FTAAP Investment Policy

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Introduction

The global pandemic has produced economic turmoil worldwide, impacting the livelihood of millions of people, disrupting business activities, affecting trade and investments and exposing the fragility of supply chains. The Covid-19 crisis has created a global health alert and has also led to a deep economic recession, sowing uncertainty and serious concerns about positive economic prospects for the future. In this context, the International Monetary Fund (IMF) estimated that the global GDP was reduced by 3.5% in 2020. The World Bank estimated that the virus outbreak could have pushed up to 115 million people into extreme poverty in 2020. The International Labour Organization (ILO) calculated that an equivalent of 245 million full-time jobs were lost by the end of last year. In addition, the performance of International trade and investments had drastic drops last year due to the pandemic and the measures implemented to contain the virus. The World Trade Organization (WTO) forecasted a 9.2% decrease in the volume of world merchandise for last year, and the United Nations Conference on Trade and Development (UNCTAD) predicted a dramatic drop up to 40% in Foreign Direct Investment (FDI) and a 15.4% decline in services trade in 2020. The World Tourism Organization (UNWTO) estimated that international tourist arrivals declined between 60% and 80% last year.

Global Value Chains (GVCs), involved in more than two-thirds of international trade, have been dramatically disrupted by the pandemic and its impact. Unfortunately, many of the companies within GVCs have already closed operations and/or cut jobs, and the majority of the remaining companies are struggling for survival, facing income and liquidity challenges, with serious working capital needs and without any capital to carry out greenfield projects that support their transition to compete and adapt under this new economic reality. Over the last twenty years, GVCs have been essential engines supporting economic growth of both developing and developed economies in the Asia Pacific by building solid and complex integrated networks among their companies and industries, creating jobs, establishing efficiencies in production processes, reducing trade barriers, decreasing transportation and logistics costs, seamlessly supplying products and services, and building new business opportunities. Unfortunately, this Covid-19 crisis disrupted the proper functioning of GVCs with such force and speed that it has highlighted the need to strengthen and improve GVCs to withstand similar disruptions in the future.

Amid exceptional uncertainty, the IMF projects the global economy will grow 5.5% in 2021 although it recognizes the world economy is at a critical juncture. It must be underscored that the estimated economic growth for this year follows an unprecedented economic collapse that has had severe adverse effects on business activity. The economic outlook for 2021 and beyond depends, to a large extent, on the ability of economies to contain the virus and, equally important, the design and implementation of comprehensive and adaptive public economic policies. At this pivotal moment for the Asia-Pacific region where an important number of supply chains are located, there is a common voice pleading for building resilience into GVCs. Policymakers, businesspeople, consumers and stakeholders recognize that it is imperative to build resilience into GVCs by supporting their participants to develop capacities of adaptation in order to respond better to instability and shocks that will likely happen again in the future. Thus, the questions to be answered

are, what are the alternatives for building sustainable economic recovery from Covid-19 in the APEC region and what public policies must be prioritized in order to promote GVCs resilience?

This report proposes prioritizing *investment policy* as one of the most important alternatives and public policy tools to achieve shared prosperity goals across the region. Investments have a solid link with international trade and to GVCs overall, which makes investment facilitation an ideal strategy to collaboratively build resilience in the Asia Pacific. FDI could set the foundation for economic recovery and be decisive in achieving GVCs resilience capable of resisting future crises and of flexibly adapting to a rapidly changing world. Governments that understand the multiplier effects that investment policy may generate and respond proactively to facilitate FDI will better position their companies and overall economies to face the new reality caused by the pandemic. Regrettably, it must be noted, the pandemic has further worsened the increase of protectionist and restrictive measures. Despite being present before the disease, protectionist measures implemented during the Covid-19 crisis have accentuated the decline in international trade and investments. Some of these kinds of measures have been implemented under public interest arguments that are valid and needed, but others have been put into effect based on a misconception of how GVCs work. De Backer and Miroudot (2013) affirmed that, while most policies are based on the premise that goods and services are produced locally and compete with foreign products, the fact is that economies compete on economic roles within the value chains and that most goods and an increasing number of services are "made in the world."[1] It is essential to understand in the concept of GVCs that the trade networks that local and foreign companies develop via supply chains are connected in complex, interwoven supply relationships and that all economies involved benefit each other, which means that GVCs are not the threat, nor the root of the problem.

The current crisis offers a unique opportunity for APEC members to ratify their primary goal to support sustainable economic growth and prosperity for all by reshaping smart, nimble, and resilient supply chains. Thus, promoting resilience in GVCs via high standards in investment rules is a worthy goal that could make a meaningful contribution for the work on the Free Trade Area of the Asia-Pacific (FTAAP) agenda of regional economic integration, which is a key element of the APEC Putrajaya Vision 2040 proclaimed at the end of last year by the APEC leaders. This new vision demands the commitment, participation, and mainly tangible actions from all APEC members to achieve an open, dynamic, resilient, and thriving region. Against this background, this report examines the strategic role that facilitating new cross-border investments via Free Trade Agreements could represent in achieving global supply chains resilience. With this goal, this study is structured into five sections: first, the Covid-19 virus impact on the disruption of GVC is analysed; second, GVC resilience is discussed; third, challenges for enhancing GVC resilience from an investment viewpoint are considered; fourth, a comparative analysis on investment chapters of the two leading pathways towards FTAAP are reviewed (CPTPP and RCEP) and this comparative analysis is enriched by adding a review of the new EU-China Comprehensive Agreement on Investment (CAI); and fifth, policy recommendations from a business perspective are proposed.

[1] De Backer, K. and S. Miroudot (2013), "Mapping Global Value Chains," OECD Trade Policy Papers, No. 159, OECD Publishing.

I. Covid-19 crisis' impact on the disruption of GVC

The covid-19 crisis has damaged the global economy by hitting, directly and indirectly, trade, investments, and Global Value Chains (GVCs) at an unprecedented scale. Some of the most affected industries have been motor vehicles and other transport equipment, textiles, clothing and leather, mining, quarrying and petroleum, basic materials, machinery and equipment, accommodation and food service activities, and transportation and storage. The global pandemic has shown how fragile GVCs are, how rapidly disruptions in supply chains can be transmitted from one economy to another one and how thousands of connected businesses can be put in risk when GVCs are shocked. Although enacted to protect people's health in a time of emergency, restrictive and protectionist measures negatively impacted economies throughout the world, though to varying degrees. GVCs suffered from temporary restrictive trade measures (import/export restrictions) implemented by governments to guarantee access to essential products, stressing supply chains because of the spill-over effects caused by strict lockdowns and public health containment-related measures.

Policy measures impacting global trade and investments

According to the Global Trade Alert Report, a total of 2,476 policy measures impacting global trade and cross-border investments were enforced by governments worldwide in 2020. Thoughtfully analyzing the data reveals that only 613 of these policy measures (24.76%) were interventions that benefited trading partners around the globe; and, correspondingly, in the APEC region, this indicator was equal to 198 interventions (21.98%) (see table 1). The Global Trade Alert Report stated that 170 economies experienced their merchandise exports facing their worst market-access scenario abroad in 2020, whereas 26 economies actually saw improved market access. The policy measures implemented around the globe represented 17,252 negative spillover effects and only 10,546 positive cross-border effects for trading partners.[2] All these restrictions on trade and investments aggravated the disruption produced by the pandemic in GVCs, stopping critical operations from performing effectively, limiting export/import capacity of businesses along supply chains, restricting the movement of intermediate and finished products and the traveling of essential workers. It must be emphasized, protectionist measures make supply chains not only harder to operate efficiently, but also make resiliency harder to attain.

[2] Simon J. Evenett. (November 2020). The 26th Global Trade Alert Report "Collateral Damage: Cross-Border Fallout from Pandemic Policy Overdrive"

Table 1:
Policy measures impacting global trade and investments in 2020.
Liberalising, harmful and total measures

Economy	Liberalising	Harmful	Total	% liberasing
World	613	1,863	2,476	24.76%
APEC	198	706	904	21.90%
Australia	5	57	62	8.06%
Brunei Darussalam	1	0	1	100.00%
Canada	5	91	96	5.21%
Chile	14	15	29	48.28%
China	29	39	68	42.65%
Hong Kong, China	0	1	1	0.00%
Indonesia	23	49	72	31.94%
Japan	1	47	48	2.08%
Republic of Korea	3	38	41	7.32%
Malaysia	10	19	29	34.48%
Mexico	8	16	24	33.33%
New Zealand	15	17	32	46.88%
Papua New Guinea	0	0	0	0.00%
Peru	2	14	16	12.50%
Philippines	6	11	17	35.29%
Russian Federation	21	66	87	24.14%
Singapore	2	7	9	22.22%
Chinese Taipei	4	6	10	40.00%
Thailand	9	15	24	37.50%
United States of America	33	188	221	14.93%
Viet Nam	7	10	17	41.18%

Source: Global Trade Alert Report

SMEs and under-represented groups seriously affected by the pandemic

The pandemic has caused an unparalleled disruption to companies in all sectors across GVCs, including Small and Medium enterprises (SMEs), as production (offer) and consumption (demand) have shrunken around the world. A survey applied by the International Trade Centre (ITC) showed that 55% of businesses had been “strongly affected” by the virus and the measures implemented to contain it. Not surprisingly, 67% of micro and small businesses declared that they had been largely impacted because of the pandemic and its effects.[3] The pandemic is not, of course, impacting companies to the same degree. The same ITC survey pointed out that SMEs and youth-led companies were at greater risk of permanently closing in next few months compared with larger companies and non-youth-led firms, respectively. This data suggests that either women-led enterprises and youth-led companies have fewer alternatives for support available and/or they are more sensitive to shocks in the economy. Either way, these results also highlight the urgency of

[3] ITC Covid-19 Business Impact Survey

considering SMEs and under-represented groups such as businesses led by women, youth and indigenous people, in trade policy design by including them in economic recovery strategies and post-pandemic trade policies and initiatives.

Effect of Covid-19 on global trade

The pandemic hit at a time when international trade was already being challenged, and serious concerns about trade disputes and protectionist measures were on the rise, with both global and APEC trade declining in 2019 compared with 2018. The decline accelerated sharply with the Covid-19 pandemic, causing exports and imports from merchandise and services from most APEC economies to drop abruptly in 2020. Analysis of quarterly trade data shows that disruptions to GVCs and changes in demand patterns caused a large downtrend in exports and imports in most APEC economies during 2020. For instance, 17 APEC economies had a drop in their volume of merchandise exports during the second quarter of 2020 compared with the same quarter one year earlier: Peru, Mexico, The Philippines, the United States, Japan, Canada, and Hong-Kong, China had higher drops compared with the world (-16.4%) and APEC averages (-12.7%). In this same indicator, 12 APEC economies had a decrease in the third quarter of 2020 in comparison with the same period of 2019, with the contraction of exports in Peru, Russia, Japan, the United States, The Philippines, Thailand, Australia, Canada, Mexico and Indonesia higher than the world (-3.7%) and APEC drops (-2.3%) (See Figure 1).

