<p>Binding language. The Parties to the CPTPP and USMCA rely on a professional services working group as an instrument to support the relevant professional bodies in pursuing the commitments provided in the annex through the provision of information regarding the regulation of professional services in the Parties' territories. For CPTPP, this working group shall meet annually or as agreed by the Parties to discuss progress towards the objectives of the commitments, whereas for USMCA, the working group shall meet within one year of the date of entry into force of the agreement, and thereafter decided by the Parties to discuss the obligations covered in the annex. Both working groups shall report to the commission the activities undertaken pursuant to the annex. In addition, CPTPP provides that the decisions of the working group shall have effect only in relation to the Parties that participated in the meeting unless a Party that does not participate in such meeting requests to be covered by the decision. PA establishes a subcommittee on services to review the recommendations presented by the Parties on mutual recognition to decide if those recommendations are consistent with the FTA.</p>

CPTPP and PA include further commitments for specific professional services. In the case of CPTPP, these obligations relate to engineering and architectural, and legal services, and the temporary licensing for engineers, while under PA, commitments only relate to the temporary licensing for engineers.

The overall average is of 48%, resulting in a medium level of convergence for the chapter.

## Conclusions

With a few exceptions, the provisions on this annex are generally of a binding nature, given the widespread use of the term “shall” to undertake subscribed commitments.

Regarding the use of DSM, whilst PA and RCEP exclude the application of DS procedures to these annexes, USMCA and CPTPP do not.

The professional services annex has a medium level of convergence. Nonetheless, the four RTA/FTAs with this annex account for 17 APEC economies, which means that at least 81% of APEC members have already undertaken obligations related to this annex. Noting the diversity of viewpoints on the role of regional and free trade agreements, it is important to encourage increased dialogue and communication in this area to further advance the FTAAP agenda and contribute to high standard and comprehensive regional undertakings. For example, these efforts would require getting a better understanding with regards to horizontal provisions that go beyond or differs to what is has already been agreed in GATS such as those related to the recognition of professional qualifications, licensing or registration and temporary licensing.

The alignment of the professional services disciplines with Aotearoa Plan of Action’s trade and investment driver is evident, including with the objective of delivering a free, open, fair, non-discriminatory, transparent and predictable trade and investment environment.

### 3.10. TEMPORARY ENTRY OF BUSINESS PERSONS

#### Overview

Four RTA/FTAs (AANZFTA, CPTPP, USMCA and RCEP) have a chapter on temporary entry of business people, including temporary entry of services providers. These chapters share a similar scope, as they are applicable to the movement of business persons engaged in trade in goods, the supply of services or the conduct of investment activities across their borders. Most provisions are binding, and the Parties’ recourse to DS procedures is conditioned.

**Table 20. Summary matrix of chapter on temporary entry of business persons**

No.	Provision	Level of convergence	Comments
1	Scope	Medium (60%)	Binding provision. Included in the four RTA/FTAs, highly convergent on the obligation of applying the chapter commitments to measures affecting the temporary entry of business persons of a Party into the territory of another Party. The agreements point out that such obligations shall not apply to measures affecting natural persons seeking access to the employment market of another Party nor with regard to citizenship, residence or employment permanently. Differences are present in terms of structure as AANZFTA and RCEP provide the type of business people to whom temporary entry measures shall apply, whereas CPTPP establish them in its



			definition provision and USMCA in its annex of general commitments.
2	Objectives	Low (20%)	Present only in AANZFTA.
3	Application procedures	Medium (60%)	Binding provision. Included in AANZFTA, CPTPP and RCEP, highly convergent with differences in degree of detail. AANZFTA and RCEP prescribe that after receiving an application for an immigration formality the Party shall notify the applicant of the receipt of the application, element absent in CPTPP. CPTPP includes an additional element regarding the fees charged by the authorities for the processing of an application for an immigration formality requiring Parties that such fees be reasonable in that they do not impair or delay trade in goods or services or conduct of investment activities. AANZFTA, USMCA and RCEP include the same provision with different wording in grant of temporary entry provision.
4	Grant of temporary entry	Medium (60%)	Binding provision. Included in four RTA/FTAs, similar in granting temporary entry or extension of temporary stay to business persons of another Party as stated in the Parties' list of commitments for AANZFTA, CPTPP and RCEP, or to a business person who is qualified for temporary entry under the Parties' relating public health, safety and national security in accordance with the Parties' general provisions for USMCA. There are divergences in the conditions for refusing immigration formalities and the grant of temporary entry provision between AANZFTA and RCEP on the one hand, and CPTPP and USMCA on the other. This last renders the convergence to medium.
5	Business travel	Low (20%)	CPTPP affirms the commitments of the Parties to enhance the mobility of business persons and the APEC Business Travel Card Program.
6	Provision of information	Medium (60%)	Binding provision. Included in four RTA/FTAs, highly coincident, but with certain nuances: CPTPP requires Parties to publish the timeframes within which an application for an immigration formality is processed; and USMCA provides the Parties shall collect and maintain data respecting the granting of temporary entry to business persons of another Party who have been issued immigration documentation, including data specific to each occupation, profession or activity. These differences render the provision medium.
7	Cooperation	Low (20%)	Binding provision for CPTPP and best endeavor for RCEP. RCEP provides that Parties may discuss mutually agreed areas of cooperation to further facilitate the temporary entry and temporary stay of natural persons of the other Parties, whereas CPTPP requires Parties to consider undertaking mutually agreed cooperation activities, including by: (i) providing advice on the development and implementation of electronic processing systems for visas, and (ii) sharing experiences with regulation and the implementation of programs and technology related to border security, the expediting of certain categories of applicants to reduce workloads constraints, and cooperating in multilateral fora to promote processing the aforementioned enhancements. These nuances render the provision low.
8	Relation to other chapters	Medium-Low (40%)	AANZFTA, CPTPP and USMCA share same language by providing that nothing in those RTA/FTAs shall be construed to impose any obligation on a Party regarding its immigration measures except for this chapter and others (i.e., initial provisions and general definitions, administrative and institutional provisions, dispute settlement, final provisions, publication and administrative proceedings).

9	Committee	Medium-Low (40%)	Binding provision. CPTPP creates a committee on temporary entry for business persons to review the implementation and operation of the chapter, consider opportunities to further facilitate temporary entry once every three years, while USMCA creates a temporary entry group to meet at least annually to consider the chapter's implementation and additional matters such as proposed modifications or additions to the chapter, and other issues of common interest.
10	Dispute settlement	Medium-High (80%)	The Parties to these RTA/FTAs agreed that no Party shall have recourse to DS procedures unless two conditions are met: (i) the matter involves a pattern of practice, and (ii) the business person affected has exhausted all available administrative remedies on the matter.

The overall average is of 46%, resulting in a medium level of convergence for the chapter.

## Conclusions

With a few exceptions, the provisions on these chapters are generally of a binding nature. The Parties' recourse to DS procedures is conditioned in the four RTA/FTAs.

At the chapter level, the temporary entry of business people chapter has a medium level of convergence. The four RTA/FTAs with this chapter account for 17 APEC economies, which means that at least 81% of APEC members have already subscribed provisions related to the topic.

In addition, given that the overall objective of this chapter is to regulate the temporary presence of business people of a Party in the territory of another Party to supply services, the alignment with Aotearoa Plan of Action's trade and investment driver is evident, including with the objectives to increase trade predictability and openness and to promote and cooperate on measures that facilitate the safe cross-border movement of people.

Noting the uneven and limited approach in this area in RTA/FTAs and the importance of regulating the movement of business people, it is important for APEC economies to share good practices to support the advancement of the FTAAP agenda and contribute to high standard and comprehensive regional undertakings in this topic in the future.

## 3.11. ELECTRONIC COMMERCE

### Overview

The five RTA/FTAs contain a chapter on electronic commerce. These chapters share the objective of promoting the use of electronic commerce, facilitating trade/avoiding unnecessary barriers to its use and development, of recognizing the importance of frameworks to increase consumer confidence, in light of the economic growth and opportunities electronic commerce/digital trade provides. While there is a high level of convergence in several provisions contained in these chapters, relevant differences emerge in areas such as data flows, data localization, non-discrimination of digital products, source code, and interactive computer services, among others.

**Table 21. Summary matrix of chapter on electronic commerce**

No.	Provision	Level of convergence	Comments
1	Objectives	High (100%)	Included in AANZFTA and RCEP, both being highly similar. RCEP also includes a paragraph on principles (importance of e-commerce, including promoting confidence and facilitation). However, similar language is also included in CPTPP, PA and USMCA under "Scope/General provisions".
2	Scope and general provisions	Medium-High (80%)	Binding language. Included in CPTPP, PA, RCEP, and USMCA with varying degrees of detail. They all make explicit non-application reference to government procurement and to information held by a Party. CPTPP, USMCA and RCEP indicate that the measures are subject to obligations, exceptions, reservations, NCMs of chapters on services, investment, and financial services. CPTPP and RCEP also do so for location of computing facilities and cross-border transfer of information; and CPTPP also for the treatment of digital products, and source code.
3	Customs duties	Medium-High (80%)	Binding language. Included in CPTPP, PA, USMCA and RCEP. All contain an obligation to eliminate customs duties, either on electronic transmissions (CPTPP, RCEP), or on digital products transmitted electronically (PA, USMCA). RCEP refers to adjusting practices according to further outcomes of the WTO Decision on the Work Programme on E-Commerce.
4	Non-discriminatory treatment of digital products	Medium (60%)	Binding language. Included in CPTPP, PA, and USMCA. It is highly convergent in the basic obligation. CPTPP goes further to clarify non-applicability to broadcasting, and in case inconsistencies with the IP chapter arise.
5	Domestic electronic transactions framework	Medium (60%)	Binding language. Included in AANZFTA, CPTPP, USMCA and RCEP. All contain an obligation to maintain (AANZFTA and RCEP also include "or adopt") a legal framework consistent with UNCITRAL model law (CPTPP and RCEP also include the UN Convention on the use of electronic communications, while RCEP refers to "other applicable international conventions"). CPTPP, USMCA and RCEP also refer to avoiding unnecessary regulatory burdens. CPTPP and USMCA refer to facilitating the input of interested persons. These nuances imply a medium level of convergence.
6	E-authentication, e-signatures	Medium-High (80%)	Binding language, except for requiring certain performance standards for particular categories of transactions (included in CPTPP, USMCA and RCEP), where the term "may" is used. The five RTA/FTAs are highly similar in permitting Parties to determine appropriate authentication technologies; on allowing the opportunity to establish that transactions comply with legal authentication requirements; and on encouraging the use of interoperable systems. CPTPP, USMCA and RCEP also may allow for the possibility of requiring certain performance standards for a particular category of transactions. Such nuance implies a medium-high level of convergence.
7	Transparency	High (100%)	Binding language. Included in AANZFTA, PA and RCEP, highly similar. However, the same obligation regarding publication, with a horizontal application, is also included in CPTPP (transparency and anti-corruption chapter), and USMCA (publication and administration chapter).
8	Online consumer protection	High (100%)	Binding language. The five RTA/FTAs are highly similar in certain objectives, but particularities in some RTA/FTAs apply: (i) obligation to publish information on consumer protection on

			remedies and legal compliance, in RCEP; (ii) transitions for certain Parties in AANZFTA, CPTPP, RCEP; and (iii) the possibility to assess alternative DS mechanisms, in PA.
9	Personal information protection	Medium-High (80%)	Binding language. Included in the five RTA/FTAs. It is similar in certain elements, but with varying degrees of specificity in others: (i) CPTPP and USMCA recognize the benefits of protecting personal information; (ii) the five RTA/FTAs call Parties to protect, adopt or maintain legal frameworks that protect personal information, and consider international standards, including the APEC Privacy Framework (USMCA); (iii) USMCA highlights key principles (personal protection of information; compliance; proportionality in restrictions to data flows; and, together with CPTPP, on avoiding non-discriminatory practices); (iv) CPTPP, PA, and USMCA highlight the importance of exchanging information on legal approaches, recognizing the APEC Cross-Border Privacy Rules as a valid mechanism (USMCA); (v) CPTPP, USMCA and RCEP highlight the obligation to publish information on consumer protection on remedies and legal compliance; (vi) transitions for certain Parties in AANZFTA, CPTPP, and RCEP. Differences in scope mostly seem not substantive, except for (iii) above, which renders the provision with medium-high convergence.
10	Paperless trading	Medium-High (80%)	Binding language. Included in the five RTA/FTAs. CPTPP, PA, USMCA and RCEP converge in accepting electronically submitted trade administration documents as the legal equivalent of paper versions. AANZFTA, CPTPP, PA and RCEP, also converge in making such documents electronically available to the public. RCEP includes transitions for certain Parties.
11	Access to and use of internet for e-commerce	Medium-Low (40%)	Binding language. Included in CPTPP and USMCA; convergent.
12	Cross-border information flows by electronic means	Medium-Low (40%)	Binding language. Included in PA, CPTPP, USMCA and RCEP. The four RTA/FTAs contain language allowing (CPTPP) / not prohibiting (USMCA) / not preventing (RCEP) cross-border transfer of information by electronic means. The four also do not prevent the Parties from adopting or maintaining measures inconsistent with the data flow obligation, to achieve a legitimate public policy objective, provided that such measure is non-discriminatory. Notably, RCEP includes a footnote, indicating that the necessity behind the public policy objective is to be decided by the implementing Party. RCEP also includes the possibility of using the concept of “essential security interest” to introduce restrictions on data flows which, if applied, shall be non-disputable by Parties. RCEP also introduces transitions for certain Parties. The substantive differences render the provision with a medium-low convergence.
13	Internet interconnection charge sharing	Low (20%)	Binding language. Provision included only in CPTPP.
14	Location of computing facilities	Medium-Low (40%)	Binding language. Included in CPTPP, PA, USMCA and RCEP. The four RTA/FTAs do not require the use or location of computing facilities in a Party’s territory as a condition to conduct business. However, CPTPP, PA and RCEP allow for inconsistent measures, only if they are implemented to achieve a legitimate public policy objective, provided that they are non-discriminatory. RCEP includes a footnote, indicating that the necessity behind the public policy objective is to be decided by the implementing Party. RCEP also includes the possibility of using the concept of “essential security interest” to introduce restrictions to this obligation, which if applied, shall be non-

			disputable by Parties. Finally, RCEP also introduces transitions for certain Parties. In light of these differences, the level of convergence is medium-low.
15	Unsolicited commercial electronic messages	Medium-High (80%)	Binding language. Included in CPTPP, PA, USMCA and RCEP. All converge in the core obligation of adopting or maintaining measures to limit unsolicited messages. CPTPP, USMCA and RCEP also provide a recourse against non-compliant suppliers, and in cooperation in appropriate cases. RCEP provides transitions for certain Parties.
16	Cooperation	Medium-High (80%)	Binding language. The five RTA/FTAs converge on the need to enhance cooperation efforts, exchange information and share experiences, in varying degrees and range of activities. AANZFTA, CPTPP, PA and RCEP also explicitly refer to the importance of assisting SMEs. The slight differences in activities listed render the level of convergence medium-high.
17	Cooperation on cybersecurity	Medium-Low (40%)	Binding language. Included in CPTPP, USMCA and RCEP. These FTA/RTAs recognize the importance of building capabilities and enhancing cooperation in cybersecurity matters. USMCA also encourages the use of risk-based approaches. This last renders the convergence medium-low.
18	Source code	Medium-Low (40%)	Binding language. Included in CPTPP and USMCA. Both protect access to source code but differ on limitations/exceptions.
19	Interactive computer services	Low (20%)	Binding language. Included only in USMCA.
20	Open government data	Low (20%)	Binding language. Included only in USMCA.
21	Institutional arrangements	Low (20%)	Binding language. Included only in PA.
22	Dialogue on e-commerce	Low (20%)	Binding language. Included only in RCEP.
23	Dispute settlement	Medium (60%)	Binding language. AANZFTA and RCEP do not subject the chapter to DS procedures to this chapter. CPTPP provides a two-year transition to two Parties on certain provisions. USMCA provides a three-year transition for a Party on interactive computer services.