Figure 1:
Volume growth rates of merchandise exports in 2020, quarterly
Growth rate, year-on-year

Source: UNCTAD, no data available for Brunei

Likewise, the impact of the pandemic affected the merchandise import flows in 2020 on a year-on-year basis. 17 APEC economies had a decrease in the second quarter of the pandemic and economies such as Philippines, Mexico, Canada, Peru, Thailand, Chile, and Indonesia suffered a higher impact than the world average (-15%) and the region (-12.7%). During the third quarter, 15 APEC members

decreased their imports compared with 2019, and 10 of them had a bigger decrease compared with the world (-5.1%) and the APEC results (-8,2%). The ten economies were Indonesia, Philippines, Hong Kong, China, Peru, Mexico, Thailand, New Zealand, Chile, Japan, and Russia (see Figure 2)

Figure 2:
Volume growth rates of merchandise imports in 2020, quarterly
Growth rate, year-on-year

Source: UNCTAD, no data available for Brunei

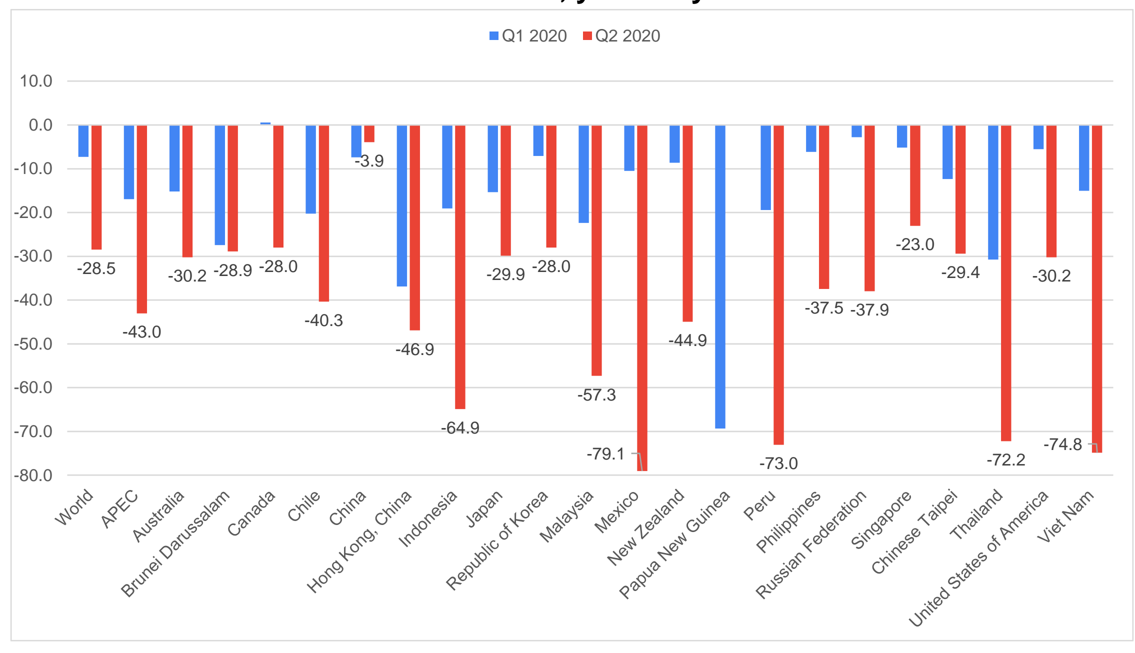
In addition to decreasing merchandise imports and exports, the pandemic hit services severely, with sectors such as tourism and travel between economies the hardest hit from travel restrictions established, flights grounded, and hotels and other tourism-related services closed. Based on information issued by the World Tourism Organization (UNWTO), the contraction of tourism arrivals could mean a reduction up 80% in 2020 compared with the previous year, which could mean putting at risk 100 to 120 million direct tourism jobs; UNWTO added that "this is by far the worst crisis that international tourism has faced since records began (1950)."[4] The impact of the Covid-19 outbreak has been particularly pronounced in the diverse range of services that are part of the GVCs around the globe, including those operating in the APEC region.

As demonstrated in Figure 3, the decline in services trade exports had a sharp drop of 28.5% worldwide, and, more negatively impacted, 43.0% in the Asia-Pacific in the second quarter of 2020 compared to the same period a year earlier. Some economies where the effects of the pandemic hit the services trade exports harder were in Mexico (-79.1%), Vietnam (-74.8%), Peru (-73.0%), Thailand (-72.2%), and Indonesia (-64.9%). For service trade imports, the drop of this indicator during the second quarter of 2020 was also severe, with a 31.3% decrease globally and 36.5% regionally. The APEC economies where the impact caused by the pandemic in trade services imports hit harder were Australia (-57.6%), Russia (-51.1%), Indonesia (-48.7%), Philippines

[4] World Tourism Organization (May 7, 2020), "International Tourism numbers could fall 60-80% in 2020, UNWTO reports".

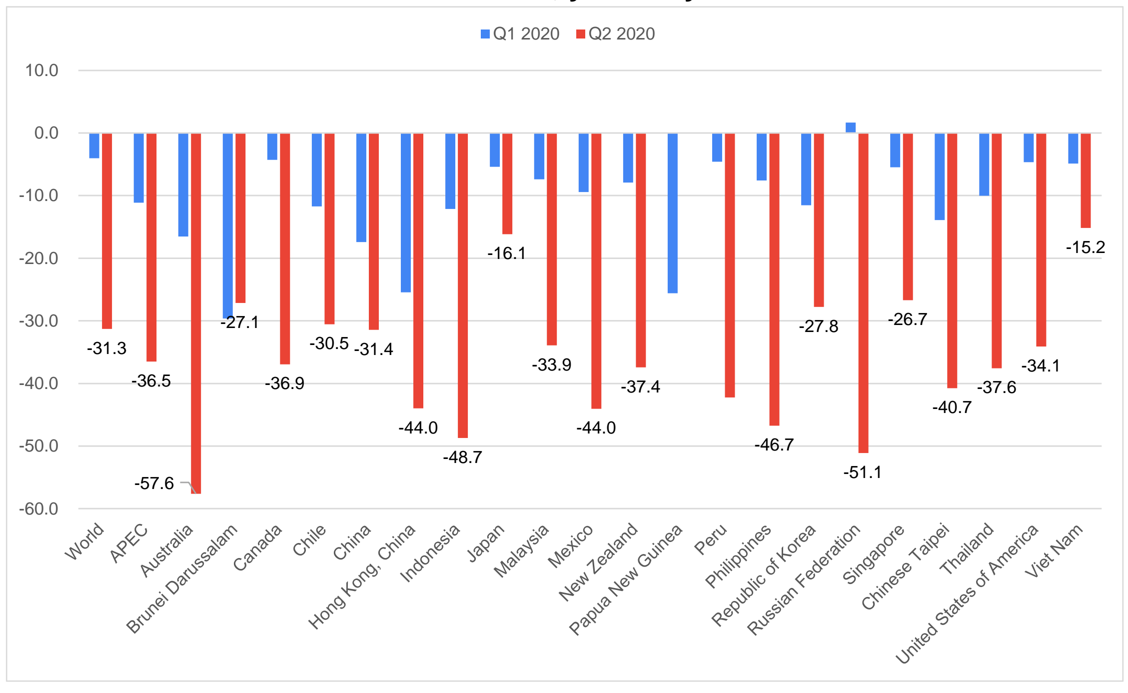
(-46.7%), Mexico (-44.0%), Hong Kong, China (-44.0%), Peru (-42.2%) and Chinese Taipei (-40.7%) (see Figure 4).

Figure 3:
Volume growth rates of services exports in 2020, quarterly
Growth rate, year-on-year



Source: UNCTAD, no data available for Papua New Guinea for Q2

Figure 4:
Volume growth rates of services imports in 2020, quarterly
Growth rate, year-on-year



Source: UNCTAD, no data available for Papua New Guinea for Q2

Protectionist measures

Global supply chains have also been seriously disrupted due to protectionist measures implemented during the Covid-19 crisis. Even though these measures were put in place for justified reasons, such as guaranteeing adequate essential supplies including food supplies, protective equipment and medicines required to contain the pandemic, these trade restrictions created significant supply chain turbulence. These protectionist measures served to further depress business activities, producing the closure of thousands of companies, and the unprecedented loss of jobs worldwide. Although most export/import bans introduced due to the global emergency in 2020 were clearly temporary or have already been partially removed in most economies, this health crisis is an important reminder to think about the lessons learned from the implementation of these measures, while working together to avoid having these protectionist policies used as the only option in the Asia Pacific region to solve new contingencies. The last edition of the Global Competitiveness Report issued by the World Economic Forum pointed out concerns from the business community on protectionism measures applied globally; on average, business leaders in G20 economies considered that restrictiveness of FDI rules and regulations increased by about 11.6% in comparison with the levels of the financial crisis in 2008 and that the incidence of non-tariff barriers grew by 7.9% over the same period. The report added that over 30% of business leaders surveyed are expecting "value chains to be less globalized than today."[5] Protectionist measures are not viable for economic recovery and these restrictions are not the solution to create resilience in global supply chains.

Strong link between companies and economies that engage in GVCs

The Covid-19 crisis demonstrated that there is a complex and strong interconnection of companies and economies that engage in GVCs, which means that what happens in one economy can cause a domino effect all over the world. In this sense, global supply chains from the Asia Pacific were hit hard by the pandemic and its economic consequences due to the strong presence of and connection between key players within GVCs, such as China, the United States, and the European Union. These three economies play a substantial role in GVCs not only as three of the top exporters worldwide, but also as three major importers of raw materials and components that are important engines for proper functioning of GVCs. According to the International Trade Centre (ITC), these three economies together represent 64% and 63% of global supply chain exports and imports, respectively. China and the United States are well known as outstanding drivers for the Asia-Pacific economy, but the European Union also plays a pivotal place in APEC trade as an importer of industrial inputs.

The impact that supply chain disruptions in China, the United States and the European Union represent for the APEC region can be shown through the APEC exports value to these markets. The United States and China represented 17.4% and 12.5% of APEC total merchandise exports in 2019, while the European Union represented 14.9% of this indicator where the top two product categories of these exports were electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers (16.3%) and machinery,

[5] World Economic Forum (Dec 2020), Global Competitiveness Report Special Edition 2020: How Countries are Performing on the Road to Recovery.

mechanical appliances, nuclear reactors, boilers; and parts thereof (13.1%). As a result of this strong integration of APEC economies with three of the most important hubs for global value chains, pandemic-related measures and shutdowns implemented in China, the United States and Europe not only had an impact in their own economies, but were transmitted across supply chains that affected their APEC partners and beyond. An ITC report calculated that lockdowns in China, the United States and European Union could mean a decrease in global trade in manufacturing inputs of 126.3 billion; and it estimated that supply chain disruption could impact harder sectors such as machinery, plastics and rubber, chemicals, and electronic equipment, with "exports of industrial inputs dropping by $44 billion, $29 billion, $23 billion and $23 billion, respectively."[6]

II. Global Value Chains resilience

Trade and investments are increasingly driven by Global Value Chains. According to a report issued by the World Bank and the WTO, over two-thirds of global trade happens through GVCs.[7] The integration and intertwined networks occurring in GVCs have evolved from traditional and vertical integration of companies into complex, diverse supply chains where manufacturers and services providers interact with and benefit from each other from all parts of the globe. GVCs have promoted efficiencies by fragmenting production in numerous stages, including the outsourcing of manufacturing and service activities. GVCs have presence across a diversity of economic sectors ranging from agricultural and natural resources to traditional and high-tech manufacturing, and a vast list of services, which sometimes are imperceptible but vital for the development of GVCs, such as transportation, logistics, financial services, business consultancy, design, among others.

The global pandemic produced unprecedented damage to the international economy, including the Asia Pacific, with a cascading effect through supply chains with such speed that negative spillover effects exposed supply chain vulnerabilities. The pandemic produced shocks on both sides of the supply and demand chain that, combined with the set of trade policy measures implemented by governments, generated serious repercussions in the production, logistics, transportation, and distribution of products and services worldwide, including essential ones. For this reason, there is a consensus in public and private sectors regarding the imperative need to improve supply chains resilience aimed at responding better to future shocks that may be produced by the appearance of new pandemics, impacts from climate change, natural disasters, wars, export or import bans, breakdowns in information and communications, shocks on demand, political conflicts, border delays, transport infrastructure failures, currency fluctuations, among others.

Value-added trade statistics

The strong integration and participation in global supply chains of most APEC economies meant that the consequences derived from the pandemic had a strong negative impact across the region so that building resilience was considered a top priority between GVCs participants and stakeholders. The relevance of GVCs in the region can be analysed through value added trade statistics that show

[6] International Trade Centre (June 2020), SME Competitiveness Outlook 2020 - Covid-19: The Great Lockdown and its Effects of Small Business.
[7] World Bank; World Trade Organization.2019. Global Value Chain Development Report 2019.

where value is created in global production. With information from the UNCTAD-Eora database, the foreign value added (FVA) as a share of exports, also known as *backward participation*, can be measured. This indicator shows what part of the gross exports of any economy consists of inputs that have been produced in other economies. In other words, this variable measures the level of vertical specialization of any economy and the extent to which the Gross Domestic Product (GDP) contribution of trade is absorbed by other economies upstream in the value chain. In this respect, the backward participation at the economic level in the Asia Pacific in 2018 shows that most of the APEC economies were well integrated within GVCs. To be noted, eight economies had a higher share of FVA compared with the world average (28%): Singapore (62%), Hong Kong, China (58%) Republic of Korea (37%), Malaysia (35%), Viet Nam (32%) Thailand (31%), Mexico (31%) and Canada (29%) (see Figure 5).