The overall average is of 57%, resulting in a medium level of convergence for the chapter.

## Conclusions

With an exception, the provisions on these chapters are generally of a binding nature, given the widespread use of the term “shall” to undertake subscribed commitments. Regarding the settlement of disputes, AANZFTA and RCEP are similar regarding the non-application of DS procedures to this chapter, while CPTPP, PA and USMCA do apply such DS procedures to the chapter.

Despite the fact that the five RTA/FTAs have included an electronic commerce chapter as part of their obligations, which emphasizes the importance that APEC economies adhere to this subject, the chapter has a medium level of convergence. Relevant differences emerge in the policy space around provisions regarding data flows and data localization, the inclusion of obligations on non-discrimination of digital products, source code or interactive computer services, and on the scope of cooperation on cybersecurity, among others. Encouraging dialogue in such issues and getting a better understanding of them as part of the efforts to advance the FTAAP agenda and contribute to high standard and comprehensive regional undertakings is necessary. These areas where differences emerge are those where APEC

economies would need to do further work in the context of the FTAAP agenda to raise awareness about their importance, learn about the sensitivities surrounding them and explore ways to achieve common ground to ensure that policies reach high standards.

Nonetheless, it is worth highlighting that the five RTA/FTAs encompass a total of 17 APEC economies, which means that at least 81% of APEC members have already undertaken obligations related to the electronic commerce/digital trade chapter.

In this regard, given that the overall objective of these provisions is to promote and facilitate the use of electronic commerce, the alignment with multiple objectives under Aotearoa Plan of Action's three drivers is evident, including ensuring that Asia-Pacific remains the most interconnected regional economy, promoting seamless connectivity, advancing economic policies to promote innovation and productivity, fostering an enabling environment which is market-driven and supported by digital economy and innovation, and cooperating on facilitating the flow of data and strengthening consumer and business trust in digital transactions.

### 3.12. GOVERNMENT PROCUREMENT

#### Overview

Four RTA/FTAs reviewed, CPTPP, USMCA (applicable only between Mexico and the United States), PA and RCEP, contain provisions on government procurement. Three RTA/FTAs (CPTPP, USMCA and PA) have detailed and binding provisions, which are subject to DS mechanisms. In general terms, such provisions are very similar in wording. The coverage of each RTA/FTA is contained in annexes per Party. The RCEP sets out provisions that are not comparable to the other RTA/FTAs.

**Table 22. Summary matrix of chapter on government procurement**

No.	Provision	Level of convergence	Comments
1	Objectives	Low (20%)	Only RCEP recognizes the importance of promoting transparency and developing cooperation.
2	Application of chapter	Medium (60%)	CPTPP, PA and USMCA use similar wording, and apply the chapter to a "measure regarding covered procurement", while RCEP has a much more limited scope.
3	Exceptions	Medium (60%)	CPTPP, PA and USMCA include exceptions resembling some GATT 1994 Article XX provisions and PA adds wording similar to Article XXI.
4	General principles	Medium (60%)	Principles like national treatment and non-discrimination, rules of origin, offsets, and use of electronic means appear in CPTPP, PA and USMCA. RCEP refers to the generally accepted government procurement principles applicable to the extent possible and as appropriate.
5	Transitional measures	Low (20%)	Under the CPTPP, this provision allows developing Parties to adopt or maintain measures that otherwise would be contrary to the obligations in this chapter e.g., price preference program or offsets.
6	Publication of procurement information	Medium (60%)	This provision in CPTPP, PA and USMCA is related to the publication of measures of general application.
7	Notices of intended procurement	Medium (60%)	Under CPTPP, PA and USMCA, Parties shall publish a notice of intended procurement and are encouraged to publish yearly the future procurement plan in advance.

8	Conditions for participation	Medium (60%)	CPTPP, PA and USMCA Parties may request conditions for participation to the extent these are related to suppliers capacity and abilities. There is a list of permitted and not allowed conditions.
9	Qualification of suppliers	Medium-Low (40%)	Only CPTPP and USMCA regulate registration systems and qualifications procedure; selective tendering; multi-use list and information on procuring entity decisions.
10	Limited tendering	Medium (60%)	The use of limited tendering is allowed under CPTPP, PA and USMCA, subject to certain requirements and only under a limited circumstances with the obligation to document use of limited tendering.
11	Negotiations	Medium-Low (40%)	Negotiations in the context of covered procurements are allowed under certain conditions in CPTPP and USMCA.
12	Technical specifications	Medium (60%)	Technical specifications are allowed only if they do not create unnecessary obstacles to trade under CPTPP, PA and USMCA. There is a list of situations that justify such specifications.
13	Tender documentation	Medium (60%)	There is an obligation to publish or provide certain information to permit allow the participation of interested suppliers to prepare and submit a responsive tender pursuant to CPTPP, PA and USMCA.
14	Time periods	Medium (60%)	Under CPTPP, PA and USMCA sufficient time for suppliers to obtain documentation and to prepare and submit a request for participation and a responsive tender. Under certain circumstances, the set minimum time periods can be reduced.
15	Treatment of tenders and awarding of contracts	Medium (60%)	CPTPP, PA and USMCA are required to grant fairness and impartiality in the treatment of tenders. Based on the criteria of the tender, the award of contracts shall be granted to the supplier capable of fulfilling the requirements, based on the most advantageous tender or the lowest price when this is the sole criterion.
16	Post-award information	Medium (60%)	There is a requirement to maintain records and publish information related to the award of a contract and, if requested, provide an explanation to the unsuccessful supplier pursuant to CPTPP, PA and USMCA.
17	Disclosure of information	Medium (60%)	Parties to CPTPP, PA and USMCA shall provide information to demonstrate whether a procurement was conducted fairly, impartially and in compliance with the chapter provisions, but without disclosing confidential information.
18	Ensuring integrity in procurement practices	Medium (60%)	Parties to CPTPP, PA and USMCA are required to establish measures addressing corruption and conflicts of interest. USMCA adds that a Party may request a supplier to adopt internal control, ethics and programs on corruption, frauds, or wrongful acts.
19	Domestic review	Medium (60%)	A procedure of review and appeal is required to resolve challenges or complaints of a supplier. USMCA encourages the use of consultations between the procuring entity and the supplier for seeking to resolve a complaint.
20	Modifications and rectifications of annex	Medium (60%)	Under CPTPP, PA and USMCA a Party has the right to modify or rectify an annex, and if the level of coverage is affected, then compensation shall be offered. The Party affected may object to the modification.
21	Facilitation of participation by SMEs	Medium (60%)	CPTPP, PA and USMCA allow a party to maintain measures for preferential treatment of SMEs to the extent that the measures are transparent. PA recognizes the importance of business partnerships between suppliers of the Parties and of micro, small and medium-sized enterprises (MSMEs).
22	Cooperation	Medium (60%)	Pursuant to CPTPP, PA and USMCA, Parties shall endeavor to cooperate on understanding the government procurement

			systems. CPTPP and PA add the aim of improving access to their respective markets.
23	Committee	Medium (60%)	Binding language. Only contained in CPTPP, PA and USMCA, by requiring Parties to engage in different activities such as review of operation and implementation, cooperation and finding improvements.
24	Further negotiations	Medium (60%)	CPTPP, PA and USMCA establish a future review with the aim of improving this chapter to facilitate government procurement.
25	Contact points	Low (20%)	Under RCEP Parties shall designate contact points to facilitate cooperation and information.
26	Non-application of dispute settlement	Low (20%)	Only RCEP excludes this chapter from dispute settlement mechanisms. The rest of RTA/FTAs provisions with this chapter are subject to DS procedures.

The overall average of the marks assigned for each provision is of 52.3%, resulting in a medium level of convergence for the chapter.

## Conclusions

At the chapter level, this chapter has a medium level of convergence. 12 APEC economies, representing at least 57% of APEC members, have already subscribed related commitments. Most of the provisions are binding in nature, and all are subject to DS procedures with few exceptions. In terms of wording and scope the provisions are very similar.

Even if RCEP also has a chapter on this matter, given the scope of its provisions (such as transparency, cooperation and future review which are not subject to the dispute settlement mechanisms) this chapter is not comparable with the abovementioned three RTA/FTAs.

Government procurement falls within the Aotearoa Plan of Action's trade and investment driver, whose objective is related to a free, open, fair, non-discriminatory, transparent and predictable trade and investment environment.

In addition, currently only nine APEC economies are part of the WTO Agreement on Government Procurement (as amended on 30 March 2012). Whilst government procurement provisions could have many elements in common in RTA/FTAs, the subject matter is challenging due to its particular use to achieve domestic policy objectives. In the context of advancing economic integration through the work of the FTAAP agenda, increased dialogue and communication in APEC is needed on high standard policies that ensure effective competition among prospective suppliers for covered procurement.

### 3.13. COMPETITION POLICY

#### Overview

Four RTA/FTAs include a competition and consumer protection chapter (AANZFTA, CPTPP, RCEP and USMCA).

For the obligations in this chapter, the higher standard seems to be found in CPTPP and USMCA: RCEP shares the basic obligations and most of the commitments, but has substantial differences on the level of transparency provided. AANZFTA is the least ambitious agreement in this area.



PA does not have a chapter as such, but there are references to competition in certain areas (for example, Article 7.5, cooperation and facilitation of trade; Article 8.6, technical specifications or Article 8.9, procurement procedures), while consumer protection is specifically mentioned in the electronic commerce and professional services annex.

All the agreements share the basic obligation to promote competition to increase economic efficiency and consumer welfare. This objective is to be attained by the establishment of competition laws, that are to be enforced by a specific authority in the territories of the Parties (although CPTPP and USMCA do allow for competition authorities to apply their national competition laws to commercial activities outside its borders that have an appropriate effects within, or nexus to, its jurisdiction) combined with cooperation activities, capacity building and promotion of joint work at international fora.

With different degrees of ambition and depth, the agreements provide for a procedural fairness process, allowing for better practices of transparency and due process; the USMCA is the agreement that has the most elaborated structure in this area. The agreements include elements for the disclosure of information and prescribe how the authority may conduct itself during an investigation process, guaranteeing the rights and image of the private actors involved.

None of the agreements establish a committee or working group to follow up on the application of the provisions on competition and consumer protection but provide for consultations to foster understanding between the Parties, or to address specific matters that arise under the chapters. These chapters are not subject to dispute settlement.

**Table 23. Summary matrix of chapter on competition policy**

No.	Provision	Level of convergence	Comments
1	Competition law and authorities	Medium-High (80%)	Binding in nature, but only RCEP, USMCA and CPTPP make explicit mentions of the need to have competition law and an authority that regulates the topic.
2	Basic principles	Medium-Low (40%)	Only included in AANZFTA and RCEP.
3	Procedural fairness in competition law enforcement	Medium-low (40%)	Obligations are binding. Although the concept is incorporated in three FTAs, the differences in substance and nature are relevant, especially between RCEP, USMCA and CPTPP.
4	Cooperation	High (80%)	The concept exists in all agreements, but there are differences on scope and areas where cooperation is to be deployed.
5	Transparency	Medium-Low (40%)	Binding obligations. Only USMCA and CPTPP elaborate in this concept. RCEP allows for the sharing of information under certain conditions.
6	Consumer protection	Medium-High (80%)	Binding common elements in CPTPP, USMCA and RCEP.
7	Dispute settlement	High (100%)	Binding language. Non-recourse to DS in all three chapters.

The overall average of the marks assigned for each provision is 65.7%, resulting in a high level of convergence for the chapter.

## Conclusions

The provisions in these chapters are binding in nature but are not subject to DS procedures. This fact should not reduce the ambition of the obligations, and if rightly coupled with the cooperation articles, it may bring a fruitful engagement for APEC economies.

Overall, at least 17 APEC economies (representing 81% of the members) already have undertaken obligations in this regard. At the chapter level, the level of convergence is high, given that CPTPP, USMCA and RCEP share the highest level of similarity among themselves, while participants in the other two agreements in this analysis (PA and AANZFTA) greatly overlap.

Given the high similarities between CPTPP and USMCA, but the existing differences in coverage of commitments between those two agreements, the AANZFTA and the RCEP, remain, a diversity of viewpoints (for example, in areas such as transparency and procedural fairness) should motivate APEC to encourage more dialogue and communication in these areas as part of the FTAAP agenda and contribute to a better understanding on how high standard and comprehensive regional undertakings on competition policy could be pursued.

Finally, in relation to the Aotearoa Plan of Action, these disciplines contribute to the Trade and Investment driver, particularly to the objectives of delivering a free, open, fair, non-discriminatory, transparent, and predictable trade and investment environment, and to the objective of promoting responsible business conduct.

### 3.13.1. State-owned enterprises and designated monopolies

#### *Overview*

There are only two agreements that incorporate a chapter on SOEs – CPTPP and USMCA. Both agreements share the objective of regulating the operation, financing, and competition of SOEs, to guarantee that these SOEs do not receive preferential treatment vis-a-vis the private sector.

These chapters have several substantive obligations including on non-discriminatory treatment and commercial considerations, non-commercial assistance, and regulatory impartiality. The “Non-Commercial Assistance” discipline being linked to the cause of “adverse effects” or “injury”.<sup>43</sup> The chapters, including their scope and exemptions, are built around the interaction of these elements, as discussed below. The chapters are fully binding and subject to DSM.

Both CPTPP and USMCA guarantee a significant degree of government authority for conducting resources to certain SOEs, and by setting a financial threshold, under which smaller SOEs are exempted from the application of the provisions.

The chapters incorporated in both CPTPP and USMCA are almost identical (see Table 24). USMCA, as the natural extension of the original TPP for its North American members, includes a chapter in the same spirit, albeit less flexibility was given in some provisions.

**Table 24. Summary matrix of chapter on state-owned enterprises and designated monopolies**

No.	Provision	Level of convergence	Comments
1	Scope of application	Medium-Low (40%)	Binding obligations, but CPTPP offers more details on how this chapter may apply to sovereign wealth funds than USMCA.

<sup>43</sup> Certain forms of non-commercial assistance are prohibited, and in those cases, there is no need to show injury or adverse effects.

2	Non-discriminatory treatment and commercial considerations	Medium-Low (40%)	Binding obligations are included in both agreements.
3	Courts and administrative bodies	Medium-Low (40%)	Binding obligations are included in both agreements, indicating that regulators must exercise its regulatory discretion in an impartial manner.
4	Non-commercial assistance	Medium-Low (40%)	Binding obligations are included in both agreements, but CPTPP offers more details on the definition.
5	Adverse effect	Medium-Low (40%)	The key concept for the function of the provisions is included in both chapters. This obligation is binding.
6	Transparency	Medium-Low (40%)	Binding in nature, ambitious standards of openness and communication in both agreements.
7	Technical cooperation	Medium-Low (40%)	Identically binding text on both CPTPP and USMCA.
8	Committee	Medium-Low (40%)	Provided for in both agreements, with the same scope and functions.
9	Exceptions	Medium-Low (40%)	In addition to the general exception, the threshold and the party-specific annexes, CPTPP contains specific provisions for Malaysia; Singapore; and Viet Nam. Similarly, USMCA includes special considerations for Mexico's investments through special purposes vehicles.
10	Further negotiations	Medium-Low (40%)	Binding obligations to undertake. These negotiations should take place within five years in the CPTPP, within six months in USMCA. Aspirational deadline of three years in USMCA.
11	Threshold calculation	Medium-Low (40%)	Binding obligations. The threshold is higher in CPTPP (200 million SDRs) than in USMCA (175 million SDRs).

The overall average is 40%, resulting in a medium level of convergence for the chapter.

### **Conclusions**

At the chapter level, the level of convergence for this chapter is medium. At least 12 APEC economies, representing 57% of APEC members, have already accepted commitments in this regard.