Figure 5:
Share of foreign value added in exports, by APEC economy, 2018

Economy	Share
Australia	14%
Brunei	11%
Canada	29%
Chile	24%
China	13%
Hong Kong, China	58%
Indonesia	11%
Japan	21%
Malaysia	35%
Mexico	31%
New Zealand	16%
Papua New Guinea	9%
Peru	10%
Philippines	28%
Republic of Korea	37%
Russia	9%
Singapore	62%
Chinese Taipei	28%
Thailand	31%
USA	13%
Viet Nam	32%
APEC	22%
World	28%

Source: Navarro's (Author) calculations using the UNCTAD-Eora Global Value Chain Database

Another indicator that offers a better picture of the involvement of economies in global supply chains, both upstream and downstream, is *GVC Participation*. The GVC participation is calculated by adding the value added *supplied* to other economies' exports (forward participation) to its Foreign Value Added (backward participation). The key role that GVCs have acquired during the last decade in the Asia Pacific region can be seen in the value in monetary terms of the GVC Participation that increased 20% from 3,971.81 billion in 2010 to 4,767.97 billion in 2018. The world average for this indicator grew less than the APEC region with 15.3% during the same period. At the economic level, all APEC economies had an increase of their GVC Participation measured in value terms from 2010 to 2018, except Chinese Taipei. It must be noted that 16 APEC economies had a greater increase than the world average; for instance, China, Vietnam, and Japan had a 38.8%, 33.5% and 30.9% growth in their GVC Participation from 2010 to 2018, respectively (see Table 2).

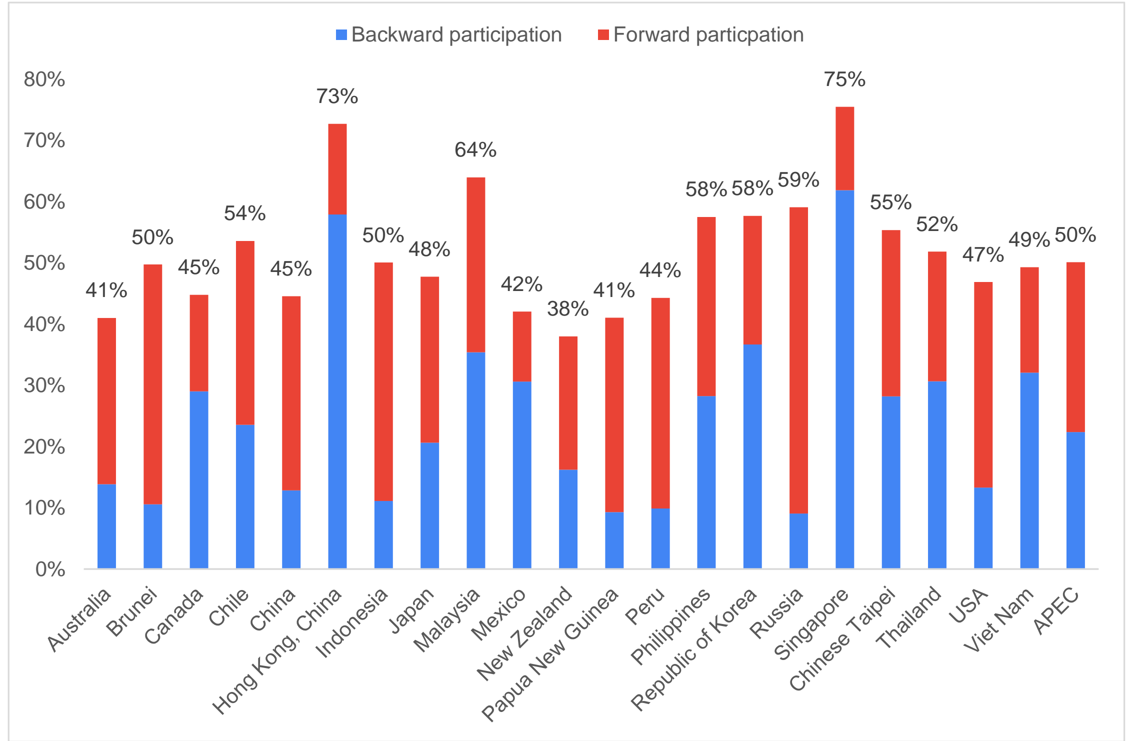
Table 2: Forward, Backward and GVC Participations by APEC economy, 2010 and 2018 (Billion of dollars)

Economy	forward participation 2010	Backward Participation 2010	GVC Participation 2010	Backward Participation 2018	Foreign Value Added 2018	GVC Participation 2018	Growth of GVC Participation
World	5,194.07	5,194.07	10,388.14	5,990.23	5,990.23	11,980.46	15.3%
APEC	2,158.49	1,813.32	3,971.81	2,640.94	2,127.03	4,767.97	20.0%
Australia	74.20	35.23	109.43	88.89	45.41	134.30	22.7%
Brunei	1.93	0.62	2.55	2.38	0.64	3.03	18.8%
Canada	94.83	182.14	276.97	107.83	198.78	306.62	10.7%
Chile	18.62	14.94	33.56	21.32	16.75	38.07	13.5%
China	417.58	274.31	691.89	683.16	277.48	960.63	38.8%
Hong Kong, China	24.31	117.45	141.76	37.55	146.55	184.10	29.9%
Indonesia	81.43	26.35	107.78	109.71	31.36	141.06	30.9%
Japan	324.22	159.51	483.73	287.36	218.53	505.89	4.6%
Malaysia	77.30	103.05	180.35	97.43	120.78	218.21	21.0%
Mexico	37.55	98.79	136.34	45.04	120.66	165.70	21.5%
New Zealand	12.72	10.66	23.38	15.63	11.66	27.29	16.7%
Papua New Guinea	1.22	0.43	1.65	1.62	0.48	2.10	27.3%
Peru	7.28	1.83	9.10	7.71	2.22	9.93	9.1%
Philippines	31.37	35.71	67.08	43.11	41.71	84.83	26.4%
Republic of Korea	104.16	194.80	298.97	136.11	237.64	373.75	25.0%
Russia	150.77	28.95	179.72	192.68	34.99	227.67	26.7%
Singapore	45.65	192.22	237.88	52.81	240.11	292.92	23.1%
Chinese Taipei	45.64	51.17	96.81	45.86	47.64	93.50	-3.4%
Thailand	43.58	63.42	107.00	55.98	81.21	137.19	28.2%
USA	559.26	211.32	770.58	601.61	239.16	840.77	9.1%
Viet Nam	4.86	10.42	15.27	7.12	13.27	20.39	33.5%

Source: Navarro's (author) calculations using the UNCTAD-Eora Global Value Chain Database

The GVC Participation can be also measured as a percentage of exports, which is known as the GVC Participation Index. This measure helps to correct the limitation of the foreign value-added indicator in which economies at the outset of the value chain have a low FVA content of exports. The UNCTAD states that the GVC participation index assesses the exposure of the GVC to shocks in the respective economy and shows how much hypothetical "damage" to GVCs would occur if exports of any economy are blocked. These latter statements provide some light to understanding why disruption in GVCs happened at such a fast speed after Covid-19 arose, borders were closed and pandemic-related measures that affected trade and investments were enforced. The GVC participation index in the APEC region is 50% and there are 9 economies above the regional average; highlighting Singapore, Hong Kong, China and Malaysia with 75%, 73% and 64%, respectively (Figure 6).

Figure 6:
GVC Participation index in APEC economies (2018)
backward participation and forward participation, as a share of gross exports (%)



Source: Navarro's (author) calculations using the UNCTAD-Eora Global Value Chain Database

What resilience means and how to achieve resilience in GVCs

Due to the disruption in GVCs caused by the pandemic, governments, companies and stakeholders agree that it is imperative to promote resilience in supply chains as a shield to avoid another disruption of this magnitude in the future. In this respect, two fundamental questions to answer are what resilience means and how to achieve resilience in GVCs to be better prepared in the emergence of another global shock. Depending on the definition of resilience that is chosen, appropriate actions to promote the desired resilience can be determined. Some governments have been using a limited definition of resilience by promoting, or at least considering, deglobalization and re-shoring measures with the intention to bring back home key business operations that their companies have been operating overseas. Although these governments are in their right to implement what they consider appropriate measures in their best national interests, actions such as re-shoring do not solve the key issue of encouraging resilience and actually create greater harm to domestic economies and their businesses.

A study from Bonadio et al. (2020) concluded that contraction of GDP would have been worse under a scenario where global value chains are re-nationalised.[8] Likewise, a study completed by the OECD (2020) simulated systemic risks to compare the impact in two kinds of economies, one where there exists fragmentation of production in GVCs and another where production is more localised

[8] Bonadio, B, Z Huo, A A Levchenko and N Pandalai-Nayar (2020), "Global Supply Chains in the Pandemic", NBER Working Paper No. 27224.

domestically. The OECD study concluded that economies with less links and networks within GVCs would not only be more vulnerable to shocks, but would also have further GDP losses to economic slowdown caused by events such as the pandemic, and considerably lower levels of economic activity and lower incomes.[9]

While the argument about re-shoring is often supported for supposedly creating resilience, forcing domestic companies to re-shore their production will likely cause the opposite effect and make them more vulnerable to future shocks, create inefficiencies in their processes and diminish competitive advantages that domestic companies currently have thanks to fragmentation of production and services happening in GVCs. Thus, the definition of resilience needs to be accurate to reach the desired output, namely stability, predictability, and building flexibility for all the players within GVCs. Chris Price, a President and Chief Executive Officer from a top global integrated logistics provider that builds supply chains, wrote in an article published by the World Economic Forum (WEF) that true resiliency means "being ready for any kind of disruption" regardless of whether it is caused by economic, political, social, cyber or pandemic-related issues.[10] Based on this short but clear definition from a business leader with hands-on experience in the field, it should be clear that resilience is not built by imposing on companies participating in GVCs what to do or how to run their businesses. Rather, what is needed is to help them be better prepared to face and react to new supply chain disturbances, respecting their right to decide where they want to install their production facilities, make investments, and/or establish business relationships and operations. Thus, it is important to highlight that participation in GVCs is not an obstacle in building domestic resilience for APEC economies, but quite the opposite, it is a factor in success.

Recommended approach to build GVCs resilience

For the reasons outlined above, the recommended approach to build GVCs resilience under the *new normal* should consider three fundamental elements: diversification, international trade, and digitalization. By following a diversification strategy to encourage resilient supply chains, businesses of any APEC economy could have access to a broader number of suppliers, partners, and consumers to draw on when they are exposed to crises like Covid-19. Having multiple suppliers available increases the odds that the production process does not suffer from a shortage of inputs. Likewise, having several markets open to sell products or services ensures that companies remain in business and that some markets will continue as a buffer even if some markets close down. Regarding international trade, at this stage it should be clear the relevance and benefits that participation in GVCs offer any economy including their businesses. It is important to emphasize that, although global trade offers benefits, trade policies and rules need to be revised to include under-represented groups and to create the fairest business environment for a level playing field. Global trade may improve the resilience of companies in challenging times by giving them the possibility to offer their goods or services abroad and having foreign suppliers available, to maintain and grow their businesses.

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[9] Shocks, risks and global value chains: insights from the OECD METRO model. Organisation for Economic Co-operation and Development (OECD), 29, June 2020.
[10] Price, C (2020, Sept). How should we future-proof our supply chains? World Economic Forum's Agenda blog.

Digitalization could represent a game-changer for building resilience in GVCs by incorporating new technologies, such as partner integration, big data and artificial intelligence, that offer GVC participants the tools to have accurate visibility into the entire process, from shipments and inventory levels to status of orders, suppliers, and, overall, the potential risks across the supply chain. An important lesson from the pandemic is that digitalization is key to create resilience and quickly sort out any challenges produced, such as Covid-19 did. Unfortunately, technologies have been mainly used by large companies and it is time to work together to facilitate deeper integration of digitalization for all levels of businesses. The Global Competitiveness Report 2020 included digitalization as one of the features of economies that were able to figure out ways to deal with the economic impact of the pandemic, which means that those economies have relied on technology and the provision of digital services online to continue running significant activities of their economies remotely. Economies with an appropriate technological infrastructure have been able to cope better with the covid-19 outbreak and have been able to monitor the evolution of the pandemic in a more effective way, allowing their businesses to respond in a timely manner.

Finally, all the participants and stakeholders involved in GVCs, namely businesses, industry associations, consumers and governments, have a responsibility and strategic role to play in building resilience within these. For example, companies should improve their mechanisms for sharing information with business partners and take coordinated actions to withstand mutual challenges. Likewise, Multinational Enterprises (MNEs) that lead supply chains should consider balancing their risk along supply chains with particular focus on protecting and strengthening the links of SMEs with GVCs, and reshaping their approach to partnership, costing, and, overall, doing business with underrepresented groups. From the government's perspective, what they could do is essential to create sustainable GVCs resilience. Government actions should aim at enhancing the business environment by making effective use of their trade policy tools and working together with other economies through the establishment and improvement of trade agreements as tools to facilitate trade and cross-border investments. Improved rules in trade and investment issues related to supply chains may increase the capacity of business to adapt and respond to future crises.

III. Challenges for enhancing GVC resilience from investment viewpoint

The reduction in foreign investment that has been happening since the beginning of the pandemic may not only create further damage in trade and across GVCs, but also create further delays towards economic recovery and resilience efforts. Global Value Chains have created inseparable links between trade and investments, which have amplified the impact of GVCs beyond borders. Casella et al. (2019) affirmed that trade and investments are inextricable linked by GVCs, which means that what happens to one of them affects the other one; they warned that regulations designed to slow cross-border trade would have consequences for Foreign Direct Investments (FDI).[11] This explains why any measure taken in benefit or against trade and investments has a direct impact on both and, as a result, also across GVCs.

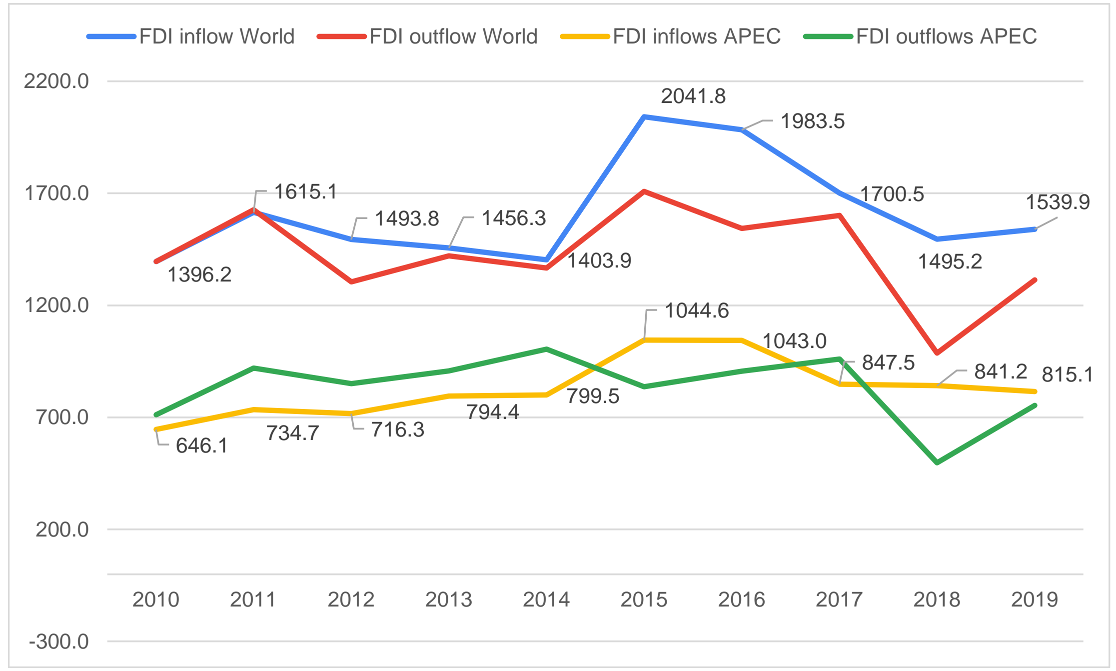
[11] Casella, B., R. Bolwijn, D. Moran and K. Kanemoto. Improving the analysis of global value chains: the UNCTAD-Eora Database. 2019. Transnational Corporations 26(3). New York and Geneva: United Nations

Foreign Direct Investment (FDI)

There is no doubt that investment policy has been a significant component of the pandemic response from governments. International reports point out that more than 70 economies took measures either to shield domestic industries from foreign takeovers or to reduce the negative effect on FDI. Indeed, FDI had a dramatic drop in 2020, reaching the lowest level of the past two decades, and the outlook is not encouraging. With information from UNCTAD, Global FDI inflows dropped by 50% in the first semester of 2020, and the number of announced greenfield investment projects decreased by 37% in the first quarter of 2020. The estimates for 2021 project a decrease in FDI by up 10% and a 37% drop in announcements of new greenfield investment projects. Therefore, if there is a real interest to foster GVCs resilience, it is essential to look carefully at the impact of investment policy decisions and utilize these to create the foundations for recovery.

Encouraging FDI by liberalizing and opening investments across the Asia Pacific may help companies to not only keep running operations and doing business until the pandemic is ended, but could also assist to re-establish disrupted supply chains networks and mitigate the negative economic impact. Inward and outward investments in the APEC region have been strategic drivers for the economic growth and development of the region during the current century. Foreign Direct Investments (FDI) inflows to the APEC region grew significantly in the last decade from representing 46.3% (646.1 billion) globally in 2010 to 52.9% (815.1 billion) in 2019. Likewise, APEC participation in FDI outflows has increased significantly during the last ten years, becoming a major and growing source of investment flows for the world. APEC accounted for 57.3% (753.2 billion) of global FDI outflows in 2019, up from 51.0% (711.9 billion) in 2010 (Figure 7).

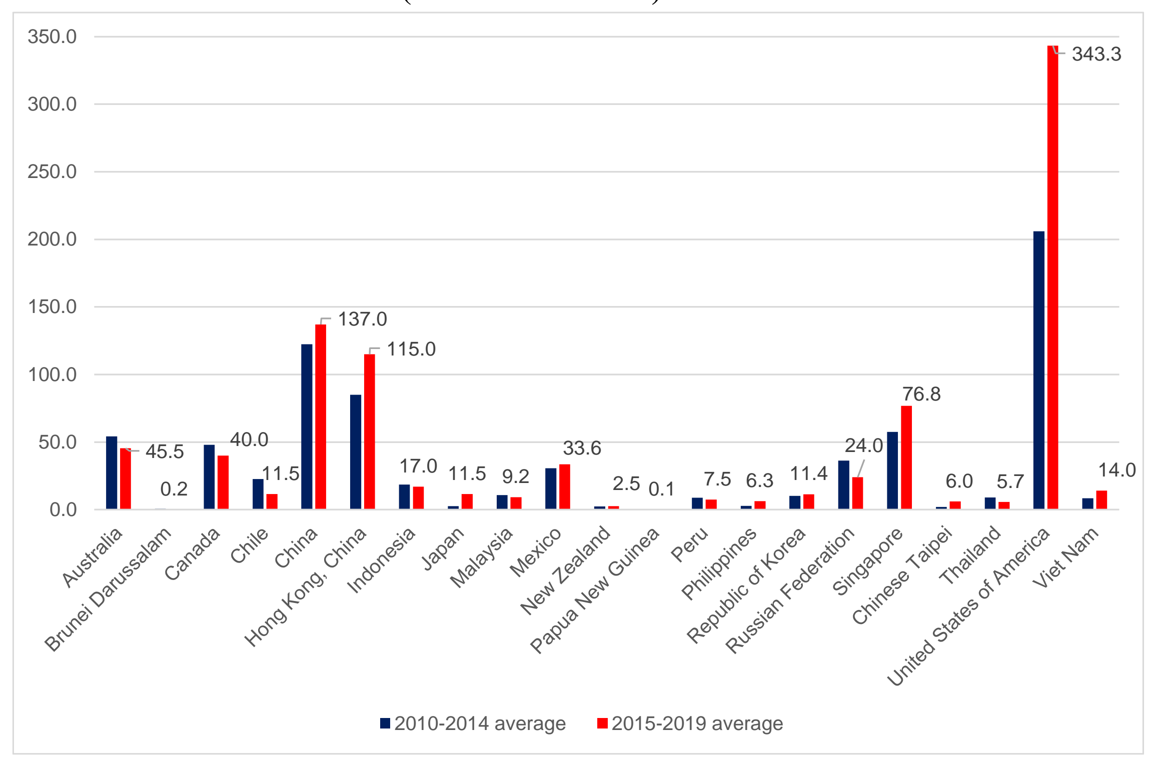
Figure 7:
APEC and Global Foreign direct investment, 2010-2019
Inward and outward flows (Billions of dollars)



Source: Elaborated by Navarro (author) with information from UNCTAD Database

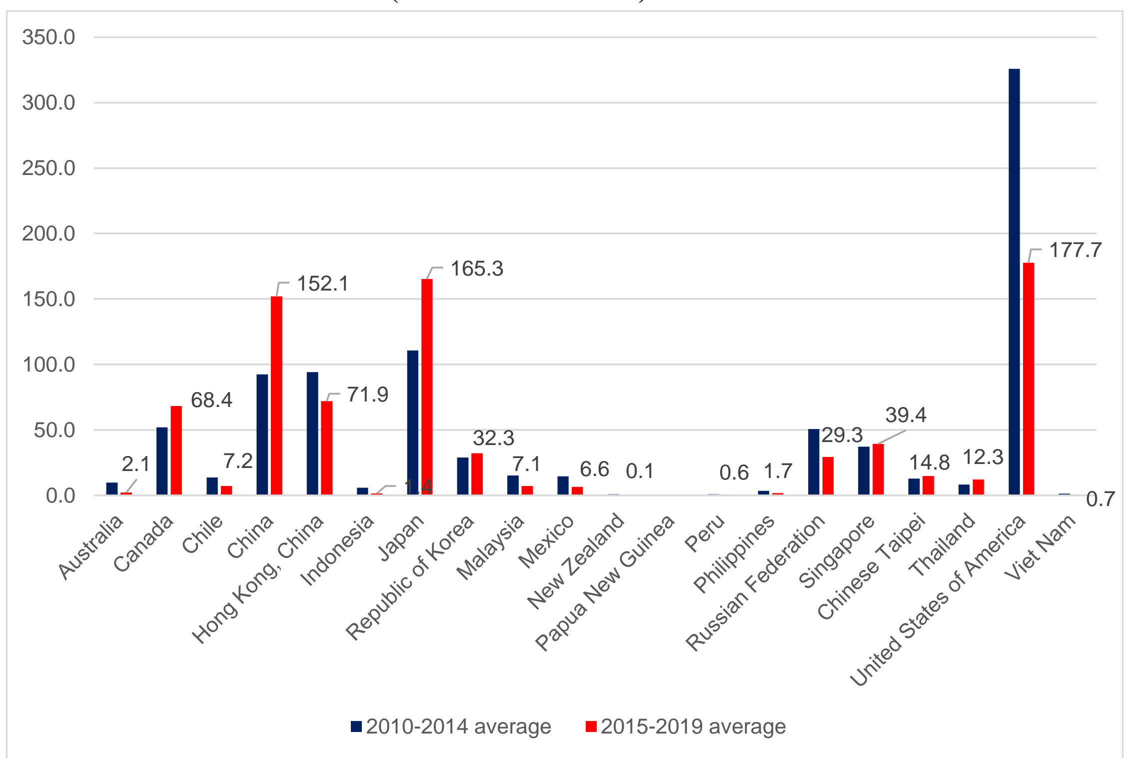
Breaking down the analysis by taking the average investments amount that occurred in five-year periods during the last decade in the APEC economies, FDI inflows at the Asia Pacific grew up 24% from 738 billion average investments in 2010-2014 to 918 billion in 2015-2019; yet, the world average increased 18.9% between these two periods (figure 8). APEC economies where growth of inward investments was outstanding in these periods were Japan (342.1%), Chinese Taipei (196.6%), Philippines (137.1%), Vietnam (67.0%) and the United States (66.6%). However, it must be noted that most of the inward investments have been concentrated in few APEC economies; for instance, during the 2015-2019 period, six economies attracted 82.5% of the total of FDI inflows: the United States (37.4%), China (14.9%), Hong Kong, China (12.5%), Singapore (8.4%), Australia (5.0%), and Canada (4.4%). This data underscores the need to continue improving investments conditions across the region in order that all APEC economies capture the benefits of investments. Conversely, FDI outflows decreased in the APEC region when the same two five-years periods are compared; the value of outward direct investment made by APEC economies went from 879 billion average in 2010-2014 to 791 billion in 2015-2019, which represented a 10.0% drop (Figure 9). The performance from the United States in both indicators explained, in part, the results in both indicators: inward investments in the US grew from 206 billion to 343 billion average investments between these two periods, whereas outward investments descended 148 billion average (from 326 to 178 average investments).