Including SOEs provisions in initiatives could contribute to the Aotearoa Plan of Action, especially in the objective of delivering a free, open, fair, non-discriminatory, transparent and predictable trade and investment environment. Therefore, initiatives on SOE to encourage dialogue and communication in the context of advancing the FTAAP agenda are encouraged noting the diversity of viewpoints in this area and the different role that SOEs play in the economies of APEC members.

### **3.14. INTELLECTUAL PROPERTY**

#### **Overview**

Only AANZFTA, CPTPP, USMCA and RCEP include a chapter on intellectual property. These chapters set out substantive obligations to protect intellectual property rights. This means that substantive obligations are binding and enforceable through DS procedures. These chapters recognize that the protection and enforcement of IPRs should take into account the need to maintain an appropriate balance between the rights of IP owners and the legitimate

interests of users (AANZFTA), or should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare and to a balance of rights and obligations (CPTPP, USMCA and RCEP). Each RTA/FTA provides for cooperation and sets out transition periods for specific obligations and Parties. In terms of protection of IPRs, whilst CPTPP, USMCA and RCEP set minimum standards that Parties must provide for protection of trademarks, GIs, patents, plant varieties, industrial designs, copyright and related rights, and trade secrets, AANZFTA does not contain specific provisions for some IPRs. However, AAZNFTA contains a definition of IPRs covering the above-mentioned rights and some general obligations apply to all of the categories.

**Table 25. Summary matrix of chapter on intellectual property**

No.	Type of Provision	Level of convergence	Comments
1	Objectives	Medium-High (80%)	CPTPP, USMCA and RCEP stress that the protection and enforcement of IPRs should contribute to the promotion of technological innovation and transfer of technology, while AANZFTA and RCEP highlight the different levels of economic development.
2	Principles	Medium (60%)	Only CPTPP, USMCA and RCEP refer to adopting measures consistent with the chapter to protect public health, nutrition, public interest or to prevent abuse of IPRs.
3	Understandings in respect to the chapter	Medium (60%)	CPTPP and USMCA set out three understandings in respect to the chapter. The same are included in RCEP as part of the objectives of the chapter.
4	Affirmation of the TRIPS Agreement	Low (20%)	Only AANZFTA and RCEP contain a general provision on the TRIPS Agreement. However, the content of the provision is substantially different. AANZFTA affirms rights and obligations and RCEP provides that the TRIPS Agreement prevails in the event of inconsistency with the chapter.
5	Nature and scope of obligations	Medium (60%)	CPTPP, USMCA and RCEP provide that each Party may provide a more extensive protection for IPRs as long it does not contravene the chapter, and each Party is free to determine the appropriate method of implementing the chapter within its own legal system.
6	Understanding regarding certain public health measures	Medium (60%)	CPTPP, USMCA and RCEP affirm the commitments under the Declaration on TRIPS and Public Health. The RTA/FTAs include a provision on the right to take measures to protect public health and access to medicines.
7	International agreements	Medium (60%)	The requirement to ratify or accede to Berne Convention, Paris Convention, Patent Cooperation Treaty (PCT), Madrid Protocol, World Intellectual Property Organization (WIPO) Copyright Treaty (WCT) and WIPO Performance and Phonograms Treaty (WPPT) is similar in CPTPP, USMCA and RCEP. To this extent, there is a medium level of convergence. With respect to other multilateral agreements, it would be a medium-low level of convergence.
8	National treatment	Medium-High	There is similarity among the four RTA/FTAs on the obligation to accord NT to the citizens of the

		(80%)	Parties with respect to the protection of IPRs. Grounds for derogation of NT are the same, however, AANZFTA and RCEP link it to the exceptions provided under the TRIPS Agreement and multilateral agreements under WIPO.
9	Transparency	Medium-High (80%)	There is convergence in the four RTA/FTAs in relation to the publication of laws, regulations and administrative rulings on an endeavor basis.
10	Application of chapter to existing subject matter and prior acts	Medium-Low (40%)	Only included in CPTPP and USMCA.
11	Exhaustion of intellectual property rights	Medium (60%)	CPTPP, USMCA and RCEP provide that each Party is free to determine its regime or conditions for the exhaustion of IPRs.
12	Contact points for cooperation	Medium-High (80%)	AANZFTA, CPTPP and USMCA have specific contact points in the chapter for the purpose of cooperation. RCEP contains an overall contact point overseeing any matter relating to the agreement, which would include the matters related to the intellectual property chapter.
13	Cooperation activities and initiatives	Medium-High (80%)	The four RTA/FTAs provide on an endeavor basis cooperation in different areas. However, the areas and means for cooperation differ among RTA/FTAs.
14	Committee on IPRs	Medium (60%)	Only included in AANZFTA, USMCA and RCEP, it establishes a Committee on IPRs. However, under CPTPP the Commission may establish ad hoc committees to refer matters to.
15	Recognition of transitional periods under the TRIPS Agreement	Medium-Low (40%)	Included in AANZFTA and RCEP.
16	Patent cooperation and work sharing	Medium (30%)	Included in CPTPP, USMCA and RCEP on a best endeavor basis.
17	Cooperation on request	Medium-High (80%)	The four RTA/FTAs provide basic principles for cooperation on a best endeavor basis.
18	Public domain	Low (20%)	Only included in CPTPP.
19	Cooperation in the area of traditional knowledge	Medium (60%)	Included in three RTA/FTAs with a non-binding language.
20	Types of signs registrable as trademarks	Medium (60%)	The provision is binding and is included in three RTA/FTAs with binding language. However, AANZFTA shares an understanding that an inclusive system of trademarks permits the registration of all trademarks, including sounds and scents. Although this is not a commitment, it shows an intention of the Parties that go in the same direction, even if such intention is reflected as part of their cooperation activities.
21	Collective and certification trademarks	Medium (60%)	The obligation is binding and identical in CPTPP, USMCA and RCEP. However, the specific obligation to provide protection in the trademark systems to signs that serve as GI is also included in AANZFTA.
22	Use of identical or similar signs	Medium-High (80%)	The basic and binding obligation of the rights conferred by a trademark is similar. Although AANZFTA is silent, this obligation can be traced back to the commitments of the Parties in the TRIPS Agreement.

23	Exceptions	Medium (30%)	The provision is included in identical terms in CPTPP, USMCA and RCEP setting out that the Parties may provide for limited exceptions.
24	Well-known trademarks	Medium (60%)	The obligations for the protection of well-known trademarks are included in similar terms in CPTPP, USMCA and RCEP. However, CPTPP and USMCA incorporate article 6bis of the Paris Convention. For this part, the level of convergence would be medium-low.
25	Procedural aspects of examination, opposition and cancelation	Medium-High (80%)	The four RTA/FTAs contain procedures for examination, opposition and cancelation of trademarks. The obligation in AANZFTA is drafted in general terms, while in CPTPP, USMCA and RCEP it is detailed with respect to due process rights in each procedure.
26	Electronic trademark system	Medium (60%)	The obligation is included in CPTPP, USMCA and RCEP in a binding fashion.
27	Classification of goods and services	Medium-High (80%)	The main obligation to maintain a trademark classification system consistent with the Nice Classification is included in four RTA/FTAs.
28	Term of protection for trademarks	Medium-Low (40%)	A term of protection for trademarks of 10 years, which is higher than the term provided in the TRIPS Agreement, is only included in CPTPP and USMCA.
29	Protection of trademarks that predate geographical indications	Medium-Low (40%)	AANZFTA and RCEP include an obligation to protect trademarks where they predate GI. Similarly, USMCA and CPTPP include the likelihood of confusion with a pre-existing trademark as a ground to refuse protection for a GI.
30	Bad faith trademarks	Low (20%)	The obligation to refuse an application or cancel a registration on bad faith grounds is only included in RCEP.
31	One and the same application relating to several goods or services	Low (20%)	Only included in RCEP.
32	Non-recordal of a license	Medium-Low (40%)	Only CPTPP and USMCA provide that no Party shall require recordal of trademark licenses.
33	Effective protection against unfair competition	Low (20%)	The obligation to provide effective protection against acts of unfair competition is only included in RCEP.
34	Domain names	Medium (60%)	The obligation to have a procedure for the settlement of disputes on domain names as well as appropriate remedies is included in CPTPP, USMCA and RCEP. The obligation to make available a database concerning domain name registrants is only included in CPTPP and USMCA, therefore, in the case of this specific obligation the level of convergence would be medium-low.
35	Use of the name of the FTA party in a good <sup>44</sup>	Medium (60%)	Only CPTPP, USMCA and RCEP include an obligation to provide legal means to prevent the

<sup>44</sup> For purposes of this report, following the APEC style guide, the actual name of this provision was adapted and corresponds to CPTPP Article 18.29, RCEP Article 11.57, and USMCA Article 20.28 which can be found at <https://www.mfat.govt.nz/assets/Trade-agreements/TPP/Text-ENGLISH/18.-Intellectual-Property-Chapter.pdf> <https://rcepsec.org/wp-content/uploads/2020/11/Chapter-11.pdf> [https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/32\\_Exceptions\\_and\\_General\\_Provisions.pdf](https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/32_Exceptions_and_General_Provisions.pdf)

			use of the name of the FTA party in relation to a good in a manner that misleads consumers as its origin.
36	Recognition of geographical indications	Medium-High (80%)	CPTPP, USMCA and RCEP recognize that GIs may be protected through a trademark or sui generis system or other legal means. Although AANZFTA only refers to the trademark system, this does not preclude a Party from protecting GI through other means. Only RCEP includes an obligation to ensure in each Party's laws and regulations, adequate and effective means to protect GIs.
37	Administrative procedures for the protection or recognition of geographical indications	Medium (60%)	CPTPP, USMCA and RCEP include similar due process obligations with respect to administrative procedures for the protection of GIs.
38	Grounds for opposition and cancellation	Medium (60%)	CPTPP, USMCA and RCEP include similar due process obligations with respect to procedures for the opposition or cancellation of the protection of GIs. CPTPP and USMCA specify three grounds, and RCEP only one of these grounds. However, this fact does not preclude an RCEP Party from providing for more grounds.
39	Guidelines for determining whether a term is the term customary in the common language	Medium (60%)	CPTPP, USMCA and RCEP include a similar obligation to determine how consumers understand a term that may be customary in the common language. Some factors that may be taken into account are similar in the three RTA/FTAs, but USMCA includes additional factors. However, this fact does not preclude the Parties to CPTPP or RCEP to take them into account as the list of factors is not binding ("may include").
40	Multi-component terms	Medium (60%)	The obligation not to provide protection to the individual component of a multi-component term of a protected GI if such term is a term customary in the common language is included in CPTPP, USMCA and RCEP.
41	Date of protection of a geographical indication	Medium (60%)	The obligation on when the protection of a GI commences is similar in CPTPP, USMCA and RCEP.
42	International agreements	Medium (60%)	CPTPP, USMCA and RCEP provide requirements regarding the recognition of GIs under different international agreements.
43	Patentable subject matter	Medium (60%)	CPTPP, USMCA and RCEP include similar rules regarding patentable subject matter. USMCA contains an additional obligation confirming that patents are available for inventions derived from plants, and this obligation is included, but currently suspended, in CPTPP. This specific obligation has a low level of convergence.
44	Rights conferred	Low (20%)	Only RCEP includes this provision setting out the rights conferred by a patent. Although the other RTA/FTAs are silent, those rights are set forth in the TRIPS Agreement. Thus, Parties of the other RTA/FTAs may be inclined not to include it in high standard and comprehensive undertakings.
45	Grace period	Medium-Low (40%)	The obligation is only included in CPTPP and USMCA as a binding commitment to provide grace periods under certain circumstances and timeframes. RCEP does not contain an

			obligation, only a statement recognizing the importance of grace periods.
46	Patent revocation	Medium-Low (40%)	The obligation is only included in CPTPP and USMCA as a binding commitment.
47	Exceptions	Medium (60%)	The provision is similar in CPTPP, USMCA and RCEP setting out that the Parties may provide for limited exceptions.
48	Other use without authorization of the right holder	Medium (60%)	Preservation of rights and obligations under article 31 of the TRIPS Agreement is set out in CPTPP, USMCA and RCEP.
49	Experimental use of a patent	Low (20%)	The provision is only included in RCEP.
50	Procedural aspects of examination and registration	Low (20%)	These are binding provisions relating to aspects of examination and registration of patents. Such provisions differ in scope between the RCEP, on one side, and CPTPP and USMCA, on the other.
51	Expedite examination	Medium-Low (20%)	This provision on providing procedures for a patent applicant to request to expedite examination, is only included in USMCA and RCEP.
52	Electronic patent application system	Low (20%)	Only RCEP includes a best endeavor provision encouraging the Parties to adopt an electronic patent application system.
53	Publication of patent applications	Medium (60%)	The provision on publication of pending patent applications is similar in CPTPP, USMCA and RCEP.
54	Information as prior art made available to the public on the internet	Low (20%)	The provision is only included in RCEP.
55	Information relating to published patent applications and granted patents	Medium-Low (40%)	The obligation to publish certain information concerning patent applications is only included in CPTPP and USMCA.
56	Patent term adjustment for unreasonable granting authority delays	Low (20%)	The provision is included in USMCA. A similar obligation is included, but currently suspended, in CPTPP.
57	Protection of undisclosed test or other data for agricultural chemical products	Medium-Low (40%)	Data protection for new agricultural chemical products is only included in CPTPP and USMCA in a binding fashion.
58	Patent term adjustment for unreasonable curtailment	Low 20%	The provision to adjust the patent term for pharmaceutical products is included in USMCA. A similar obligation is included, but currently suspended, in CPTPP.
59	Regulatory review exception	Medium-Low (40%)	CPTPP and USMCA include a binding provision to adopt or maintain a regulatory review exception for pharmaceutical products.
60	Protection of undisclosed test or other data	Low 20%	Mandatory data protection for new pharmaceutical products is included in USMCA. A similar obligation is included, but currently suspended, in CPTPP.
61	Definition of new pharmaceutical product	Medium-Low (40%)	The definition is only included in CPTPP and USMCA.
62	Measures relating to the marketing of certain pharmaceutical products.	Medium-Low (40%)	This provision is only included in CPTPP and USMCA in a binding fashion.
63	Alteration of period of protection	Medium-Low (40%)	Only CPTPP and USMCA require that the data protection period shall not be altered if the patent protection terminates earlier.
64	Introduction of international patent classification system	Low (20%)	The provision is only included in RCEP.



65	Protection of new varieties of plants	Low (20%)	The provision is only included in RCEP.
66	Protection of industrial designs	Medium (60%)	CPTPP, USMCA and RCEP are similar in the protection of industrial designs. RCEP is more detailed in its provision.
67	Registration or grant and applications of industrial designs	Low (20%)	The provision is only included in RCEP.
68	Non-prejudicial disclosures/grace period	Low (20%)	Grace period for disclosures of information on industrial designs is only included in USMCA.
69	Electronic industrial design system	Low (20%)	The obligation to provide for a system for the electronic application for industrial designs and information is only included in USMCA.
70	Improving industrial design systems	Low (20%)	CPTPP includes a best endeavor obligation to ratify or accede to the Geneva Act.
71	Introduction of international classification system for industrial designs	Low (20%)	RCEP includes a best endeavor obligation to use a classification system consistent with the Locarno Agreement.
72	Term of protection	Low (20%)	USMCA provides for a term of protection of 15 years which is higher than the 10 years provided for in the TRIPS Agreement.
73	Definitions	Medium-Low (40%)	Definitions applicable with respect to performers and producers of phonograms are only included in CPTPP and USMCA.
74	Right of reproduction	Medium (60%)	The obligation to provide the exclusive right of reproduction is established in CPTPP, USMCA and RCEP in similar terms.
75	Right of communication to the public	Medium-High (80%)	The obligation to provide the exclusive right of communication to the public is established in the four RTA/FTAs.
76	Right of distribution	Medium (60%)	The obligation to provide the exclusive right of distribution is established in CPTPP, USMCA and RCEP, however, the obligation is drafted in different terms in RCEP.
77	No hierarchy	Medium-Low (40%)	No hierarchy between the authorization of the author and the performer or producer is only established in CPTPP and USMCA.
78	Related rights	Medium-Low (40%)	Obligations for the protection of related rights are only included in CPTPP and USMCA.
79	Right to remuneration for broadcasting	Low (20%)	Specific obligations on remuneration to performers and producers of phonograms are only included in RCEP.
80	Protection of broadcasting organizations and encrypted programme-carrying satellite signals	Low (20%)	Obligations under USMCA and RCEP differ in substance. USMCA contains the binding obligation to make a criminal offense and provide civil remedies for certain actions with regard to encrypted signals as well as devices for decoding encrypted signals. A similar obligation is included, but is currently suspended, in CPTPP. In RCEP the establishment of measures is a best endeavor commitment.
81	Term of protection for copyright and related rights	Medium-Low (40%)	USMCA provides for a higher term of protection for copyright and related rights than the term set forth in the TRIPS Agreement. A similar obligation is included, but currently suspended, in CPTPP.
82	Application of article 18 of the Berne Convention and article 14.6 of the TRIPS Agreement	Medium-Low (40%)	This binding provision is only included in CPTPP and USMCA.