Figure 8: FDI inflows by host APEC economy
2010-2014 and 2015-2019 averages
(Billions of dollars)



Source: Navarro's (author) calculations using the UNCTAD Database

Figure 9: FDI outflows by APEC economy
2010-2014 and 2015-2019 averages
(Billions of dollars)



Source: Navarro's (author) calculations using the UNCTAD Database
Note: no data available for Brunei Darussalam

Without a doubt, APEC economies have made significant gains in advancing towards trade and investment liberalization during the last thirty years by signing and implementing an important number of bilateral and regional agreements. As of 2019, APEC economies have enforced a total of 177 trade accords, with 66 intra-regional agreements. These FTAs have made a meaningful contribution to develop the current GVC model in the region and have enabled the participation of APEC economies in cross border trade in goods and services. Nonetheless, these FTAs have not reached the FTAAP goal and now the pandemic has added new elements for consideration that need to be revised and addressed on an urgent basis.

Indicators such as the FDI restrictiveness issued by the OECD shows the area of opportunity to improve the investment environment in the region. This index measures the restrictiveness of an economy's FDI rules by analysing four main types of restrictions: discriminatory screening and approval mechanisms, foreign equity constraints, operational restrictions, and controls on key foreign staff. The index reports values between "zero" for economies open for foreign direct investments and 'one" for economies closed to FDI. The last results of this indicator show that the FDI conditions in every APEC economy differs and there is still work to be done in order to improve the investment ecosystem as a region (see Figure 10). For instance, there is only one APEC economy (Japan) below the OECD average (0.06), which could be considered a realistic goal to reach, and there are eight economies above the APEC average (0.18); the Philippines, Indonesia, Thailand, Russia, Malaysia, China, New Zealand and Mexico.

Figure 10:
FDI restrictiveness by APEC economy, 2019

Source: OECD (2021), FDI restrictiveness (indicator).
No data available for Hong Kong, China, Papua New Guinea and Chinese Taipei
APEC indicator is the average of the indicator for APEC economies with data available

FDI measures may be the gamechanger that revitalizes GVCs and, for this reason, should be considered a strategic action towards economic recovery. For investment policy that supports GVC resilience to succeed, however, there are three main challenges that need to be addressed by APEC economies: a) the increasing number of screening measures b) protectionist measures on the rise and c) the lack of access to digital technologies for all. These three issues are analysed below.

Increasing number of screening FDI measures

The number of more rigorous screening measures of FDI that has been introduced for national security reasons during the outbreak has increased. It is fair to clarify that these kinds of investment restrictions are not something new and that these are legitimate policy tools when applied properly. However, these regulations have grown exponentially during the pandemic and, in some cases, seem to have been the result of an overreaction to the global crisis. These new screening regulations on FDI have created an inappropriate investment environment and discouraged foreign investors, who have become more reluctant to explore and carry out new business endeavours.

Many economies have established new screening regimes aiming to safeguard their public interest and protect critical assets from predatory behaviour. The implementation of these stringent investment regulations by host economies have generated new barriers for FDI in sectors beyond those protected for valid reasons and where host economies could get benefits by the arrival of new capitals. Some examples of these more rigorous screening regulations include: broadening their definition about what national security means; lowering the threshold for stakes acquired by foreign

investors in local companies; establishing advisory committees to assess the national security implications of foreign investment; widening the scope of businesses subject to the foreign investment screening mechanism; putting into effect regulations concerning foreign acquisitions that are subject to national security-related reviews; defining new rules to intervene in foreign acquisitions under certain conditions; and, overall, expanding FDI screening regime's remit.

Protectionist measures on the rise

A second challenge that needs to be considered to improve GVC resilience with respect to FDI is the growing presence of protectionist measures. Numerous regulations that restrict trade and investments have been implemented worldwide since the beginning of the Covid-19 crisis: export bans on medical equipment, import restrictions, closure of borders, travel restrictions, mandatory production. These and other policies have adversely affected the business environment, led to a slower recovery and less GVCs resilience. Similar to the challenge analysed in the previous paragraph, there are justifiable circumstances when implementing these measures to protect domestic companies or industries are valid and needed. Nonetheless, economies must find the right balance between the need to implement these measures and allowing investors to bring their capital to support GVC activities in host companies.

A particular consideration that policymakers must assess carefully is that protectionist regulations significantly affect the performance from multinational enterprises (MNEs) that lead global supply chains. Multinational enterprises play a unique role in GVCs, either intra-firm or inter-firm, by investing in trading inputs and outputs across supply chains and investing in productive assets wherever it is needed. As reported by the UNCTAD World Investment Report 2020, the top 5,000 MNEs worldwide, which account for the majority of global FDI, were expecting earnings to decrease by 40% on average for last year and this decrease in profits in MNEs would mean less earnings to reinvest in their foreign affiliates. In this context, protectionist measures at the border or behind the border could further damage supply chains by causing investment plans from MNEs to halt. UNCTAD calculated that up to 80% of global trade comprises MNEs, which gives a sense of the negative impact that protectionist policies may create if MNEs are not able to invest at any stage or location of the international production process. A report from the World Bank points out that some of the most important determinants of efficiency-seeking investment for MNEs are investment policy factors, which include investment protection guarantees, ease of obtaining approvals, bilateral investment treaties, and preferential trade agreements (PTAs), among others.[12]

Make digital technologies accessible for all

A third challenge that should be considered for strengthening GVC via investments is the imperative need to make digital technology accessible for all. Technology could have helped businesses within GVCs reduce and manage the impact of disruption caused by the Covid-19 pandemic. Many companies, mainly SMEs and underrepresented groups (such as companies led by women, indigenous people, and young entrepreneurs), have been left behind in digitizing their processes and making full use of technology, so that the consequences of the pandemic hit them harder. These

[12] World Bank Group (2020), Trading for development in the age of global value chains.

companies did not have the support of digital tools to assist their decision making during the supply chains disruption and to keep their operations running effectively during the lockdowns when there was the imperative need to shift to online platforms.

The application of emerging technologies across GVCs could increase not only the efficiency, but also the inclusivity in the trade of goods and services by enabling more small and medium enterprises (SMEs) to reap the benefits of internationalization of production. However, digital trade barriers, including obsolete rules and lack of harmonization across the region, could potentially prevent these gains. Thus, facilitating FDI in strategic industries that demand the use of technologies must be prioritized in order that these companies may automate planning of production, reconfigure manufacturing processes, add artificial intelligence (AI) that streamline processes, develop digital supply networks to anticipate disruptions and/or add big data tools and even blockchain to improve their operations. Improving GVC resilience via investments that promote the diffusion of technology would be key to spark research and development (R&D), venture capital and innovation that help to boost new business models and accelerate the transition from the current GVC to a more resilient and digital one.

Governments should carefully analyse whether all the measures implemented during the pandemic period are really addressing potential threats to essential security interests and if these measures truly support economic recovery goals. The APEC Business Advisory Council (ABAC), aiming to lay the groundwork for recovery, recommended the following actions in its *ABAC COVID-19 Report:* resisting the use of measures that discourage and limit the flow of foreign direct investments, eliminating non-tariff barriers, removing unjustified trade restrictions, strengthening value chains and enhancing transparency. Additionally, it should be noted that the crisis has also decelerated the pace of negotiating free trade agreements (FTAs) and international investment agreements (IIAs), which is not a good signal for building GVCs resilience. In view of the sharp reduction in FDI since the outbreak of the pandemic, Asia Pacific economies need to work together to stimulate investment across the region, which is requisite to strengthen and diversify production.

Collaboration could be achieved, on one hand, by improving commitments and defining high standards via trade pacts and IIAs that promotes economic growth via trade and facilitate the arrival of investments in sectors where they feel comfortable to do that, and, on the other hand, by ensuring that essential goods and services remain accessible and affordable for all. Greater FDI will be needed as GVCs are revitalized. Thus, it is important that APEC governments discuss their legitimate concerns related to the opening of sensitive sectors to foreign investors but clearly show their commitment with principles of transparency, fairness, and predictability. If APEC economies are able to work together and improve investment policy provisions, they not only could improve investment climate in the region, but make also a meaningful contribution to the multilateral trading system by adding this experience in the design of *the Investment facilitation agreement*, which is a joint initiative launched in 2017 by a group of WTO members with the goal of establishing a multilateral framework on investment facilitation and currently has the participation of 106 members.

Investment Dispute Case

To conclude this section, an investment dispute case is included below to clearly demonstrate the relevance of including investment-related provisions as tools to determine the outcome of conflicts in a clear and predictable manner for the benefit of both Parties, host-economies and foreign investors.

Adria Group versus Republic of Croatia (ICSID Case No. ARB/20/6)

As will be explained in section IV, some of the most important elements for business people when they invest abroad is to have certainty about the security, control, and management of their investments by having clear and non-discriminatory rules that protect them against unfair procedures and/or eventual expropriations from governments of host-economies. In this respect, a recent investment dispute case shows how investment provisions included either in FTAs or BITs could help to try to reach an agreement and legal solution between the investor-state in conflict.

Last year, *the Adria Group BV and Adria Group Holding BV (the claimants)*, which are Dutch private investment entities, claimed that they had been coerced into transferring control over their investment made in *Agrokor Group* to the state in the form of an "extraordinary administration." The claimants owned and controlled, directly and indirectly, 95.5% of the shares from the *Agrokor group,* which is the largest company in Croatia with over 50,000 employees and operations around three main business segments: retail and wholesale, agriculture, and food. The claimants alleged that they suffered the takeover of *Agrokor Group* by *the Government of Croatia (respondent)* in an unlawful manner and were illegally deprived of their investment based on false grounds. For this reason, *the Adria Group* submitted a claim for this arbitrary action to *the International Centre for Settlement of Investment Disputes (ICSID)* to try to recover its investment, obtain the repair of damage and/or compensation based on *the IIA Croatia - Netherlands BIT* that is in force between the host economy of the investment (Croatia) and the home economy of the investor (Netherlands).

From the host economy's side, it must be highlighted that, in April 2017, the parliament from Croatia approved a law known as *"Executive administration procedure in companies of systemic importance for the Republic of Croatia" (the EA Act)* to shield the economy from failures of big companies after *Agrokor Group* piled up debts, leaving it struggling to pay suppliers and creditors. The EA Act provides for restructuring proceedings "scheme of arrangement" under the management of an administrator appointed by the government of Croatia. According to some analyses, the company accumulated debts equivalent to six times its equity and it was facing serious liquidity issues that were putting at risk the viability of the company. In this vein, Danielle Maksimow, a seasoned professional in banking and business law, pointed out that "in 2016, the group's liquidity position became increasingly restricted following a fall in revenues and a rising cost of capital"; she added that, despite the company refinancing its debt in the last quarter of that year and taking additional debt in February 2017, both measures were insufficient to meet the funding needs of the group whose liabilities by that time stood at €6.7 billion.[13]

[13] Maksimow, D. (2019, July 27). *The Extraordinary Administration of Agrokor d.d.* American College of Investment Counsel

Based on the information provided, it could be argued either in favour or against the claimant or the respondent of this case. However, the goal of sharing this case is not taking sides regarding the eventual outcome of the legal proceedings of this case, but to create awareness of the relevance of including a transparent, fair and equitable mechanism to decide investor-state disputes. In this particular case, both Parties have the opportunity to present and support their arguments to ICSD and demonstrate that they had acted according to the rule of law by not breaching any of the obligations contained in the *IIA Croatia - Netherlands BIT* in force. The Adria Group and the Republic of Croatia will file evidence in support of their claim or defence with their written arguments by providing evidence that "prove or disprove facts upon which they wish to rely." On the other hand, ICSD will manage the proceedings by following steps such as registering the request for arbitration, establishing the number of arbitrators and the method of their appointment, establishing the tribunal and starting the proceedings, scheduling a first meeting with the Parties, defining the procedure to submit written pleadings and the time limits for their submission, defining oral procedures if needed, scheduling deliberations of the tribunal, and notifying the Tribunal's last decision on the award of the case to the Parties, which is final and binding, and can be recognized and enforced in any ICSID Member State.