83	Limitations and exceptions	Medium (60%)	Possibility for limitation and exceptions to exclusive rights are included in CPTPP, USMCA and RCEP.
84	Contractual transfers	Medium-Low (40%)	Only CPTPP and USMCA contain binding obligations concerning the transfer of an economic right of a work, performance or phonogram.
85	Technological protection measures (TPMs)	Medium-Low (40%)	The level of convergence refers to the binding obligation in USMCA, AANZFTA and RCEP to provide adequate legal protection and effective legal remedies against circumvention of effective TPMs. A similar obligation is included, but currently suspended, in CPTPP. It is worth noting that this is a best endeavor obligation in AANZFTA and that the provision in USMCA includes additional obligations.
86	Rights management information (RMI)	Medium-Low (20%)	The level of convergence refers to the binding obligation in USMCA and RCEP to provide adequate and effective legal remedies to protect RMI. A similar obligation is included, but currently suspended, in CPTPP. It is worth noting that USMCA includes additional obligations.
87	Collective management	Medium-High (80%)	The four RTA/FTAs have obligations on collective management.
88	Definitions	Low (20%)	Definitions relating to trade secrets are only included in USMCA.
89	Protection of trade secrets	Medium-Low (40%)	In CPTPP and USMCA the obligation is more comprehensive than in RCEP.
90	Provisional measures	Low (20%)	Only USMCA requires that judicial authorities may order provisional measures in civil judicial proceedings to prevent misappropriation of a trade secret.
91	Confidentiality	Low (20%)	Only USMCA requires that judicial authorities may order confidentiality orders and impose sanctions in cases of breach.
92	Civil remedies	Low (20%)	Only USMCA requires that judicial authorities may order injunctive relief and damages against a person who misappropriated a trade secret.
93	Licensing and transfer of trade secrets	Low (20%)	Only USMCA includes a binding provision not to discourage or impede voluntary licensing of trade secrets.
94	Prohibition of unauthorized disclosure or use of a trade secret by government officials outside the scope of their official duties	Low (20%)	This obligation is only included in USMCA in a binding fashion.
95	General obligations	Medium (60%)	With respect to enforcement procedures, CPTPP, USMCA and RCEP contain similar general obligations for the enforcement of IPRs.
96	Presumptions	Medium-Low (40%)	Only CPTPP and USMCA have a higher level of ambition, since the obligation covers civil, administrative, and in some cases criminal proceedings involving copyright or related rights, registered trademarks, and patents. RCEP includes this obligation only with respect to civil proceedings involving copyright authors, therefore, for this case the level of convergence would be medium.

97	Enforcement practices with respect to intellectual property rights	Medium-Low (40%)	This obligation is only included in CPTPP and USMCA as a binding commitment.
98	Civil and administrative procedures and remedies	Medium (60%)	There is a medium level of convergence with respect to the main obligations under CPTPP, USMCA and RCEP.
99	Provisional measures	Medium (60%)	There is a medium level of convergence with respect to the main obligations under CPTPP, USMCA and RCEP.
100	Special requirements related to border measures	Medium (60%)	There is a medium level of convergence with respect to the main obligations under CPTPP, USMCA and RCEP.
101	Criminal procedures and penalties	Medium (60%)	There is a medium level of convergence with respect to the main obligations under CPTPP, USMCA and RCEP. AANZFTA includes specific commitments for willful infringement of copyright.
102	Government use of software	Medium-High (80%)	The obligation that central level agencies use legitimate software is included in the four RTA/FTAs.
103	Internet service providers	Low (20%)	The definition is only included in USMCA.
104	Legal remedies and safe harbors	Low (20%)	The obligation to establish a framework of legal remedies and safe harbours to address copyright infringement in the online environment is included in USMCA. A similar obligation is included, but currently suspended, in CPTPP.
105	Final provisions/Party-specific transition periods	Medium-Low (40%)	CPTPP, USMCA and RCEP provide transition periods for specific obligations and Parties.
106	Technical assistance	Low (20%)	The provision is only included in RCEP on a best endeavor basis.
107	Improvement of procedures for the administration of intellectual property rights	Low (20%)	The provision is only included in RCEP on a best endeavor basis.

The overall average is 42.1%, resulting in a medium level of convergence for the chapter.

## Conclusions

The substantive provisions that protect IPRs are generally of a binding nature, and enforceable through dispute settlement procedures.

At the chapter level, the intellectual property chapter has a medium level of convergence for the five RTA/FTAs. Nonetheless, it is worth highlighting that while this chapter is included in four RTA/FTAs, those RTA/FTAs account for 17 APEC economies, which means that at least 81% of APEC members have already subscribed to commitments for the protection of IPRs.

In addition, these commitments align with the Aotearoa Plan of Action's main drivers towards having a transparent and predictable trade and investment environment by including adequate and effective protection and enforcement of IPRs, promoting innovation as well as improving quality of life.

The comparative analysis across the four RTA/FTAs show that it could be feasible to include many IPR disciplines in any high standard and comprehensive regional undertakings. However, more challenging differences are present in certain areas where APEC economies could do

more work as part of the efforts to advance the FTAAP agenda in order to learn from good practices and get a better understanding of the issues. Areas for further study could include, for example, the types of signs registrable as trademarks and protection for collective and certification trademarks; recognition of GIs protected pursuant other international agreements; data protection for agricultural chemical and pharmaceuticals products and adjustment of the patent term under certain scenarios; some of the exclusive rights provided for authors, performers and producers of phonograms; protection against circumvention of TPMs and RMIs; and obligations related to copyright infringement in the online environment.

### 3.15. LABOR

#### Overview

CPTPP and USMCA include a labor chapter,<sup>45</sup> and its provisions develop commitments to guarantee the fundamental labor rights recognized internationally by ILO on freedom of association; forced labor; child labor; discrimination and occupational safety and health. In both cases, the chapter is subject to DSM.

In addition to the fundamental rights, USMCA includes some innovative provisions related to migrant workers, violence against workers, and discrimination in workplace, and includes an annex on Mexico's labor commitments, which is linked to a mechanism to enforce labor rights (the rapid response labor mechanism), as part of the DS chapter.

**Table 26. Summary matrix of chapter on labor**

No.	Provision	Level of convergence	Comments
1	Statement of shared commitment	Medium-Low (40%)	Binding language presented in both agreements that affirms Parties obligations as ILO's members.
2	Labor rights	Medium-Low (40%)	Both agreements contain this binding provision that is the core of the chapter.
3	Non-Derogation	Medium-Low (40%)	Binding language. Members should undertake an internal task to adapt or strengthen their legal framework. It is present in both CPTPP and USMCA.
4	Enforcement of labor laws	Medium-Low (40%)	Building on labor rights and non-derogation provisions, this binding provision is contained in both agreements, establishing a strong commitment of members to enforce labor laws.
5	Forced or compulsory labor	Medium-Low (40%)	Binding provision that prohibits importation of goods produced by compulsory labor. Provision convergent in both agreements.
6	Corporate social responsibility	Low (20%)	CPTPP contains this provision with binding language to encourage enterprises to adopt corporate social responsibility.
7	Violence against workers	Low (20%)	Innovative provision in a labor chapter, and unique to USMCA to protect workers when exercising their labor rights. Binding language.

<sup>45</sup> It is worth noting that New Zealand and Indonesia signed a Memorandum of Understanding on Labor Cooperation and New Zealand and the Philippines Memorandum of Agreement on Labor Cooperation. In these instruments, among others, the Parties recognized (NZ-INA MOU) or reaffirm (NZ-PHL MOA) their obligations under ILO. See WTO Factual presentation of the AANZFTA, section 5.11, available at <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/REG/284-1R1.pdf&Open=True>

8	Migrant workers	Low (20%)	Innovative provision in a labor chapter, and unique to USMCA to ensure migrant workers are protected by labor laws of the Parties. <b>Binding language.</b>
9	Discrimination in the workplace	Low (20%)	Innovative provision in a labor chapter, and unique to USMCA to promote equality of women in workplace. <b>Binding provision.</b>
10	Public awareness and procedural guarantees	Medium-Low (40%)	Binding provision that supports the transparency of administrative and judicial proceedings. It is present in both agreements.
11	Public submissions	Medium-Low (40%)	CPTPP and USMCA contain a binding provision to make transparent, accessible and public the procedures related to chapter's matters.
12	Cooperation	Medium-Low (40%)	Both treaties share this binding provision that recognizes the importance of cooperation as a mechanism for effective implementation of the chapter.
13	Cooperative labor dialogue	Medium-Low (40%)	Both agreements contain a binding provision that establishes an alternative mechanism to consultations and DSM.
14	Labor council	Medium-Low (40%)	This body contributes to facilitating interaction between the Parties on matters related to the chapter. <b>Binding provision presented in CPTPP and USMCA.</b>
15	Contact points	Medium-Low (40%)	Binding provision to designate official representatives to address labor matters. Both agreements have this provision.
16	Public engagement	Medium-Low (40%)	Binding language. Public participation offers an opportunity to legitimize the implementation of the chapter. Both agreements contain this provision.
17	Labor consultations / Dispute Settlement	Medium-Low (40%)	Dialogue is promoted to resolve differences between members, but if they fail DSM is activated. USMCA presents an innovative mechanism to enforce labor rights.
18	Annex	Low (20%)	USMCA includes an annex on Mexico's labor obligations which are linked to an innovative compliance mechanism that is part of article 31 of this agreement.

The overall average is of 35.3%, resulting in a medium level of convergence for the chapter.

## Conclusions

The provisions in these chapters are binding in nature. Also, the labor chapter is subject to DS procedures in both CPTPP and USMCA. At the chapter level, the labor chapter has a medium level of convergence for the five RTA/FTAs. Both CPTPP and USMCA include 12 APEC economies, who at least are already implementing the labor provisions contained in these agreements. These 12 APEC economies are equal to 57% of total APEC members.

Given that the chapter's overall objective is to guarantee the fundamental labor rights recognized internationally, there is an alignment to the third driver of the Aotearoa Plan of Action on "Strong, Balanced, Secure, Sustainable and Inclusive Growth", particularly with the objectives to intensify inclusive human resource development, as well as economic and technical cooperation to better equip the people with the skills and knowledge for the future.

Despite that all signatory parties in the five RTA/FTAs are members of the ILO, labor issues remain a sensitive matter for some APEC economies. Therefore, further dialogue and communication is encouraged on labor-related matters to advance the FTAAP agenda and get a better understanding of the diversity of viewpoints on these matters.

### 3.16. ENVIRONMENT

#### Overview

Two RTA/FTAs (USMCA and CPTPP) include a chapter on environment,<sup>46</sup> and their content is similar. Nevertheless, USMCA contains additional provisions on environmental impact assessment, air quality, marine litter, sustainable forest management, a public submissions process, and related cooperation. CPTPP includes another provision for the transition to a low emissions and resilient economy.

USMCA includes a novel approach where the burden of proof relies on the responding Party in the case of dispute settlement.

**Table 27. Summary matrix of chapter on environment**

No.	Provision	Level of convergence	Comments
1	Scope and objectives	Medium-Low (40%)	Both agreements share similar provisions. USMCA includes a recognition of the importance of the role of the environment in the economic, social, and cultural well-being of indigenous people.
2	Levels of protection	Medium-Low (40%)	Both agreements share identical provisions to acknowledge and respect its determination on environmental protection standards.
3	Enforcement of environmental law	Medium-Low (40%)	Both agreements share identical provisions. USMCA clarifies that a panel shall presume that a failure affects trade or investment between the Parties unless the responding Party demonstrates otherwise.
4	Public information and participation	Medium-Low (40%)	Both RTA/FTAs share identical binding provisions.
5	Procedural matters	Medium-Low (40%)	Both agreements share four identical provisions. USMCA incorporates an additional provision for final decisions.
6	Environmental impact assessment	Low (20%)	This provision is included only in USMCA.
7	Multilateral environmental agreements	Medium-Low (40%)	Both agreements include similar provisions. USMCA includes an additional provision regarding five multilateral environmental agreements and incorporates a clarification in the implementation of this provision. USMCA goes beyond clarifying that a dispute settlement panel shall presume that a failure is affecting trade or investment unless the responding Party demonstrates otherwise.
8	Protection of the ozone layer	Medium-Low (40%)	Both agreements include identical provisions. USMCA clarifies that for purposes of dispute settlement, a panel shall presume that a failure is affecting trade or investment, unless the responding Party demonstrates otherwise.
9	Protection of the marine environment from ship pollution	Medium-Low (40%)	Both agreements include identical provisions. USMCA clarifies that for purposes of dispute settlement, a panel shall presume that a failure is affecting trade or

<sup>46</sup> It is worth noting that New Zealand and Indonesia signed a Memorandum of Understanding on Environmental Cooperation and New Zealand and the Philippines Memorandum of Agreement on Labor Cooperation. In these instruments, among others, the Parties recognized (NZ-INA MOU) or reaffirm (NZ-PHL MOA) encourage sound environmental policies and practices and improve the capacities and capabilities of the Parties to address environmental matters. See WTO Factual presentation of the AANZFTA, section 5.11, <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/REG/284-1R1.pdf&Open=True>

			investment unless the responding Party demonstrates otherwise.
10	Air quality	Low (20%)	This provision is included only in USMCA.
11	Marine litter	Low (20%)	This provision is included only in USMCA.
12	Corporate social responsibility and responsible business conduct	Medium-Low (40%)	Both agreements share similar binding provisions. USMCA recognizes the importance of promoting social responsibility and responsible business conduct.
13	Transition to low emissions a resilient economy	Low (20%)	This provision is included only in CPTPP.
14	Voluntary mechanisms to enhance environmental performance	Medium-Low (40%)	Both agreements share identical provisions.
15	Trade and biodiversity	Medium-Low (40%)	Both agreements share identical provisions. USMCA includes an additional area of cooperation.
16	Invasive alien species	Medium-Low (40%)	Both agreements share identical provisions.
17	Marine wild capture fisheries	Low (20%)	Both agreements share identical provisions in recognizing their role as major consumers and producers. Nevertheless, each agreement utilizes a different language for illegal, unreported, and unregulated fisheries. USMCA includes a binding provision to cooperate with Regional Fisheries Management Organizations and Regional Management Arrangements.
18	Sustainable fisheries management	Medium-Low (40%)	Both agreements share similar binding provisions in the operation of fisheries management systems. USMCA includes an additional binding provision on using explosives in fishing harvests and shark finning.
19	Conservation of marine species	Low (20%)	Both agreements commit to promoting the long-term conservation of sharks, sea turtles, seabirds, and marine mammals. USMCA also prohibits the killing of great whales. Nevertheless, while CPTPP lists specific measures for each species, USMCA approach is for non-target species.
20	Fisheries subsidies	Medium-Low (40%)	Both agreements share identical provisions, including definitions for "fishing," "fishing vessels," "illegal, unreported and unregulated fishing," and "overfished fish stocks." Regarding overfished fish stocks, CPTPP states that a fish stock is overfished including when is recognized by a domestic jurisdiction where the fishing is taking place or by a Regional Fisheries Management Organization (RFMO), the USMCA adds a Regional Fisheries Management Arrangement (RFMA). USMCA also includes definitions for "operator". USMCA includes the binding commitment to notify annually of any list of vessels and operators engaged in IUU. Also, it contains a binding commitment to work in WTO to strengthen international rules on fisheries subsidies and enhance its transparency.
21	Illegal, unreported, and unregulated fishing	Medium-Low (40%)	Both agreements share similar binding provisions.
22	Conservation and trade	Medium-Low (40%)	Both agreements share similar provisions, with some nuances. USMCA includes an additional binding

			provision for inspection at entry ports for wildlife shipments.
23	Sustainable forest management and trade	Low (20%)	Both agreements include a binding commitment to promote sustainable forest management. Nevertheless, USMCA contains a specific article with provisions to acknowledge parties' roles as major consumers, producers, and traders, to commit to promoting trade in legally harvested forest products, and to exchange information.
24	Environmental goods and services	Medium-Low (40%)	Both agreements share similar provisions to recognize the importance of trade and investment in environmental goods and services. USMCA contains a binding commitment to cooperate in international forums, not for CPTPP.
25	Environmental cooperation	Low (20%)	Both agreements share an identical recognition of cooperation's importance in implementing their respective chapters. Nevertheless, the USMCA states that such cooperation activities will be carried out according to the Agreement on Environmental Cooperation among the three Parties (ECA). The ECA establishes the Commission for Environmental Cooperation, which comprises a council, a secretariat, and a joint Public advisory committee. CPTPP includes provisions for the designation of contact points and authority responsible, different ways of cooperation, the periodic review of this article, the possibility of providing recommendations, and the promotion of public participation.
26	Environmental committee and contact point	Medium-Low (40%)	Both agreements share similar provisions.
27	Submissions on enforcement matters	Medium-Low (40%)	Both agreements include provisions to receive and consider written submissions regarding the implementation of this chapter (CPTPP) or effectively enforce its environmental laws (USMCA). While USMCA establishes a procedure by the CEC Secretariat, CPTPP establishes that each Party shall elaborate its procedures and notify the entity responsible for receiving submissions. CPTPP includes the possibility of discussing such submissions and responses in the Committee. It also states the first evaluation of the implementation of this article in six years.
28	Factual records and related cooperation	Low (20%)	This provision is included only in USMCA.
29	Environment consultations	Medium-Low (40%)	Both agreements share similar binding provisions.
30	Senior representative consultations	Medium-Low (40%)	Both agreements share identical binding provisions.
31	Ministerial consultations	Medium-Low (40%)	Both agreements share identical binding provisions.
32	Dispute resolution	Medium-Low (40%)	Both agreements share similar provisions in the case of failure in the senior and ministerial consultation. USMCA states that within 60 days after the date of receipt of an environmental consultation, the Parties may request the establishment of a Panel; CPTPP establishes 75 days. CPTPP includes a "reciprocal environmental law" non-binding provision in the case of consultations and the establishment of a panel.



The overall average is of 35%, resulting in a medium level of convergence for the chapter.

## Conclusions

At the chapter level, this chapter has a medium level of convergence (35%) among the five RTA/FTAs. Notably, while this chapter is present in two RTA/FTAs, these two agreements involve 12 APEC economies, translating to at least 57% of APEC members that have undertaken related environmental provisions.

In addition, the general objectives of such environmental chapters are to promote mutually supportive trade and environmental policies and practices; promote high levels of environmental protection and effective enforcement of environmental laws; and enhance the Parties' capacities to address trade-related environmental issues, align with multiple objectives under the Aotearoa Plan of Action's economic drivers, including development, encourage and exchange best practice policies and promote capacity building programs to address all environmental challenges and work towards the sustainable resource management of agriculture, forestry and marine resources and fisheries.

Although 12 APEC economies have already made environmental commitments, other key members have not or have had environmental sensitivities. Likewise, incorporating disciplines such as the burden of proof on the questioned Party in an environmental chapter could be challenging. This is a new approach that could be part of the plans to advance the FTAAP agenda, as it differs from the more traditional approach in which the burden of proof lies on the party filing a dispute.

### 3.17. COOPERATION AND CAPACITY BUILDING

#### Overview

AANZFTA, CPTPP and RCEP include a chapter on cooperation and capacity building. These chapters share the objective of strengthening cooperation and capacity building activities to better implement and maximize the use of the agreement; with some nuances present in ways to conduct work (through work programs, or through a committee), in referring to levels of development, or regarding participation from international donors and private sector.

**Table 28. Summary matrix of chapter on cooperation and capacity building**

No.	Provision	Level of convergence	Comments
1	Scope and objectives	Medium (60%)	Included in the three agreements. Binding provisions (use of "shall" language) for AANZFTA and RCEP, and non-binding (use of "may" language), for CPTPP. AANZFTA and RCEP explicitly refer to different levels of development.
2	General provisions	Low (20%)	Only included in CPTPP, binding language; recognizes the importance of involvement of the private sector and assistance to SMEs.
3	Work program	Medium-Low (40%)	Binding provision. Included in AANZFTA and RCEP; RCEP prioritizes capacity building to least developed Parties. <sup>47</sup>

<sup>47</sup> For purposes of this report, following the APEC style guide, the actual name of this provision was adapted and corresponds to RCEP Article 15.5(2)(a) which can be found at <https://rcepsec.org/wp-content/uploads/2020/11/Chapter-15.pdf>

4	Contact points	Medium-Low (40%)	Binding provision. Only included in AANZFTA and CPTPP.
5	Implementation, evaluation, review of work program/establishment of committee	Medium-Low (40%)	Binding provisions. Included in AANZFTA and CPTPP. Execution of actions in AANZFTA through the definition of work programs; in CPTPP, through a dedicated committee. CPTPP highlights the importance of participation of PPPs, international donors and the private sector.
6	Resources	Medium (60%)	Provision present in all three agreements, of a binding nature, except for RCEP in the case of participation of international organizations or institutions, where the term "may" is used. For the supply of resources to conduct work, AANZFTA and CPTPP acknowledge differences in levels of development.
7	Least developed Parties <sup>48</sup>	Low (20%)	Binding language. Included in RCEP only, due to presence of least developed Parties.
8	Dispute settlement	Medium (60%)	Binding language. Non-recourse to DS in all three chapters.

The overall average is of 42.5%, resulting in a medium level of convergence for the chapter.

## Conclusions

With a few exceptions, the provisions on these chapters are generally of a binding nature. However, none of the three agreements subject this chapter to dispute settlement procedures.

At the chapter level, the cooperation and capacity building chapter has a medium level of convergence for the five RTA/FTAs. Nonetheless, it is worth highlighting that while this chapter is included in three RTA/FTAs, those three RTA/FTAs account for 16 APEC economies, which means that at least 76% of APEC members have already subscribed provisions related to such area.

In addition, given that the overall objective of these chapters is to strengthen cooperation and capacity building activities to better implement and maximize the use of opportunities derived from trade agreements – an aspirational objective that is at the heart of APEC's agenda, including in those initiatives that are part of the FTAAP agenda –, the alignment with multiple objectives under the Aotearoa Plan of Action's three drivers is evident, including advancing capacity building programs to further economic integration in the region in a manner that is market-driven, empowering people and businesses to participate and grow in an interconnected global economy and fostering quality and inclusive growth. Thus, endeavoring to include related commitments in high standard and comprehensive regional undertakings seems feasible.

## 3.18. COMPETITIVENESS AND BUSINESS FACILITATION

### Overview

CPTPP and USMCA contain a chapter on competitiveness and business facilitation. Both chapters recognize the importance of enhancing competitiveness of the participating economies and of promoting regional economic integration and economic growth, including by improving

<sup>48</sup> For purposes of this report, following the APEC style guide, the actual name of this provision was adapted and corresponds to RCEP Article 15.6 which can be found at <https://rcepsec.org/wp-content/uploads/2020/11/Chapter-15.pdf>

their respective business environments. To that end, actions foreseen under these chapters largely rely on cooperative efforts between participants.

**Table 29. Summary matrix of chapter on competitiveness and business facilitation**

No.	Provision	Level of convergence	Comments
1	Committee	Medium-Low (40%)	Binding language. While both agreements contain this provision, USMCA elaborates further, to stress the importance of enhancing integration at the North American level.
2	Supply chains	Low (20%)	Binding provision, included only in CPTPP, recognizing the importance of supply chains for the region.
3	Engagement with interested persons	Medium-Low (40%)	Binding language, both enable mechanisms to receive input from interested persons.
4	Dispute settlement	Medium-Low (40%)	Binding language. Non-recourse to dispute settlement in both chapters.

The overall average of the marks assigned for each provision is of 35%, resulting in a medium level of convergence for the chapter.

## Conclusions

The provisions of this chapter are of a binding nature but are not subject to DS mechanism.

This chapter has a medium level of convergence for the five RTA/FTAs. Nonetheless, it is worth highlighting that despite the fact that this chapter is only included in two RTA/FTAs, those two RTA/FTAs encompass 12 APEC economies, which means that at least 57% of APEC members have already subscribed this type of provisions.

In addition, the overall objective of this chapter, which is to enhance competitiveness, foster additional integration and improve business environments in the region, aligns with multiple objectives under the Aotearoa Plan of Action's three drivers, including ensuring an interconnected regional economy, promoting resilient supply chains, enabling a market-driven environment, and fostering quality and inclusive growth. Thus, endeavoring to include such set of provisions in high standard and comprehensive regional undertakings seems feasible. APEC could play an important role in sharing best practices and promote comprehensive initiatives in this area, as part of its efforts to advance the FTAAP agenda, noting that it aims to strengthen regional economic integration and business facilitation in precisely one of its pillars.

### 3.19. SMALL AND MEDIUM-SIZED ENTERPRISES

Three RTA/FTAs (CPTPP, RCEP and USMCA) contain a chapter on SMEs, which recognizes, on the one hand, the importance of this type of enterprises in the dynamism, competitiveness (USMCA), growth, employment and innovation (RCEP) of the Parties and, on the other hand, that SMEs can take advantage of the trade and investment opportunities derived from the agreements. The chapter relies on the substantive provisions related to cooperation, information sharing, and the Committee on SMEs issues.

Not all the provisions are included in the three agreements. CPTPP, RCEP and USMCA include two similar provisions (information sharing, and DS), RCEP and USMCA contain two similar provisions (cooperation and obligations that benefit the SMEs), CPTPP and USMCA contain one provision (Committee on SMEs issues) and four of the topics covered (general principles, objectives, SME dialogue, and contact points) but the SMEs provisions are only included in one of the three agreements. The three agreements explicitly state that the SMEs chapter is not subject to DS procedures.

**Table 30. Summary matrix of chapter on small and medium-sized enterprises**

No.	Provision	Level of convergence	Comments
1	General principles	Low (20%)	Only USMCA has this provision, with non-binding language. Based on the recognition of the role of SMEs in the economy, USMCA emphasizes cooperation as a tool to benefit SMEs, and underlines the participation of private sector in the SMEs cooperation.
2	Objectives	Low (20%)	Non-binding provision contained in RCEP, which is similar to USMCA on the role of SMEs in the economy and cooperation as a tool to benefit SMEs.
3	Cooperation	Medium-Low (40%)	Binding provision for RCEP and USMCA. This is one of the three pillars on which chapter relies and seeks strengthening the cooperation between Parties. CPTPP does not develop this kind of provision.
4	Information sharing	Medium (60%)	CPTPP, RCEP and USMCA contain this binding provision to promote the sharing of information related to each agreement through the website of each Party. This is the second pillar of the chapter.
5	Committee on SMEs issues	Medium-Low (40%)	The Committee is part of CPTPP and USMCA as binding provision and is a strong mechanism for implementing and monitoring provisions set forth in this chapter. This is the third element on which the chapter relies. This figure is absent in RCEP.
6	SME dialogue	Low (20%)	Binding provision contained only in USMCA; it promotes the participation of stakeholders of the SMEs ecosystem on issues related to this kind of enterprises.
7	Contact points	Low (20%)	Only RCEP contains this binding provision. Contact points are a tool for the cooperation and exchange of information between the Parties.
8	Dispute settlement	Medium (60%)	Binding language. Non-recourse to DS in all three chapters.
9	Obligations in the agreement that benefit SMEs	Medium-Low (40%)	Non-binding provision included in RCEP and USMCA that reflects that commitments or benefits on SMEs issues go beyond the ones established on the chapter.

The overall average of the marks assigned for each provision is of 35.6%, resulting in a medium level of convergence for the chapter.

## Conclusions

The main provisions of SMEs chapter are related to cooperation, information sharing, and the committee on SMEs issues. The chapter is not subject to DS procedures in any of the three agreements.

As a whole, the SMEs chapter presents a medium level of convergence for the five RTA/FTAs. Despite that, CPTPP, RCEP and USMCA chapter encompass 17 APEC economies, which means that at least 81% of APEC members have already subscribed this type of provisions.

It is clear that the inclusion of a chapter on SMEs in the CPTPP, RCEP and USMCA reflects the importance of recognizing the role of SMEs for APEC economies. This is aligned with the third driver of the Aotearoa Plan of Action on a strong, balanced, secure, sustainable and inclusive growth to ensure that the Asia-Pacific region will foster quality growth that delivers tangible benefits and improves the health and well-being of all. Thus, given the importance of SMEs to APEC economies, as part of the efforts to advance the FTAAP agenda, developing comprehensive initiatives that include SME topics seems feasible.

### **3.20. DEVELOPMENT**

#### **Overview**

Only CPTPP formally includes a chapter on development. The rest of the RTA/FTAs incorporate references to the concept in a few chapters, although those mentions have a different intent and purpose than the way that the CPTPP chapter considers it.

In CPTPP, development is understood as the ultimate objective that the liberalization of trade and investment must achieve, and to accomplish it, certain activities have to be implemented in areas such as women and economic growth, education, science and technology, research and innovation. It is worth noting that the development chapter in CPTPP establishes a specific link with the provisions and activities provided for in chapter 21 (cooperation and capacity building). The CPTPP chapter is legally binding, although it is not subject to DS procedures, and it includes a committee to follow up on the obligations spelled out in the text.

As per the other agreements, when the concept of development is used, it is more related to how the establishment of the free trade area may contribute to the economic development of its Parties. For example, USMCA mentions in its preamble that the Parties are committed to promote sustainable development, as well as to create a competitive environment that promotes economic integration and development.

Similarly, RCEP states in Article 1.3 that its objectives are, among others, to contribute to global economic growth and development, by facilitating the expansion of regional trade and investment. AANZFTA, for its part, in its preamble also states that its Parties are confident that the free trade area will serve as an important building block towards regional economic integration and support sustainable economic development.

Alternatively, the concept of development is also mentioned where exceptions to the obligations are considered. For example, RCEP and AANZFTA establish that, when taking measures to safeguard the balance of payments, some Parties may be more fragile than others precisely because of their level of development, and hence exceptions could be considered.

Finally, the concept of development is also incorporated in the content of the agreements in relation to the ability of its Parties to develop economic and technical cooperation activities – such references can be found, for example, in RCEP article 15.2 and AANZFTA articles 12.1 and 12.3.