An important element to analyze by the Arbitrators to make the final decision in this case will be the level of commitments established in the BIT text in conjunction with the evidence submitted by the Parties. They will have particular interest in interpreting the obligations related to investment liberalization and protection (e.g. national treatment, most-favoured-nation treatment, fair and equitable treatment, expropriation, public policy exceptions, among others) that are part of the BIT text in order to determine if there has been a breach or violation of this by the host-economy. Again, both Parties should trust that, regardless of the output of the final decision, this will be impartially made and will be based on international standards and principles that guarantee transparent and high-standard proceedings. Thus, APEC economies may be interested in adding clauses in their agreements that allow resolution of complex investment disputes under the auspices of international institutions such as the ICSID and promote an optimal environment for business.

In the next section, a comparative analysis of the investment chapters of two of the most relevant mega-regional trade agreements (MRTA) of the current century, the CPTPP and RCEP, is presented, along with preliminary comments on a new promising agreement, the EU-China Comprehensive Agreement on Investment (CAI).

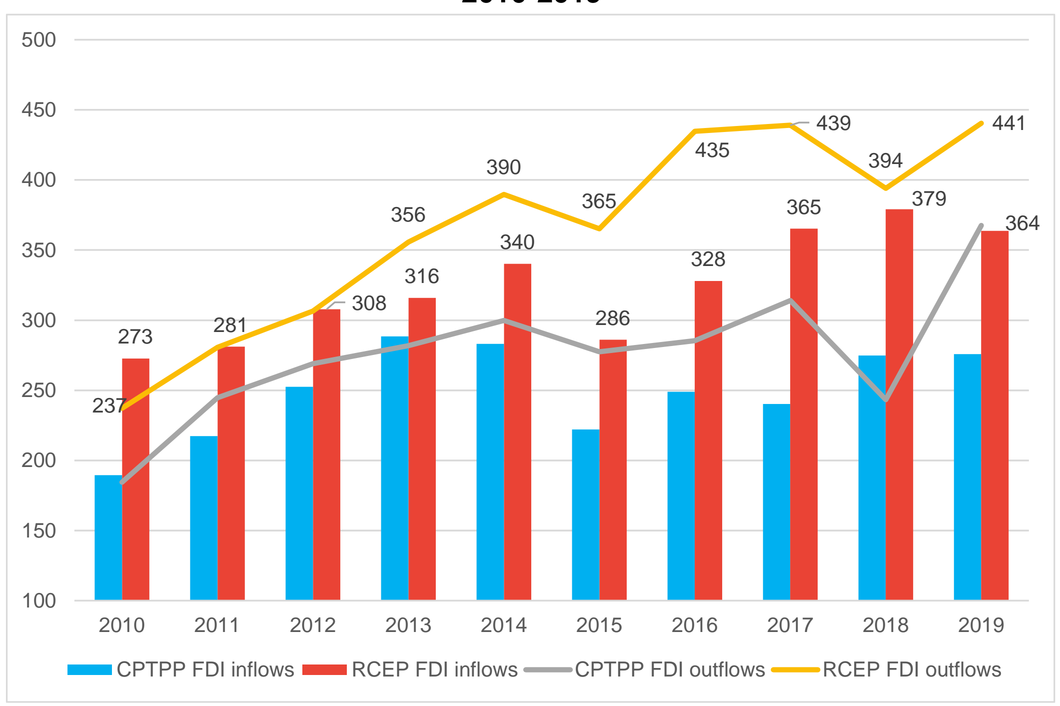
IV. Comparative analysis on investment chapters of RTAs

Improving and strengthening the investment environment in APEC economies via enhanced rules on Free Trade Agreements (FTAs) and/or international investment agreements (IIAs) could contribute to promoting resilience in supply chains and sustainable economic recovery. With this improvement in mind, reviewing the contents of trade accords with the goal of keeping an updated stocktaking of commitments is a useful exercise. In this section, a comparative analysis of the investment chapters of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and the Regional Comprehensive Economic Partnership (RCEP) is presented,

since these are two of the most relevant mega-regional FTAs of the current century due to the numbers that they both represent. The CPTPP makes up a market of 500 million people and the RCEP one of two 2 billion. In terms of GDP, the CPTPP accounts for 13.5% of global GDP, and the RCEP accounts for 30% of this indicator, which makes RCEP the largest trading bloc by GDP size in the world.

Regarding Foreign Direct Investments, while global FDI has been stagnant for the last decade, the CPTPP and RCEP economies have shown a consistent upward trend until last year. Both CPTPP and RCEP economies are important FDI destinations, which have allowed the economic growth and development of the region (Figure 11). On one hand, CPTPP economies went from 190 billion FDI inflows in 2010 to 276 billion in 2019, whereas RCEP economies grew from 273 to 364 billion FDI inflows, which represented an increase of 45.6% and 33.4%, respectively. The CPPTPP and RCEP economies accounted for 17.9% and 23.6% of the global FDI inflows in 2019, respectively. On the other hand, CPTPP and RCEP economies grew 99.2% (from 184 to 368 billion FDI outflows) and 85.8% (from 237 to 441 billion) from 2010-2019, respectively. Outward FDI in the CPTPP and RCEP represented 28.0% and 33.5% of global FDI outflows in 2019.

Figure 11:
Foreign direct investment (billions of dollars)
Inward and outward flows in the CPTPP and RCEP
2010-2019



Source: Navarro's (author) calculations using UNCTAD Database

It must be highlighted that the CPTPP and RCEP have been considered for several years the two leading pathways towards the FTAAP goal in the Asia Pacific, so having both agreements finally at this stage (the CPTPP entered in force on December 30, 2018 and RCEP was signed on November

15, 2020)[14] sends an encouraging message to the international community about resilience and commitment to multilateralism and collaboration. Both agreements had important challenges and obstacles to overcome during their negotiation stages, but the members of both agreements prioritized the dialogue and their shared goals of deepening economic integration and their trade and investment ties. CPTPP and RCEP involve eleven and fifteen Asia-Pacific economies, respectively, all of them not only with a solid determination for trade and investment liberalization, but also for GVC development.

Interestingly, there are large overlaps in membership between the CPTPP and RCEP. Seven economies are part of both FTAs: Australia, Brunei, Japan, Malaysia, New Zealand, Singapore, and Vietnam. The CPTPP is complemented by Canada, Chile, Peru, and Mexico, while the RCEP includes, additionally, Cambodia, China, Indonesia, Republic of Korea, Laos, Myanmar, the Philippines, and Thailand (Figure 12). It should be noted that the CPTPP involves mostly upper-middle and high-income economies, whereas the RCEP is currently considered an ASEAN-centric FTA, which makes possible the inclusion of a diverse group of economies, including least-developed ones.

Figure 12:
Member economies of the CPTPP and RCEP

CPTPP
Canada
Chile
Peru
Mexico

Australia
Brunei
Japan
Malaysia
New Zealand
Singapore
Vietnam

RCEP
Cambodia
China
Indonesia
Republic of Korea
Laos
Myanmar
The Philippines
Thailand

Figure elaborated by Navarro (author).

The CPTPP and RCEP have similarities but also differences in the scope and depth of how they address some of the issues that could contribute to economic integration in the region, which makes sense due to the different features of their memberships. For instance, the CPTPP text contains 30 chapters that includes enhanced solutions to a broad set of both traditional and Next Generation Trade and Investment Issues (NGeTI) such as labour, environment, State-Owned-Enterprises, transparency, and anticorruption. In contrast, the RCEP contains 20 chapters where the Parties focus mainly on harmonising barriers and procedures in topics such as trade of goods and services,

[14] RCEP will only come into force after 9 signatory countries (minimum of 6 ASEAN, 3 non-ASEAN) have ratified the agreement.

investments, Intellectual Property Rights (IPRs), SMEs, and electronic commerce. As the RCEP agreement enters into force, it is expected that existing RCEP provisions could continue to be improved and deepened over time as member economies continue to mature. Regarding supply chains and investments, both agreements set out their commitment to facilitate both areas after their preamble. On one hand, the CPTPP Parties commit to increase the competitiveness of their businesses in global markets by promoting the strengthening of regional supply chains and establishing a predictable legal framework for investments. On the other hand, the RCEP Parties make clear their goal to establish mutually advantageous rules to facilitate investments, including participation in GVCs.

In addition to the good news of the signing of the RCEP agreement last year, the announcement from the world's two largest economies, China and the European Union (EU), regarding the conclusion of negotiations of the EU-China Comprehensive Agreement on Investment (CAI) on December 30, 2020 demonstrated that, even in challenging times, it is possible to continue moving forward in the discussion and solution of critical issues and, in this manner, build stronger economies together. Negotiations for this agreement were ongoing for seven years, and similarly for the RCEP negotiations, had to overcome many obstacles to reach this final agreement, but it was possible because of their determination to improve the business environment for investors and their investments, which will be more important than ever to support economic recovery and build GVCs resilience. CAI will improve market conditions in industries such as manufacturing including the automotive sector, financial services, health, research and development (R&D), telecommunications including cloud services, computer services, air transport-related services, business services such as real estate services, advertising, management consulting, construction services, and environmental services namely, solid waste disposal, sewage, nature and landscape protection, but also in relation to state-owned enterprises (SOEs). Without a doubt, the completion of CAI sets the foundation for a strong development of bilateral investments between China and the EU that will have positive spill-over effects on GVCs, but also sends a positive signal to the international community about the Parties' commitment to support the strengthening of the international trading system and of utilizing collaboration via investment arrangements as a tool to enhance market access conditions.

In the next section, a comparative analysis of the investment chapters of the CPTPP and RCEP is divided into three categories: investment liberalization, investment protection and Investment Dispute Settlement (IDS) that include twelve provisions in total that are considered essential elements to promote an appropriate investment climate. Because of the relevance that CAI could represent for supply chain networks in the Asia Pacific and beyond, this report also includes the CAI draft text in the comparative analysis. Examination of the CAI is based on the draft text released by the European Commission on January 22, 2021; however, it must be clarified that the CAI final text to be released upon signature of the Parties may have further changes.[15]

[15] The draft text of the CAI agreement was published on Jan 22,2021 for information purposes only and may undergo further modifications because of the process of legal and technical revision, including the final structure of the text.

A) Investment liberalization

Liberalizing and facilitating Foreign Direct Investment (FDI) in trade agreements are crucial elements to promote economic recovery, build supply chains resilience and create a more proactive investment environment at the local and Asia-Pacific level. Provisions that are relevant to discuss and include to advance the investment liberalization goal are explained below.

Definition of investment

The relevance of the definition of investment lies in the formal establishment of what types of investments are covered under the corresponding agreement. To this point, CPTPP and RCEP have similar wording by defining investment (in articles 9.1 and 10.1, respectively) as every asset that investors control or own, *directly or indirectly*, including features such as the expectation of profit or gain, the acceptance of risk and the commitment of capital or other resources. Both agreements include similar forms that an investment may take, including stocks, shares, bonds, debentures, loans, intellectual property rights, rights under contracts, namely turnkey, management, construction, production, and revenue-sharing contracts. Other forms of investment that RCEP and CPTPP consider are licences, authorizations, permits, and equivalent rights conferred pursuant to the Party's law, also movable and immovable property, and related property rights, namely liens, mortgages, leases, and pledges. The CPTPP, unlike the RCEP, explicitly includes the concept of *enterprise* as a form that an investment may take; whereas the RCEP, in contradiction to the CPTPP, includes *claims to money or to any contractual or related to a business and having financial value* as one of these forms. Both agreements clarify that the investment definition does not include a judgment or order entered in an administrative or judicial action. It is interesting to note that the EU-China Comprehensive Agreement on Investment (CAI) does not include any formal definition of *investment* or any form that this may take.