**Table 31. Summary matrix of chapter on development**

No.	Provision	Level of convergence	Comments
1	General provisions	Low (34%)	Binding obligations. Statement of aspirational goals, where development is to improve welfare, reduce poverty, raise living standards, and create new employment opportunities.
2	Promotion and development	Low (34%)	The Parties to the CPTPP recognize differences in development levels among them, and that such differences need to be considered.
3	Women and economic growth	Low (34%)	Novel binding commitment, as it recognizes that enhancing opportunities for women has a direct impact on the promotion of development.
4	Education, science and technology, research and innovation	Low (34%)	In this article Parties agree to develop policies in these areas linked to trade and investment opportunities, because of their role in accelerating economic growth.
5	Development activities	Low (34%)	This article is important because it creates a docking station for the private sector and civil society to participate in the cooperation activities developed by the CPTPP Parties.
6	Committee	Low (34%)	Binding obligations to follow up and monitor the state of the chapter and the promotion of future activities.

The overall average is of 34%, resulting in a medium level of convergence for the chapter.

### Conclusions

At the chapter level, the level of convergence for this chapter is medium, given that it only exists in CPTPP. This agreement encompasses 11 APEC economies, which means that at least 57% of APEC members have already undertaken these commitments.

In principle, it appears that APEC economies would not object to include language on development in future agreements in the region; however, the issue appears to be not on including the concept as such, but rather, the responsibilities and tasks that such language may imply for APEC economies. Certain economies – for example, USMCA members – have only aspirational references to development, perhaps trying to avoid financial, migration or development aid commitments.

Support for economic and technical cooperation is a key feature of both AANZFTA and RCEP. Australia and New Zealand jointly provide funding to support ASEAN Member States' implementation of both Agreements. Funds have been committed under the current arrangement until 2025 and a process for approving projects established. Economic and technical cooperation under AANZFTA has been ongoing since 2010. All ASEAN FTA partners in RCEP (Australia; China; Japan; Korea; and New Zealand) support economic and technical cooperation under the Agreement.

The level of convergence in this chapter is low, in spite of development being a crucial issue for the region. Indeed, this is recognized in the aspirational language that all agreements share, but only CPTPP articulates into specific actions and adds an institutional framework that accompanies them. APEC's FTAAP agenda could include discussions on development, in order to get a better understanding of how development could be framed and what responsibilities APEC economies are willing to undertake to promote it.

Finally, inserting obligations on development in trade agreements in the region could greatly contribute to the Aotearoa Plan of Action, especially in the driver of strong, balanced, secure, sustainable and inclusive growth. For example, the objective of intensifying inclusive human resources development and economic and technical cooperation is already foreseen in the chapter in CPTPP.

### 3.21. REGULATORY COHERENCE

#### Overview

A chapter on regulatory coherence is included in three RTA/FTAs, i.e., CPTPP, PA<sup>49</sup> and USMCA. The objective of these chapters is to promote transparency in regulatory processes, regulatory cooperation among signatory Parties, public participation in rulemaking, regulatory impact assessments, the sharing of best practices to create a more predictable and efficient regulatory environment, reduce trade barriers and foster cooperation in regulating various industries and economic activities.

**Table 32. Summary matrix of chapter on regulatory coherence**

No.	Provision	Level of convergence	Comments
1	Subject matter and general provisions	Medium (60%)	This provision is included in the three agreements. There are no binding provisions. The provision includes a general understanding of each agreement on the importance of good regulatory practices.
2	Central Regulatory Coordinating Body	Medium-Low (40%)	Only USMCA and PA recognize the important role of their respective central regulatory coordinating bodies (for USMCA) or coordination and revisions mechanisms or processes (for PA) in promoting good regulatory practices, and the Parties mention their intention to maintain such bodies. In addition, PA includes the characteristics of such mechanism.
3	Implementation report notification	Medium-Low (40%)	This provision is included only in the CPTPP and PA. Both agreements include similar binding provisions. The CPTPP includes an additional provision to make publicly available in its annual notice of prospective covered measures.
4	Coordination and review	Medium-Low (40%)	USMCA and PA establish a mechanism for coordination and review. While for USMCA, it is binding; in CPTPP it is a best endeavor.
5	Information quality	Low (20%)	Only USMCA incorporates a provision on information quality. Its commitments are best endeavors.
6	Early planning	Medium (60%)	USMCA includes a binding provision to publish annually the expected regulations, while for CPTPP and PA it is a best endeavor clause.
7	Dedicated website	Medium-Low (40%)	USMCA contemplates a binding provision for a dedicated website. CPTPP and PA limits to make publicly available new covered regulatory measures online as practicable.
8	Use of plain language	Medium (60%)	The three agreements include a very similar non-binding provision.
9	Transparent development of regulations	Low (20%)	Almost all provisions contained only in the USMCA chapter are binding, except for the period for comments, to publish in a format that can be read and digitally

<sup>49</sup> In PA, this chapter is called Regulatory Improvement.

			processed and to make publicly written comments. Only the latest clause is shared by PA and CPTPP.
10	Expert advisory groups	Low (20%)	Only USMCA includes a non-binding provision on expert advisory groups.
11	Regulatory impact assessment	Medium (60%)	The three chapters include non-binding provisions to use impact assessments for regulations beyond an economic impact. CPTPP and PA include an identical provision considering other regulatory measures.
12	Final publication	Low (20%)	Only USMCA includes binding provisions for promptly publishing a regulatory impact assessment
13	Retrospective review	Medium (60%)	USMCA includes a binding commitment while for CPTPP and PA is a best endeavor. USMCA goes beyond in including two additional non-binding provisions.
14	Suggestions for improvement	Medium (60%)	The three agreements include a similar binding provision.
15	Information about regulatory processes	Low (20%)	Only USMCA establishes a binding commitment to publish online a description of the process and mechanism employed by its regulatory authority.
16	Annual report	Low (20%)	Only USMCA commits to providing annual information on covered regulatory measures.
17	Encouragement of regulatory compatibility and cooperation	Medium (60%)	This is the only provision which is binding for CPTPP and PA and non-binding for USMCA.
18	Committee on Good Regulatory Practices	Medium (60%)	This provision is included in the three agreements. Only CPTPP and PA foresee a review of the operation of the chapter, for CPTPP it is every five years and for PA every three years. <sup>50</sup>
19	Contact points	Medium (60%)	The three agreements include the commitment to notify their respective contact points.
20	Dispute settlement	Medium-Low (40%)	For CPTPP and PA, the dispute settlement chapter is not applicable. For USMCA, it is up to the Parties to recourse to the dispute settlement procedures, only to address a sustained or inconsistent recurring course of action or inaction.
21	Scope	Medium (60%)	The three chapters include the commitment to determine the scope of their covered regulatory measures.
22	Relation to other chapters	Medium-Low (40%)	This provision is included only in CPTPP and PA. Both agreements include identical binding provisions.

The overall average is of 43.6%, resulting in a medium level of convergence for the chapter.

## Conclusions

The chapter of regulatory coherence is included in three RTA/FTAs (USMCA, PA and CPTPP). Almost all PA and CPTPP provisions are very similar in language and commitments, but some differ from the USMCA.

This chapter has a medium level of convergence. These RTA/FTAs involve 12 APEC economies, which means that at least 57% of APEC members have subscribed related provisions.

<sup>50</sup> In PA is called committee on regulatory improvement.



Considering the importance of transparency in contributing to an improved business environment, and the fact that these RTA/FTAs have introduced certain flexibilities regarding the recourse to DS procedures; APEC can allocate resources to strong, dedicated capacity-building cooperation efforts related to ways to improve regulatory coherence among APEC economies.

### 3.22. TRANSPARENCY

#### Overview

Provisions on transparency are included in CPTPP, PA, USMCA and RCEP.<sup>51</sup> Through these provisions, the Parties to these RTA/FTAs promote transparency in making and implementing laws, regulations and government decisions regarding any matter covered by their respective agreements.

This analysis covers those provisions included in a transparency chapter. Other specific provisions are analyzed in their respective chapters (trade remedies, agriculture, SPS, and TBT, among others).

**Table 33. Summary matrix of chapter on transparency**

No.	Provision	Level of convergence	Comments
1	Publication	Medium-High (80%)	The four agreements share two provisions on publication and provide comments for regulation of general application. CPTPP and USMCA elaborate further to publish the regulation adopted by their central level of government in an official journal and online. CPTPP includes a period between the publication and entry into force.
2	Administrative proceedings	Medium-High (80%)	Provisions in the four agreements are identical in language and commitments.
3	Review and appeal	Medium-High (80%)	Provisions in the four agreements are identical in language and commitments.
4	Provision of information	Medium (60%)	CPTPP and PA share identical provisions. PA elaborates further on the treatment of confidential information. RCEP, CPTPP and PA contain a binding commitment to respond questions on any proposed regulation. USMCA does not include this provision.
5	Contact points	Medium-Low (40%)	Only CPTPP and PA include such commitment. PA includes an annex with the names of their respective agencies, while CPTPP provides 60 days to notify them.

The overall average is of 68%, resulting in a high level of convergence for the chapter.

#### Conclusions

The chapter of transparency is included in CPTPP, PA, USMCA and RCEP. Provisions are similar in the level of ambition and some of them are practically the same (i.e., administrative procedures and review and appeal). Other provisions share some parts of the language but differ in the level of ambition.

<sup>51</sup> Despite that AANZFTA does not contain a chapter on transparency, provisions on publication are included in the chapters of trade in goods; trade in services; investment; standards, technical regulations and conformity assessment procedures; movement of natural persons; electronic commerce, and intellectual property. In addition, provisions on due process rights, such as review and appeal are included in chapter on rules of origin; customs procedures; and trade in services.

At the chapter level, these provisions have a high level of convergence. An important point to be highlighted is that transparency provisions in these RTA/FTAs comprise 17 APEC economies, which means that at least 81% of APEC members have already undertaken related commitments under this area.

Considering the paramount importance of transparency in international trade and the convergence among the provisions analyzed, discussing future work in this area within APEC's FTAAP agenda in order to contribute to high standard and comprehensive regional undertakings on transparency seems to be feasible.

### 3.22.1. Anti-corruption

#### Overview

Three RTA/FTAs have anti-corruption provisions, USMCA, CPTPP, and RCEP and share the objective of promoting transparency, integrity and ethical conduct in the trade and economic relations among the parties, requiring adopting or maintaining provisions to criminalize and sanction corrupt behavior in issues that affect international trade or investment.

USMCA and CPTPP chapters are structured similarly, and the provisions are also similar in language and ambitions, while RCEP includes limited provision to only one article in the general provisions and exception chapter.

**Table 34. Summary matrix of chapter on anti-corruption**

No.	Provision	Level of convergence	Comments
1	Scope	Medium-Low (40%)	This provision is included only in USMCA and CPTPP; both agreements affirm their commitments to international conventions. The USMCA goes far beyond including more instruments from G20 and APEC.
2	Measures to combat corruption	Medium-Low (40%)	This provision is included only in USMCA and CPTPP; both agreements share several binding provisions to criminalize and sanction acts of corruption. USMCA includes a provision to encourage the private sector to prohibit the use of facilitation payments.
3	Promoting integrity among public officials	Medium-Low (40%)	This provision is included only in USMCA and CPTPP. Provisions in both agreements are identical in language and binding commitments, except for the establishment of codes of conduct and procedures for public officials accused of corruption, which are non-binding for CPTPP.
4	Participation of private sector and society	Medium-Low (40%)	This provision is included only in USMCA and CPTPP; both chapters share three identical provisions; two are binding and one is a best endeavor. USMCA includes one more provision to encourage enterprises to establish programs for preventing and detecting acts of corruption.
5	Application and enforcement of anti-corruption laws	Medium (60%)	Provisions in USMCA and CPTPP are identical in language and commitments. The Parties to the RCEP only assume a binding commitment to prevent and combat corruption.
6	Relation to other agreements	Medium-Low (40%)	This provision is included only in USMCA and CPTPP; both chapters state that nothing in the respective agreements affects their rights and obligations under international agreements. CPTPP refers to the United Nations Convention Against Corruption (UNCAC), the OECD and the Inter-American Convention Against Corruption (IACAC) conventions, while

			USMCA adds the UN Convention against Transnational Organized Crime.
7	Dispute settlement	Medium-Low (40%)	The USMCA and CPTPP chapters are subject to the respective DS chapter but differ in the consultation process. CPTPP includes a provision for third parties and USMCA incorporates commitments for the Trade Commission (when discussing Anti-corruption issues) and for the roster and qualification of panelists. For RCEP, anti-corruption is not applicable to its DS chapter.
8	Cooperation	Low (20%)	Only USMCA includes a best endeavor provision to cooperate between their respective anti-corruption agencies. USMCA also acknowledges the importance of cooperation and coordination in international forums.

The overall average is of 42%, resulting in a medium level of convergence for the chapter.

### **Conclusions**

The chapter of anti-corruption is included in three RTA/FTAs (USMCA, CPTPP, and RCEP) and share the objective of promoting transparency, integrity and ethical conduct in the trade and economic relations among the parties, requiring adopting or maintaining provisions to criminalize and sanction corrupt behavior in issues that affect international trade or investment.

USMCA and CPTPP chapters are structured similarly, and their provisions are also similar in language and ambition in measures to combat corruption, participation of private sector and society, dispute settlement and application and enforcement of anti-corruption laws, while RCEP includes limited provisions to one article (measures against corruption) in its general provisions and exception chapter. Nevertheless, these three agreements contain a binding provision to take appropriate measures to prevent and combat corruption with respect to any matter covered by their respective agreements.

At the chapter level, the anti-corruption chapter has a medium level of convergence. Significantly, the inclusion of such provisions in the three RTA/FTAs involves 17 APEC economies, meaning that at least 81% of APEC members have already subscribed related commitments to this chapter.

Considering the divergence in the coverage and level of ambition of the RTA/FTAs that include anti-corruption provisions, APEC could advance the FTAAP agenda by engaging in capacity-building initiatives to get a better understanding of a nexus between trade and anti-corruption as an initial step towards achieving high standard and comprehensive regional undertakings in this area.

### **3.23. DISPUTE SETTLEMENT**

#### **Overview**

Every RTA/FTA reviewed contains a chapter on dispute settlement. There is a high degree of similarity in terms of stages, but the wording varies. It is worth noting that, under the AANZFTA, Australia and New Zealand agreed that this chapter shall not create rights and obligations between them.

**Table 35. Summary matrix of chapter on dispute settlement**

No.	Provision	Level of convergence	Comments
1	Objectives	Medium (60%)	Two RTA/FTAs (AANZFTA and RCEP) set out in an ex profeso provision related to the objectives of the chapter, while PA contains the objective in the general provisions article.
2	General provisions	Medium (60%)	Binding wording. Three RTA/FTAs (AANZFTA, PA and RCEP) contain general provisions.
3	Cooperation	High (100%)	Binding wording. The five RTA/FTAs establish that the disputing Parties are encouraged to reach a mutually agreed solution.
4	Scope	High (60%)	Binding wording. This provision is contained in the five RTA/FTAs.
5	Choice of forum	High (100%)	Binding wording. The five RTA/FTAs regulate the choice of forum with certain variances but substantially are equivalent.
6	Consultations	High (100%)	Binding wording. The five RTA/FTAs regulate the consultations in a very similar fashion.
7	Good offices, conciliation and mediation	High (100%)	Non-binding. The five RTA/FTAs contain this provision with a very similar wording.
8	Establishment of a panel	High (100%)	Binding wording. The five RTA/FTAs contain this provision with certain variations regarding requisites and timeframes.
9	Terms of reference	High (100%)	Binding wording. The five RTA/FTAs contain this provision with certain variations.
10	Composition of panels	High (100%)	Binding wording. The five RTA/FTAs contain this provision with variations.
11	Qualifications of panelists	High (100%)	Binding wording. The five RTA/FTAs, using a very similar wording, establish provisions on qualifications of panelists.
12	Roster of panel chairs and party specific lists	Medium (60%)	Binding wording. Two RTA/FTAs (CPTPP and USMCA) establish the roster of panelists and rules on it. PA refers to WTO indicative list.
13	Function of panels	Medium-High (80%)	This provision appears in four RTA/FTAs (AANZFTA, CPTPP, USMCA and RCEP).
14	Rules of procedure for panels	High (100%)	The five RTA/FTAs establish that panel are obliged by the provision contained by the chapter at issue and the rules of procedure.
15	Third Party participation	High (100%)	The five RTA/FTAs allow the participation of Parties in the proceeding with a different level of rights.
16	Role of experts	Medium (60%)	Three RTA/FTAs (AANZFTA, CPTPP and USMCA) contain a similar provision.
17	Cases of urgency	High (100%)	This provision is contained in the five RTA/FTAs.
18	Suspension or termination of proceedings	High (100%)	The five FTA/RTAS permit the suspension or termination of the proceedings.
19	Initial report	High (100%)	The five FTA/RTAS prescribe the issuance of an initial or interim report.
20	Final report	High (100%)	The five RTA/FTAs regulate the issuance of the final report in a similar manner.
21	Request for clarification of the final report	Low (20%)	Only PA permits a disputing Party to file a request for clarification of the panel report.
22	Implementation of final report	High (100%)	The five RTA/FTAs regulate the implementation of a final report with certain variations.

23	Non-implementation – compensation and suspension of benefits	High (100%)	The five RTA/FTAs regulate cases of compensation and suspension of benefits using conceptually certain common elements but in a different manner.
24	Compliance review	High (100%)	The five RTA/FTAs establish provisions on dispute settlement matters but the level of specificity varies.
25	Private rights	Medium-Low (40%)	Two RTA/FTAs (CPTPP and USMCA) establish that no Party shall provide for a right of action under its law against any other Party on the ground that a measure is inconsistent with its obligations under the agreement.
26	Alternative dispute resolution	Medium-Low (40%)	Two RTA/FTAs (CPTPP and USMCA) contain provisions on the use of arbitration and other alternative dispute resolution means for the settlement of international commercial disputes between private parties.
27	Referrals of matters from judicial or administrative proceedings	Low (20%)	Only USMCA contains this provision related to the interpretation or application of the agreement when it arises in a domestic judicial or administrative proceeding of a Party.
28	Special and differential treatment	Medium-Low (40%)	Two RTA/FTAs (AANZFTA and RCEP) establish a special and differential treatment provision regarding disputes.
29	Expenses	Medium-Low (40%)	Two RTA/FTAs (AANZFTA and RCEP) contain a provision on who shall bear the costs of the proceedings.
30	Contact points	High (100%)	The five RTA/FTAs establish the obligation to designate a contact point, a permanent office or Section of the Secretariat regarding the communications in the proceedings.
31	Language	Medium-High (80%)	The five RTA/FTAs regulate the use of languages in the proceeding but in a different manner. Accordingly, the rate is medium-high rather than high.
32	Electronic document filing	Low (20%)	Only USMCA prescribes that disputing Parties shall file all documents by electronic means.
33	Facility-specific rapid response mechanism	Low (20%)	Only USMCA establishes a unique state-state labor-specific dispute settlement mechanism.

The overall average is of 75.7% resulting in a high level of convergence for the chapter.

## Conclusions

Almost all provisions are binding. Every RTA/FTA contains a chapter on dispute settlement. There is a high degree of similarity in terms of stages, but the wording varies. There is high convergence between AANZFTA and RCEP on one part, and among CPTPP, PA and USMCA on the other part.

The level of convergence of the chapter on dispute settlement is high. The five agreements that include this chapter cover 17 APEC economies, which means that at least 81% of APEC members have subscribed commitments under the chapter.

Noting the different approaches in some dispute settlement chapters, it will be important to work in some areas where APEC economies do not have much experience and learn from those who have put them in practice. For example, the case of state-state labor-specific dispute settlement mechanisms and collective bargaining laws.

In light of the Trade and Investment driver of the Aotearoa Plan of Action, in particular with the objective related to the importance of a free, open, fair, non-discriminatory, transparent and

predictable trade and investment environment, APEC economies might consider certain provisions as a minimum to be included in high standard and comprehensive undertakings.

### 3.24. MACROECONOMIC POLICIES AND EXCHANGE RATE MATTERS

#### Overview

Only the USMCA includes a chapter on macroeconomic policies and exchange rates matters, where the Parties reaffirm their commitment to support exchange rates determined by the market. It also underscores their adherence to the International Monetary Fund's (IMF) Articles of Agreement, which means they will not engage in activities that manipulate exchange rates or the international monetary system to avoid necessary balance of payments adjustments or gain an unfair competitive advantage.

**Table 36. Summary matrix of chapter on macroeconomic policy and exchange rate matters**

No.	Provision	Level of convergence	Comments
1	General provisions	Low (20%)	No other agreement includes a similar provision
2	Scope	Low (20%)	No other agreement includes a similar provision
3	Exchange rate practices	Low (20%)	No other agreement includes a similar provision
4	Transparency and reporting	Low (20%)	No other agreement includes a similar provision
5	Macroeconomic Committee	Low (20%)	No other agreement includes a similar provision
6	Principal representative consultations	Low (20%)	No other agreement includes a similar provision
7	Dispute settlement	Low (20%)	No other agreement includes a similar provision

The overall average of the marks assigned for each provision is 20%, resulting in a low level of convergence.

#### Conclusions

As the only chapter with these provisions, the USMCA macroeconomic policies and exchange rate matters chapter has a low level of convergence for the RTA/FTAs analyzed. The chapter is implemented by only three APEC economies, which means that at least 14% of APEC members have already undertaken commitments under this chapter.

The overall objective of the chapter is to avoid unfair competitive advantage through the manipulation of exchange rates or the international monetary system, which may be interpreted as aligning with multiple objectives under a couple Aotearoa Plan of Action's drivers, including advancing the integration in the region in a manner that is market driven.

Including this topic in the APEC discussions to advance the FTAAP agenda may be challenging, as there has been lack of appetite among some APEC economies to discuss an issue that they may consider it is outside the scope of any RTA/FTA.

### 3.25. EXCEPTIONS AND GENERAL PROVISIONS

#### Overview

All five RTA/FTAs reviewed maintain a chapter on exceptions and general provisions. On common exceptions, there are several common provisions, even if the drafting language varies. Every Party needs specific exceptions which are reflected in this chapter in each of the agreements. With regard to the general provisions therein, this is subject to the structure of the FTA at issue.

**Table 37. Summary matrix of chapter on exceptions and general provisions**

No.	Type of Provision	Level of convergence	Comments
1	General exceptions	High (100%)	Two different approaches are there, some WTO provisions are the basis. AANZFTA sets out a consultation stage when the exceptions relate to trade in services and investment.
2	Security exceptions	High (100%)	Article XXI is the basis for three RTA/FTAs and is a bit different in CPTPP and USMCA. AANZFTA and RCEP add the protection of critical public infrastructures as part of the exceptions.
3	Public order	Low (20%)	It is only contained in PA. See Section 7 Investment for further information.
4	Temporary safeguard measures	High (100%)	Even if the wording varies among these provisions, it is present in every RTA/FTA. Also, there are WTO texts referred to as well as the Agreement of the IMF.
5	Taxation measures	High (100%)	Taxation measures are excluded from every RTA/FTA save for certain matters. Tax conventions to avoid double taxation are not affected by the RTA/FTA. There are specific provisions on ISDS.
6	Disclosure of information	High (100%)	RTA/FTAs establish that nothing in the agreements obliges the Parties to provide confidential information.
7	Confidentiality	Medium-Low (40%)	AANZFTA and RCEP prescribe that the information provided to another Party pursuant to the agreement at issue designated as confidential shall keep that nature. Specific chapters of RTA/FTAs maintain similar provisions limited to the scope of those chapters. See Sections 3 Customs administration and trade facilitation and 4 Trade remedies.
8	Personal information protection	Low (20%)	Contained only in USMCA, this provision refers to the legal framework for the protection of personal information. As relevant principles or guidelines for establishing that framework, APEC Privacy Framework and the OECD Recommendation of the Council concerning Guidelines governing the Protection of Privacy and Transborder Flows of Personal Data (2013) are mentioned. It is recognized that APEC Cross-Border Privacy Rules system is a valid mechanism to facilitate cross-border information transfers while protecting personal information.
9	Access to information	Low (20%)	Only contained in USMCA, Parties shall maintain a legal framework allowing a natural person to obtain access to records held by the central level of government.
10	Publication	Medium-High (80%)	This appears in RCEP, while other RTA/FTAs have it in another chapter. For the purposes of assessing the level of convergence, these provisions are analyzed in Section 22 Transparency.
11	Provision of information	Medium (60%)	This appears in RCEP, while other RTA/FTAs have it in another chapter. For the purposes of assessing the level of convergence, these provisions are analyzed in Section 22 Transparency.
12	Review and appeal	Medium-High (80%)	This appears in RCEP, while other RTA/FTAs have it in another chapter. For the purposes of assessing the level of convergence, these provisions are analyzed in Section 22 Transparency.

13	Administrative proceedings	Medium-High (80%)	This appears in RCEP, while other RTA/FTAs have it in another chapter. For the purposes of assessing the level of convergence, these provisions are analyzed in Section 22 Transparency.
14	Tobacco control measures	Medium-Low (40%)	This appears in RCEP, while CPTPP has it in the investment chapter or in side letters. For the purposes of assessing the level of convergence, these provisions are analyzed in Section 7 Investment.
15	Treaty of Waitangi	Medium (60%)	Where New Zealand is a Party, it is prescribed that nothing precludes measures favoring Maori under the Treaty of Waitangi.
16	Indigenous people rights	Low (40%)	Only USMCA establishes that nothing precludes a Party from adopting or maintaining a measure to fulfill its legal obligations to indigenous people.
17	Cultural industries	Low (20%)	Under USMCA there is an exception for Canada with respect to a cultural industry. Canada signed side letters with other Parties pursuant to CPTPP.
18	Traditional knowledge and traditional cultural expressions	Medium-Low (40%)	Pursuant to CPTPP a Party may establish measures to respect, preserve and promote these expressions subject to its international obligations. AANZFTA keeps a similar obligation in the intellectual property chapter. For the purposes of assessing the level of convergence, these provisions are analyzed in Section 14 Intellectual property.
19	Screening regime and dispute settlement	Medium-Low (40%)	This provision related to investment is contained only in RCEP. PA also contains a similar provision in the chapter on investment. See for the purposes of assessment Section 7 Investment.
20	Measures against corruption	Low (20%)	RCEP has this provision but in other RTA/FTAs, there is a specific chapter. For the purposes of assessing this matter see Section 22a Anti-corruption.
21	Convention on Biological Diversity	Low (20%)	Only RCEP Parties affirm in this chapter rights and responsibilities under the Convention on Biological Diversity done at Rio de Janeiro on 5 June 1992.
22	Non-Market FTA member <sup>52</sup>	Low (20%)	USMCA establishes certain obligations on Parties when negotiating an FTA with a non-market customs territory.
23	Geographical scope of application	Low (20%)	RCEP regulates its territorial application, while other RTA/FTAs do that by the definition of territory.

The overall average is of 51.3%, resulting in a medium level of convergence for the chapter.

## Conclusions

The convergence with regard to common exceptions is high, while tailored-made exceptions for Parties in specific cases also find room. These provisions are binding. In this vein, Parties could accommodate their needs and within APEC, exceptions could be discussed as part of the efforts to advance the FTAAP agenda.

Most common exceptions are included in four – or even in five – RTA/FTAs covering 17 APEC economies that represent 81% of APEC members. Regarding specific-party exceptions, every Party has been capable of accommodating its needs.

<sup>52</sup> For the purposes of this report, following the APEC style guide, the actual name of this provision was adapted and corresponds to USMCA Article 32.10, which can be found at [https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/32\\_Exceptions\\_and\\_General\\_Provisions.pdf](https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/32_Exceptions_and_General_Provisions.pdf)



In this sense, it seems feasible to include exceptions and general provisions in high standard and comprehensive undertakings. APEC's efforts to advance the FTAAP agenda could include more dialogues on the approaches to exceptions in existing regional and free trade agreements.

There are new provisions such as the personal information protection set out in USMCA. This specific provision refers to APEC Privacy Framework and APEC Cross-Border Privacy Rules system, which APEC economies may consider more acceptable to put in practice.

Considering the objectives of the Aotearoa Plan of Action and the general nature of the exceptions and provisions applicable to the entire RTA/FTA, these provisions on exceptions and general provisions fall within all the objectives by balancing the rights and obligations of the Parties.

### 3.26. FINAL PROVISIONS

#### Overview

The five RTA/FTAs contain a chapter on final provisions. These chapters include, among others, rules for amendments, relation to other agreements, review, withdrawal and termination, and entry into force. In most of the provisions under analysis the substance is similar, however, some level of detail varies.

**Table 38. Summary matrix of chapter on final provisions**

No.	Provision	Level of convergence	Comments
1	Annexes, appendices and footnotes	High (100%)	The provisions are identical.
2	Relation to other agreements	Medium-Low (40%)	Included in AANZFTA and RCEP RTA/FTAs.
3	Amendments	High (100%)	The main features in the process of amending the agreements are identical.
4	Amendment of the WTO Agreement	High (100%)	Noting that AANZFTA and RCEP include any international agreement, the level of convergence applies to the WTO Agreement.
5	Accession	Medium (60%)	Although two RTA/FTAs do not contain an accession provision, there is no provision that prohibits it.
6	Entry into force	High (100%)	Included in the five RTA/FTAs. Different modalities apply in each of them.
7	Withdrawal/termination	High (100%)	Included in the five RTA/FTAs. Different modalities apply in each of them.
8	Depositary	Medium (60%)	The fact that AANZFTA and USMCA do not include this figure does not mean that the Parties to these agreements are not open to it. Except for the United States, the rest of the economies participate in the other RTA/FTAs that include the figure.
9	Authentic texts	Medium-Low (40%)	Included in CPTPP and USMCA, texts in English, French and Spanish are equally authentic, with some nuances. For CPTPP, the English version prevails in case of discrepancy. For USMCA, they are equally authentic unless provided elsewhere in the agreement. The AANZFTA and RCEP have only been signed in English, while the PA has only been signed in Spanish.
10	Review	Medium-High (80%)	The fact that PA does not include a review clause does not mean that the Parties to this agreement are not

			open to it. These economies participate in other RTA/FTAs that include this provision.
11	Reservations	Low (20%)	Included in one FTA.

The overall average is of 72.7%, resulting in a high level of convergence for the chapter.

### Conclusions

The provisions of this chapter are operational, and in that regard, of a binding nature.

At the chapter level, the final provisions chapter has a high level of convergence for the five RTA/FTAs, which include 17 APEC economies, representing 81% of APEC membership. Since this is an operational chapter, the inclusion of this type of provisions seems feasible in the context of any high standard and comprehensive regional undertaking.

In addition, the overall objective of the final provisions is to set out rules and procedures for the operation of the RTA/FTAs in different areas, an objective that aligns with Aotearoa Plan of Action objective to maintain APEC's unique position as the premier forum for regional economic cooperation and the driver of improving APEC governance and organizational structure. APEC's efforts to advance the FTAAP agenda could include more dialogues on the approaches to final provisions in existing regional and free trade agreements.

## ANNEX A METHODOLOGY

This report analyzes the following 29 chapters and five sectoral chapters contemplated in the Inception Report.