Definition of investor

The importance of the investor definition is because this establishes the types and the features of the investors protected under the agreement. In this respect, the CPTPP, RCEP and CAI specify what an *investor of a non-party* and *investor of a party* means to them in art. 9.1, art. 10.1 and art. 2 section I, respectively. The three agreements define in a similar manner what an *investor of a non-Party* is by establishing that, with respect to a Party, this is an investor that *attempts/seeks to make*, *is making, or has made an investment* in the territory of that Party, that is not an investor of a Party. Regarding the *investor of a party* definition, the three FTAs again establish similar concepts by describing this entity as a *national/natural person or an enterprise/juridical person* of a Party, that *attempts/seeks to make*, *is making, or has made an investment* in the territory of another Party. The investor definitions provided by the three agreements are appropriate to promote investment liberalization because these extend protections to the "pre-establishment" phase, which is ideal for foreign investors by protecting their investments throughout the entire life of an investment.

To make *definitions of the investor* clear, the CPTPP and RCEP agreements clarify what the Parties must understand about the concept of *attempts/seeks to make* that is included in their definitions.

On one hand, the CPTPP states that *attempts to make* means an investment where the investor has taken concrete action(s) to carry out this, such as channelling capital or resources with the goal to start a business or processing a license or permit. On the other hand, the RCEP defines the *seeks to make* concept also as an investment when that investor has taken concrete action(s) to complete this, but it adds that this happens when an approval or notification is needed for carrying out the investment, and the investor that *seeks to make* that investment refers to an investor that has started such approval or notification process. The CAI includes a clarification regarding the *investor of a Party* definition and states that shipping companies established outside China or the EU and controlled by nationals of China or a Member State of the EU, respectively, may also be beneficiaries of the provisions of this agreement, if their vessels are registered under their respective legislation, in that Member State or in China and fly the flag of a Member State or of China.

National Treatment (NT)

The National Treatment (NT) clause has a goal to safeguard foreign investors and their investments from any discrimination as regards to investors from the host economy. The NT provision is one of the most relevant clauses of investment agreements because it aims to guarantee a degree of competitive equality between foreign and domestic investors. In this sense, the Parties from the CPTPP and RCEP coincide in the content of the NT clause (articles 9.4 and 10.3, respectively) by ensuring that they will provide to investors of another Party, and to their covered investments, treatment no less favourable than that it accords, *in like circumstances*, to its own investors and their investments with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.

Likewise, both CPTPP and RCEP provide a framework about what shall be understood in *like circumstances* under this provision by stating that it depends on the entirety of the circumstances, including whether the relevant treatment differentiates between investors or investments on the basis of legitimate public welfare goals. Similarly, the CAI contains in article 4 section II almost an identical definition for National Treatment as CPTPP and RCEP but with a slight difference; CAI uses the expression in *like situations* instead of *like circumstances*. CAI Parties clarify that whether the treatment is accorded in “like situations" requires a case-by-case analysis based on factual information.

Most-favoured-nation treatment (MFN)

The most-favoured-nation (MFN) treatment clause aims to defend foreign investors and their investments from any kind of discriminatory practice in relation to foreign investors and their investments. It must be noted that an MFN clause is governed by the *ejusdem generis principle*, which means that this provision may attract the most favourable treatment available in other treaties but only apply to issues belonging to the same subject matter, the same category of subjects, or the same class of matters to which the clause relates (OECD, 2006).[16] In this connection, CPTPP and RCEP establish similar definitions on the MFN commitment in Articles 9.5 and 10.4, respectively.

[16] OECD (2006), "Most-Favoured-Nation Treatment in International Investment Law", in International Investment Law: A Changing Landscape: A Companion Volume to International Investment Perspectives, OECD Publishing, Paris

Both agreements state that each Party shall give to investors and their covered investments of another Party treatment "no less favourable" than that it offers, *in like circumstances*, to investors and their investments of any other Party or of any non-Party with respect to any stage of the investment process namely, the establishment, acquisition, expansion, management, conduct, operation, and sale or any other step of investments in its territory. The CPTPP and RCEP make clear that this clause does not include international dispute resolution mechanisms or procedures, such as those included in Section B (Investor-State Dispute Settlement) in the case of the CPTPP, or existing or future international agreements with respect to the RCEP. It must be highlighted, the RCEP agreement exempts Cambodia, Lao PDR, Myanmar, and Viet Nam of the application of the MFN commitment, which creates concerns from a foreign investor point of view. Likewise, it must be noted, China is not exempted from RCEP's MFN.

The CAI's clause on MFN sets out basically the same commitment compared to the CPTPP provisions, with the difference being mainly in its wording. CAI Parties define in article 5 of Section II that they will grant to investors of the other Party and to *covered enterprises*, treatment *no less favourable* than the treatment it offers, in *like situations*, to investors and their enterprises of any non-Party in relation to establishment and operation in its territory. CAI Parties defines "establishment" as the setting up, including the acquisition,[17] of an enterprise in China or in the EU respectively with the goal of starting or creating lasting economic ties. It must be highlighted, "operation" of an enterprise for CAI Parties means the conduct, management, maintenance, use, enjoyment, sale, or other form of disposal of the enterprise.

Fair and equitable treatment (FET)

Fair and equitable treatment provisions have the purpose to protect foreign investors and their investments against arbitrary and abuse treatment and denial of justice. The inclusion of this clause may substantially improve predictability for foreign investors of trading partners, offering to all the Parties of an agreement the framework to conduct allegations to arbitral tribunals. According to an UNCTAD report (2020), this is the most litigated provision in International Investment Agreements (IIAs) with 80% of known Investor-state dispute settlement (ISDS) cases that alleged a violation of the FET clause. A study from UNCTAD (2012)[18] concluded that there are five main concepts that FET clauses aim to cover: prohibiting the denial of justice, banning any manifest arbitrariness in decision-making, avoiding any abusive treatment of investors, protecting the legitimate interest of foreign investors arising from a government's investment-inducing policies, and prohibition of targeted discrimination because of gender, religious belief or race.

Regarding the inclusion of the FET clause in the CPTPP and RCEP, this clause can be found in Article 9.6 (minimum standard of treatment) and article 10.5 (treatment of investment), respectively. There are similarities in the manner that both agreements address FET by guaranteeing to cover investments fair and equitable treatment and full protection and security treatment, in conformity with applicable customary international law principles. The CPTPP and RCEP texts add

[17] CAI text clarifies that the term "acquisition" shall be understood as including capital participation in an enterprise with a view to establishing or maintaining lasting economic links.

[18] UNCTAD (2012), Fair and Equitable Treatment, UNCTAD Series on Issues in Int. Investment Agreements II.

that *fair and equitable treatment* demand each Party not to deny justice in any legal or administrative proceedings; and both agreements clarify that a determination that there has been a breach of another provision of their respective agreements, or of a separate international agreement, does not mean that there has been a breach of the FET clause. Regarding the EU-China Comprehensive Agreement on Investment (CAI), this agreement does not include any specific clause addressing the FET.

Performance requirements (PR)

With the appearance of the Covid-19 virus and its economic consequences, including protectionism measures on the rise, many economies have been imposing or considering public policy measures to ensure the supply of essential products and services and guarantee adequate domestic manufacturing capacity. In this respect, there is a risk that governments overuse performance requirements (PRs) with the goal to strengthen their local industries and try to increase self-sufficiency and overall local capacities by imposing certain conditions on foreign investors. According to Genest (2019), performance requirements obligate specific operational undertakings upon investors and their investments with a view to serving specific national objectives of the host economy. [19] PRs may be justified under certain circumstances, but they are generally considered as generators of distorting effects that have a negative impact on global trade and act as "brakes" on the flow of Foreign Direct Investments (FDI). For these reasons, it is essential to guarantee that performance requirements measures are addressed in either FTAs or IIAs and that these measures limit or prohibit PRs depending on the negotiation of the Parties.

Regarding the CPTPP and RCEP, both agreements include provisions prohibiting the enforcement of PRs in article 9.10 and article 10.6, respectively. Both agreements state that no Party must impose any requirement or enforce any commitment or undertaking as a condition for any stage of the investment process, namely establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment of an investor of a Party or of a non-Party in its territory. The CPTPP and RCEP texts include a list of PRs that are prohibited under their agreements: exporting a given level or percentage of goods; purchasing or using goods produced in its territory; transferring a particular technology, a production process, or other proprietary knowledge to a person in its territory; supplying exclusively from the territory of the Party the goods that such investments produce to a specific regional market or to the world market; achieving a given level or percentage of domestic content; relating the volume or value of imports to the volume of exports or to the amount of foreign exchange inflows associated with investments of that investor; restricting sales of goods in its territory that such investments produce by relating such sales to the volume or value of its exports or foreign exchange earnings; adopting a given rate or amount of royalty under a licence contract; and conditioning the receipt of an advantage namely a tax incentive based on performance requirements listed in their clauses. It must be highlighted, there are performance requirements that are allowed if they are consistent with the TRIPS agreement, or the requirement is imposed by a competition authority to remedy a practice determined after judicial or an administrative process to be anti-competitive under the competition laws from any of the Parties.

[19] Genest, A. (2019) Performance Requirement Prohibitions in International Investment Law (Brill Nijhoff).

The CAI addresses the Performance Requirements (PRs) issue in article 3 of section II. To be highlighted, the CAI agreement included the entire list of prohibited performance requirements from the CPTPP and RCEP which were included in the previous paragraph, but the CAI went further by adding other PRs, giving proof of the Parties' commitment to avoid any forced technology transfer. The CAI agreement prohibits interference in contractual freedom in technology licencing and includes prohibition of several types of investment requirements that compel transfer of technology. Another performance requirement that is prohibited in CAI, which neither the CPTPP or RCEP included, is to impose or enforce on the investor of a Party to locate the headquarters for a specific region or the world market in the territory.

Appointment of senior management and board of directors

Ensuring the right of foreign investors to make senior management and board of directors appointments without regard to nationality is essential because of the strategic role that these positions perform by managing, assessing, and monitoring the foreign investments. It must be highlighted that, if the right to appoint executives is with the host economy or there are nationality restrictions on senior personnel, the control of companies owned by foreign investors could be at risk. Thus, it is important that FTAs contain provisions that ensure such actions are prohibited and/or established in a transparent and non-discriminatory manner, guaranteeing foreign investors the right to employ key managerial staff and board of directors of their choice to manage their investments according to their business vision and goals.

The CPTPP, RCEP and CAI address the issue of the appointment of senior management and board of directors, in article 9.11, article 10.7 and article 6 of Section III, respectively. The Parties of the three agreements establish that no Party must require an enterprise (juridical person) that is a covered investment to appoint to a senior management position a natural person of any specific nationality. CPTPP and RCEP Parties add that, while a Party may require that most of the board of directors of an enterprise of that Party that is a covered investment be resident in the territory of the Party or of a particular nationality, it must not do so if this would materially impair the ability of the investors to exercise control over their investments.

B) Investment Protection

Investment protection is an integral part of the overall investment policy framework aimed at maximizing the benefits of Foreign Direct Investment (FDI). In this respect, it is essential to define transparent and predictable rules that safeguard the interests of both foreign investors and host economies. Four commitments that should be considered to pursue the investment protection goal are analyzed below.

Full protection and security (FPS)

The full protection and security provision, which is the third most litigated obligation in IIAs as shown in international reports, aims to require host economies to exercise reasonable steps in order to protect foreign investments. The FPS principles in both the CPTPP and RCEP are included in the

same clause as the fair and equitable treatment (in article 9.6 of the CPTPP and in article 10.5 of the RCEP). In this regard, there are similarities in the manner that both agreements address the FPS standard with only slight differences in the wording where they establish how their members shall meet with the full protection and security requirement for covered investments. On one hand, the CTPP states that each Party must provide the level of police protection required under customary international law; whereas the RCEP demands each Party to take such measures as may be reasonably needed to secure the physical protection of the covered investment. Both agreements clarify that the FPS principles, the same as FET principles, do not require treatment to be accorded to covered investments in addition to or beyond that which is required under the customary international law minimum standard of treatment of foreign investors. With respect to the CAI agreement, despite the Parties recognizing in the preamble their shared goal to build on their respective rights and obligations under multilateral, regional and bilateral agreements and arrangements to which they are party, the CAI does not include any formal clause addressing the Full Protection and Security to FDI.