**Table A.1. Chapters of the RTA/FTAs covered in the scope of the study**

No.	Chapter	AANZFTA	CPTPP	PA <sup>1</sup>	USMCA	RCEP
1	Market access for goods	2	2	3	2 and 3	2
1a	Agriculture	2.3	2.c	3F	3	2.13
2	Rules of origin and origin procedures	3	3	4	4 and 5	3
2a	Textiles and apparel	-	4	-	6	-
3	Customs administration and trade facilitation	4	5	5	7	4
4	Trade remedies	7	6		10	7
5	Sanitary and phytosanitary measures	5	7	6	9	5
6	Technical barriers to trade	6	8	7	11	6
6a	Sectoral annexes	-	✓	✓	✓	-
7	Investment	11	9	10	14	10
8	Cross-border trade in services	8	10	9	15	8
9a	Financial services	Annex	11	11	17	Annex 8A
9b	Maritime services	-	-	12	-	-
9c	Telecommunications	Annex	13	14	18	Annex 8B
9d	Professional services	-	Annex 10-A	Annex 9.10	Annex 15-C	Annex 8C
10	Temporary entry of business persons	9	12	-	16	9
11	Electronic commerce	10	14	13	19	12
12	Government procurement		15	8	13	16
13	Competition policy	14	16 and 17	-	21 and 22	13
13a	State-owned enterprises and designated monopolies	-	16 and 17	-	21 and 22	-
14	Intellectual property	13	18	-	20	11
15	Labor	-	19	-	23	-
16	Environment	-	20	-	24	
17	Cooperation and capacity building	12	21	-	-	15
18	Competitiveness and business facilitation	-	22	-	26	-
19	Small and medium-sized enterprises	-	24	-	25	14
20	Development	-	23	-	-	-
21	Regulatory coherence	-	25	15bis	28	-
22	Transparency	-	26	15	29	17.1-6
22a	Anti-corruption	-	26	-	27	17.9
23	Dispute settlement	17	28	17	31	19
24	Macroeconomic policies and exchange rate matters	-	-	-	33	-
25	Exceptions and general provisions	15	29	18	32	17
26	Final provisions	18	30	19	34	20

<sup>1</sup>Includes modifications of the First Amending Protocol for TBT sectoral annex on cosmetics and chapters on e-commerce, telecommunications, and regulatory coherence.

The methodology used in this Report to analyze chapters and annexes across the five RTA/FTAs consists of identifying the specific texts based on official sources and authentic

languages and developing a comparative matrix to compare the provisions included in those chapters. This work is done on the analysis at the provision and chapter level.

### **Analysis at the provision level**

To compare provisions of each of the chapters under analysis, we developed a comparative working matrix to detect convergences and divergences as well as binding or non-binding patterns.<sup>53</sup> To identify these patterns, we applied the following criteria:

- If the provision contains the verb “shall”, it will be considered as “binding.”
- If the provision is of a best endeavor nature, it will be considered as “non-binding”. Under this criterion, in general, the common language used to identify the pattern will be either “should”, or terms such as “endeavor/best effort” language or reference to the “extent possible”, “practicable”, “according to Party’s domestic law” or “Party’s domestic system”.

In some cases, the provision could or could not be subject to a dispute settlement mechanism. In other words, while a provision contains an obligation, it may be “non-enforceable” under a dispute settlement mechanism. This pattern is also identified in the convergences and divergences determined in the working matrix, and reflected in the column comments of the “Summary of the comparative matrix”.

We also analyze the level of convergence considering the number of RTA/FTAs that contain the provision of the covered chapter, according to the following indicators:

- If the provision is in one agreement, the level of convergence will be marked as “low”, and it will be weighted with 20% convergence.
- If the provision is in two agreements, the level of convergence will be marked as “medium-low”, and it will be weighted with 40% convergence.
- If the provision is contained in three agreements, the level of convergence will be marked as “medium”, with 60% convergence.
- If the provision is contained in four agreements, the level of convergence will be marked as “medium-high”, with 80% convergence.
- If the provision is contained in five agreements, the level of convergence will be marked as “high”, with 100% convergence.

This is a quantitative metric which provides a convergence reference. However, this score could be further fine-tuned depending on the depth of the commitment and nature of the provisions beyond their sole presence in the RTA/FTAs.

For this analysis, we understand “convergence” as the act of converging and especially moving toward union or uniformity of the provisions contained in the five RTA/FTAs, so this convergence should not necessarily be understood as the existence of an identical provision, or convergence exclusively among a particular subset of RTA/FTAs.

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<sup>53</sup> For the provisions that appear in some agreements as annexes and in others as chapters, the comparison is carried out in the comparative working matrix. The rest of the RTA/FTA chapters’ annexes, such as reservations of investment and services, will not be included in the matrix, and only a summary will be provided in the working matrix indicating, for example, the type of reservations taken, or the positive or negative approach used. In any instance, the results will be incorporated into the conclusions of their corresponding chapter.

It is important to mention that the provision “definitions” is not considered when averaging convergence at the provision level, since its relevance to the convergence exercise is conducted rather in each substantive provision. Nevertheless, when a Chapter includes an article with “definitions”, a brief description of such provision is included in the “Appendix A Detailed Analysis of Chapter provision”.

The analysis conducted through the working matrices is reflected in “Part B: Detailed Comparative Analysis of Chapters” of this Report, which includes two sections for each of the chapters under analysis:

1. A general overview of the RTA/FTA chapter, describing the main convergences and divergences identified in the working comparative matrix.
2. A summary matrix of the corresponding RTA/FTA chapter to present the level of convergence by the number of RTA/FTAs that contain the provisions under study and complemented by an additional analysis based on the number of member economies that have adopted such provisions and comments describing the binding or non-binding nature of the provision, as it is indicated in the following table:

**Table A.2. Summary of the comparative matrix, chapter xx**

Provision	Level of convergence	Comments
Provision		
Provision		
Provision		

### **Analysis at the chapter level**

We also include a subsequent level of analysis to determine the level of convergence by chapter and by RTA/FTA based on the average of the marks assigned for each provision, utilizing the following categories:

- 33% or less will be defined as “low convergence” among chapters,
- above 33% and below 66% as “medium”, and
- above 66% as “high level of convergence”.

Section 1, “General Outcomes by Chapter,” includes the outcomes of this analysis of the chapter-level convergence and the number of APEC economies that have assumed such commitments.

### **Analysis at the RTA/FTA level**

Once concluded the analysis of all chapter contemplated in the Inception Report and the level and percentage of convergence is determined, the average of those figures has allowed us to assess the level of convergence among the five RTA/FTAs analyzed, which stands at 50.0%.

As a further element of analysis, each chapter was rated as “feasible”, “feasible/challenging” or “challenging”. Parameters such as the weighting of its convergence (the average convergence of each provision), the number of APEC members that undertook commitments in that chapter, and elements that could be controversial in a potential negotiation were

considered to determine this. Such parameters are detailed in Table 1 of Part A, as well as in the summary matrix of each chapter included in Part B.

### **An additional, APEC-wide indicator, for reference**

Finally, an additional indicator, which is used only for referential purposes, is introduced to provide a more comprehensive picture. This indicator highlights the total number and percentage of APEC economies that have subscribed the commitments under each of the analyzed chapters. While this indicator hints at the amenability of APEC economies to undertake such commitments, this must not necessarily be seen as a determinant to subscribe or not such measure in any high standard and comprehensive undertaking. This indicator is a complementary guide and is contained in the following table.

**Table A.3. Number of APEC economies per RTA/FTA**

Number of RTAs	RTA/FTAs Combinations	APEC Members	
		# Members	% APEC
1	AP	3	14%
1	USMCA	3	14%
2	AP + USMCA	5	24%
1	AANZFTA	9	43%
1	CPTPP	11	52%
2	CPTPP + AP	11	52%
1	RCEP	12	57%
2	AANZFTA + AP	12	57%
2	AANZFTA + USMCA	12	57%
2	AANZFTA + RCEP	12	57%
2	CPTPP + USMCA	12	57%
3	CPTPP + AP + USMCA	12	57%
2	AANZFTA + CPTPP	14	67%
3	AANZFTA + CPTPP + AP	14	67%
3	AANZFTA + AP + USMCA	14	67%
3	AANZFTA + CPTPP + USMCA	15	71%
3	AANZFTA + AP + RCEP	15	71%
3	AANZFTA + USMCA + RCEP	15	71%
2	AP + RCEP	15	71%
2	USMCA + RCEP	15	71%
4	AANZFTA + CPTPP + AP + USMCA	15	71%
2	CPTPP + RCEP	16	76%
3	CPTPP + AP + RCEP	16	76%
3	AANZFTA + CPTPP + RCEP	16	76%
3	CPTPP + USMCA + RCEP	17	81%
3	AP + USMCA + RCEP	17	81%
4	AANZFTA + CPTPP + AP + RCEP	17	81%
4	AANZFTA + CPTPP + USMCA + RCEP	17	81%
4	AANZFTA + AP + USMCA + RCEP	17	81%
4	CPTPP + AP + USMCA + RCEP	17	81%
5	AANZFTA + CPTPP + AP + USMCA + RCEP	17	81%

Lastly, on the seven innovative approaches, to determine the parameters for their identification, three main recent disruptive developments that have impacted trade and investment worldwide have been considered: the COVID-19 pandemic; the increasing environmental concerns; and the acceleration of the digital economy. In addition, trade tensions, armed conflicts, and the increasing awareness of the impact of natural disasters in trade, which have implied rethinking

the way supply chains are distributed, have guided research for this section. Other issues -which can be somehow related to some of the abovementioned disruptive events- such as the new investment facilitation provisions in different bilateral agreements and in the World Trade Organization by some members, and gender equality, were also taken into account.

The areas surveyed for the identification of emerging trends include (i) multilateral/plurilateral discussions at the WTO; (ii) ongoing regional negotiations (such as the ASEAN Digital Economy Framework Agreement); (iii) agreements where at least one APEC economy has participated, either concluded or already put into force recently; (iv) and initiatives being conducted in certain APEC fora and other regional or plurilateral organizations in support of innovative approaches.

## LIST OF ABBREVIATIONS

Acronym or abbreviation	Full name
ABAC	APEC Business Advisory Council
AANZFTA	Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area
AD Agreement	Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994
ADB	Asian Development Bank
AEO	Authorized economic operator
Agreement of the International Monetary Fund	Articles of Agreement of the International Monetary Fund
AIDER	APEC Internet and Digital Economy Roadmap
APEC	Asia-Pacific Economic Cooperation
ASEAN	Association of Southeast Asian Nations
Berne Convention	Berne Convention for the Protection of Literary and Artistic Works
Budapest Treaty	Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure
CBTS	Cross border trade in services
CEC	Commission for Environmental Cooperation
CEDAW	UN Convention on the Elimination of all forms of Discrimination Against Women
CIF	Cost, insurance and freight
CIL	Customary international law
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CTC	Change in tariff classification
CTI	Committee on Trade and Investment
Compliance Agreement	FAO Agreement to Promote Compliance with International Conservation Management Measures by Fishing Vessels on the High Seas
CPTPP	Comprehensive and Progressive Agreement for Trans-Pacific Partnership
CPLG	Competition Policy and Law Group
CSR	Corporate social responsibility
CVA	Customs Valuation Agreement
DS or DSM	Dispute settlement mechanism
DEPA	Digital Economic Partnership Agreement
DESG	Digital Economy Steering Group
ECA	Agreement on Environmental Cooperation
FAO	Food and Agriculture Organization
FBX	Freightos Baltic Index
FET	Fair and equitable treatment
FOB	Free on board
FTA	Free trade agreement
RTA/FTAs	Free trade agreements / Regional trade agreements
FTAAP	Free Trade Area of Asia-Pacific
GATS	General Agreement on Trade in Services
GATT 1994	General Agreement on Tariffs and Trade 1994
Geneva Act	Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs
GIs	Geographical indications



GP	General provisions
GRP	Good regulatory practices
GTAGA	Global Trade and Gender Arrangement
IACAC	Inter-American Convention Against Corruption
IADB	Inter-American Development Bank
IBA Rules	Bar Association Guidelines on Conflicts of Interest in International Arbitration
ICSID	International Centre for Settlement of Investment Disputes
ICT	Information and communication technology
IUU	Illegal, unreported, and unregulated
ILO	International Labor Organization
IMF	International Monetary Fund
INCI	International Nomenclature Cosmetic Ingredient
Inter-American Convention	Inter-American Convention on the Law Applicable to International Contracts
IPRs	Intellectual property rights
ISDS	Investor-state dispute settlement
ISP	Internet service providers
ITE	Information technology equipment
IUU IPOA	FAO International Plan of Action to Prevent, Deter, and Eliminate Illegal, and Unregulated Fishing
JPAC	Joint Public Advisory Committee
JSI	WTO's Joint Statement Initiatives
KSDPA	Korea-Singapore Digital Partnership Agreement
LAC	Latin America and the Caribbean
Lao PDR	Lao People's Democratic Republic
LLPO	Low level presence occurrence
Locarno Agreement	Locarno Agreement Establishing an International Classification for Industrial Designs
Madrid Protocol	Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks
Marrakesh Treaty	Marrakesh Treaty to Facilitate Access to Published Works for Persons Who are Blind, Visually Impaired, or Otherwise Print Disabled
MFN	Most-favored-nation
Montreal Protocol	Montreal Protocol on Substances that Deplete the Ozone Layer
MRAs	Mutual recognition agreements
MSMEs	Micro, small and medium-sized enterprises
MST	Minimum standard of treatment
NAFTA 1994	North American Free Trade Agreement
NCMs	Non-conforming measures
New York Convention	Convention on the Recognition and Enforcement of Foreign Arbitral Awards
Nice Classification	Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks
NT	National treatment
NTM	Non-tariff measures
OECD	Organization for Economic Co-operation and Development
PA	Pacific Alliance
Paris Convention	Paris Convention for the Protection of Industrial Property
PCT	Patent Cooperation Treaty
Port State Measures Agreement	Agreement on Port State Measures to Prevent, Deter, and Eliminate IUU Fishing

PPPs	Public-private partnerships
PRs	Performance requirements
PSR	Product-specific rules of origin
RCEP	Regional Comprehensive Economic Partnership
RFMA	Regional Fisheries Management Arrangement
RFMO	Regional Fisheries Management Organization
RMI	Rights management information
Rome Convention	International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations
ROO	Rules of origin
RPT	Reasonable period of time
RRLM	Rapid response labor mechanism
RTA	Regional trade agreements
RVC	Regional value content
S&DT	Special and differential treatment
SCM Agreement	Agreement on Subsidies and Countervailing Measures
SDRs	Special drawing rights
Singapore Treaty	Singapore Treaty on the Law of Trademarks
SMBD	Senior management and boards of directors
SMEs	Small and medium-sized enterprises
SOEs	State-owned enterprises
SPS	Sanitary and phytosanitary
SPS Agreement	WTO Agreement on the Application of Sanitary and Phytosanitary Measures
SSC	Short Supply Committee
STCW	International Convention on Standards of Training, Certification and Watchkeeping for Seafarers
SWOT	Strengths, weaknesses, opportunities and threats
Strasbourg Agreement	Strasbourg Agreement Concerning the International Patent Classification
TBT	Technical barriers to trade
TBT Agreement	Technical Barriers to Trade Agreement
TFA	Trade Facilitation Agreement
TPLs	Tariff preference levels
TPMs	Technological protection measures
TPP	Trans-Pacific Partnership
TRIMS Agreement	WTO Agreement on Trade-Related Investment Measures
TRIPS Agreement	Agreement on Trade-Related Aspects of Intellectual Property Rights
TRQs	Tariff rate quotas
UN	United Nations
UN Fish Stocks Agreement	Agreement for the implementation of the provisions of the UNCLOS relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks
UNCAC	United Nations Convention against Corruption
UNCITRAL	United Nations Commission on International Trade Law
UNCLOS	United Nations Convention on the Law of the Sea
UPOV 1991	International Convention for the Protection of New Varieties of Plants
USMCA	U.S.-Mexico-Canada Agreement
WCO	World Customs Organization
WCT	WIPO Copyright Treaty
WIPO	World Intellectual Property Organization
Work Programme on E-Commerce	WTO's Work Programme on Electronic Commerce
WPPT	WIPO Performances and Phonograms Treaty
WTO	World Trade Organization
WTO Agreement	Marrakesh Agreement Establishing the World Trade Organization
WHO	World Health Organization

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