Expropriation

Expropriations, either direct or indirect ones, could cause serious damage to foreign investors and their investments so these must be properly regulated, guaranteeing investment-related provisions protect foreign investors from uncompensated expropriations or discriminatory actions. UNCTAD defines Direct investments as "*a mandatory legal transfer of the title to the property or its outright physical seizure*" and indirect investments as those that involve "*total or near-total deprivation of an investment but without a formal transfer of title or outright seizure*".[20] The CPTPP and RCEP address both types of expropriations in article 9.8 and article 10.13, respectively. CPPTP and RCEP texts state that no Party of their agreements shall expropriate or nationalise a covered investment either directly or indirectly through measures equivalent to expropriation or nationalisation. Both agreements establish that the only circumstances under which expropriations may happen are, for a public purpose, on payment of prompt, adequate and effective compensation, in a non-discriminatory manner, and in accordance with due process of law. The CPTPP, unlike the RCEP, adds that the "public purpose" concept refers to a term in customary international law and clarifies that domestic regulations may express this or a similar concept by using different terms, such as "public necessity", "public interest" or "public use". CPTPP and RCEP emphasize that the compensation, which is referred as one of the circumstances under which expropriations may happen, must be paid without delay, be equivalent to the fair market value of the expropriated investment at the time when the expropriation was officially announced, and be effectively realizable and freely transferable. As regards to the CAI, even though this agreement establishes in its preamble the Parties' commitment to promote their economic relationship based on openness, ensuring non-discrimination, a level playing field, transparency, and a predictable and rule-based investment environment, there is no clause addressing expropriations, which is a sensitive issue for foreign investors.

[20] UNCTAD (2012), Series on Issues in International Investment.

Public policy exceptions

Provisions on public policy exceptions are valid and needed because these provisions allow public policy measures, otherwise prohibited by the agreement, to be taken under specified conditions. Provisions on public policy exceptions strengthen agreements by fostering coherence between FTAs and other public interest objectives from the Parties of any agreement. In this respect, the CPTPP in article 9.16 (investment and environmental, health and other regulatory objectives) points out that nothing in the investment chapter shall be interpreted to prevent a Party from adopting, maintaining, or enforcing any measure otherwise consistent with this Chapter that it considers appropriate to ensure that investment activity in its territory is undertaken in a manner sensitive to environmental, health or other regulatory objectives. Regarding the CAI agreement, the Parties recognize, in *article 1 (objectives) of section I,* their right to regulate within their territories to achieve legitimate policy goals, namely safety, public education, the protection of public health, social services, privacy and data protection, the environment, public morals, consumer protection, or the promotion and protection of cultural diversity. In contrast, the RCEP does not include in its investment chapter any provision referring to public policy exceptions.

Transfer of funds

In the context of Covid-19 crisis, the transfer of funds clause has significant meaning for foreign investors because some governments are analyzing the option of implementing capital controls to limit the surge in outflows. In this respect, the inclusion of the transfer of funds provision in FTAs provides certainty to foreign investors that they will be able to receive the financial benefits that their investments pay. This clause allows foreign investors to receive the payment, convert or repatriate any amount relating to their investments. Although there are justified circumstances to impose certain restrictions on transfers, the key issue is that these restrictions be applied on a temporary basis and do not discriminate against foreign investors. In view of the relevance of this provision to foreign investors, any economy aiming to attract investment should consider including a clear and comprehensive detailed transfer clause. This provision should define the types of transfers that are covered and the nature of the commitment that applies to these transfers, but also the only exceptions under which the Parties agree that there is no application of this clause, such as a serious economic crisis and/or severe balance-of payments difficulties.

Both the CPTPP and RCEP agreements address this transfer clause in similar ways in articles 9.9 and 10.9, respectively. In both FTAs, this provision is titled “transfers" and in the first paragraph both agreements state that Each Party shall allow all transfers relating to a covered investment to be made “freely” and “without delay” into and out of its territory. Some examples of the transfers that both CPTPP and RCEP include in this clause are profits, dividends, interest, capital gains, royalty payments, contributions to capital, earnings from the sale of all or any part of the covered investment, payments made under a contract and payments arising out of a dispute. On the other hand, both agreements include similar exceptions to this clause by recognizing that each of the Parties may prevent or delay a transfer through the *equitable, non-discriminatory, and good faith application of its laws.* Some of exceptions for transfers include criminal or penal offences: bankruptcy, insolvency, or the protection of the rights of creditors; and issuing, trading, or dealing

in securities, futures, options, or derivatives. RCEP unlike CPTPP adds to this clause that nothing in the investment chapter must affect the rights and obligations of a Party as a member of the International Monetary Fund (IMF) and noted that a Party shall not impose restrictions on any capital transactions inconsistently with the obligations under this chapter regarding such transactions, except on request of the IMF or under article 17.15 (Measures to Safeguard the Balance of Payments).

On the other hand, the CAI text established in article 6 (Capital Movements) of section VI that each Party must allow, regarding transactions on the capital and financial account of the balance of payments, the free movement of capital with the aim of liberalization of investment; the CAI, however, does not provide specific examples of these transfers. With regard to exceptions for the free transfers relating to investments, the CAI establishes in article 7 (Measures affecting capital movements, payments or transfers) a similar list of exceptions same as the CPTPP and RCEP do. The CAI adds that these exceptions must not constitute a disguised restriction on capital movements, or otherwise be applied in a discriminatory or arbitrary manner.

C) Investment Dispute Settlement (IDS)

The inclusion of an Investment Dispute Settlement (IDS) mechanism is an essential element in FTAs from a business perspective because it offers certainty and predictability to foreign investors about their investments in international markets. IDS mechanisms give foreign investors and host economies the opportunity to effectively address their grievances, preventing and/or solving conflicts from causing FDI cancellations. Without an IDS mechanism, the Parties of any agreement would be free to non-enforce or violate investment-related obligations, leading to serious difficulties for foreign investors by giving them no option to submit a claim and dispute actions that adversely affect their investments before tribunals and/or courts that act in a transparent and impartial manner. To be noted, the inclusion of an IDS mechanism not only sends a positive signal to the business community, but is also an important determinant for foreign investors to decide whether to invest or not in a specific market.

Investor-State Dispute Settlement (ISDS)

If any Party of an FTA breaches their investment commitments and foreign investments suffer damage because of this non-compliance, Investment Dispute Settlement (IDS) should be granted to foreign investors to submit their grievances and demand repair and/or compensation for the damage, and if approved, these should be provided. In this respect, the CPTPP includes an Investor-State Dispute Settlement (ISDS) mechanism that allows foreign investors of a Party to pursue remedies directly against the government of another Party with respect to non-compliance of an investment clause. The CPTPP describes comprehensively its ISDS mechanism in section B of the Investment Chapter that provides foreign investors with the possibility to submit to arbitration any claim when they consider a CPTPP government has violated any commitment of the investment chapter, an investment authorization, or an investment agreement.[21] The CPTPP text establishes that if a dispute

[21] The CPTPP defines an investment agreement as a written agreement that is concluded and takes effect after the date of entry into force of this Agreement between an authority at the central level of government of a Party and a covered investment or an investor of another Party and that creates an exchange of rights and obligations, binding on both parties

cannot be settled within six months through consultation and negotiation (article 9.18), a foreign investor from a CPTPP Party may submit the issue to arbitration (article 9.19). The CPTPP offers a vast number of clauses regarding transparency and procedure of arbitral proceedings, including the process for the selection of arbitrators, the obligation for respondents to make various documents publicly available and that a tribunal is to conduct hearings open to the public.

The CAI agreement includes a state-to-state dispute settlement (SSDS) mechanism throughout 23 articles in Section V, but it only stipulates commitments for resolving discrepancies between the Parties concerning the interpretation and application of the provisions of the agreement. However, it must be highlighted that the SSDS mechanism is not equivalent nor replacement to the ISDS because it does not provide foreign investors with the right to access tribunals to present their claims and resolve their investment disputes if needed nor guarantee compensation or repair of the damage to them in case host economies breached investment commitments. For instance, CAI does not include typical investment protection clauses such as protection from strife or prohibition and compensation for expropriation. For these reasons, the dispute mechanism of the CAI, despite allowing the Parties to discuss some investments problems in the state-to-state level as they arise, does not have sufficient and comprehensive investment protection provisions that promote certainty and protection to foreign capitals as the investor-state dispute settlement (ISDS) or investment court system (ICS) have.

Unfortunately, the RCEP does not include any investment dispute resolution mechanism that allows foreign investors to present claims and disputes against member economies through clear arbitration procedures in an ISDS or ICS process. This lack of an IDS puts RCEP in an inferior quality level of investment commitments in comparison with the CPTPP. It should be noted, the RCEP Agreement includes a built-in work programme on investor-state dispute settlement provisions where the Parties state that all the members of this agreement shall, without prejudice to their respective positions, enter into a dialogue on the settlement of investment disputes between a Party and an investor of another Party, no later than two years after the date of entry into force of this trade pact, and it adds that the Parties shall end the discussions on ISDS within three years from the date of commencement of the discussions. This means that the RCEP parties will review the ISDS within five years of the agreement's entry into force.

Final considerations on the CPTPP, RCEP and CAI

The Investment Chapter of the CPTPP includes other clauses that refer to topics that may assist in creating an appropriate investment climate. For instance, promotion of corporate and social responsibility standards, in article 9.17, outlines that the Parties commit to promotion among enterprises running operations within its territory to voluntarily incorporate into their internal policies those internationally recognised standards, guidelines and principles of corporate social responsibility that have been endorsed by that Party. Likewise, it must be considered that the CPTPP text offers an excellent framework to promote an appropriate investment environment by

under the law applicable under Article 9.25.2 (Governing Law). Likewise, the CPTPP defines an investment authorisation as an authorisation that the foreign investment authority of a Party grants to a covered investment or an investor of another Party.

adding other provisions that encourage FDI, for instance, in non-discriminatory market, cooperation and capacity building chapters.

Likewise, the RCEP has provisions that offer an excellent reference to analyze, build on and move forward the discussion of the investment agenda in FTAs: the promotion of investment, in article 10.16, where Parties recognize the relevance of promoting and increasing awareness of the region as an investment area; and the investment facilitation clause, in article 10.17, where the Parties list several activities that would be beneficial for FDI, such as simplifying procedures for investment approvals and establishing one-stop investment centres to provide advisory services to investors. However, the RCEP still has considerable room to grow in investment commitments, for instance, by adding an IDS mechanism and including *subsidies,* which are currently exempted (article 10.2.2), as part of the scope of the investment obligations.

Regarding the CAI agreement, this is an important addition to the stocktaking of the international trading system and, particularly, for the FDI agenda, because it brings together two of the most important supply chains in the world. In this sense, the CAI also includes serious commitments that need to be carefully analyzed: transparency including subsidies, behaviour of covered entities, sustainable development including corporate social responsibility, environmental and labour issues; and the establishment of an investment committee whose tasks will cover analyzing ways to further enhance investment relations and ensuring the proper functioning of the CAI. It must be highlighted that inclusion of subsidy provisions in the CAI agreement sets an excellent precedent to follow by new generation trade pacts. From a business perspective, incorporation of subsidy provisions in investment rules offers certainty, predictability and a level playing field to foreign investors.

Upon completion of the analysis of the investment provisions in the three agreements, this report concludes that the CPTPP contains the most advanced investment commitments due to their deeper and broader coverage of investment liberalization, protection, and dispute settlement. The RCEP Parties may want to consider both CPTPP and CAI provisions as frameworks to continue enriching its agreement moving forward. To be noted, CAI is understood to be equated with the RCEP participating economies due to China's participation in both agreements. In this regard, it is possible to think that, similarly to how China shaped their participation and level of commitments in the investment agenda via CAI, other economies could do so in RCEP.

Table 3 below provides a summary of the comparative analysis presented in this section and the relevant clauses found in investment chapters from the CPTPP and RCEP.

Table 3:
Comparison of the contents of Investment Chapters of the CPTPP and RCEP

Topic	CPTPP (Ch. 9)	RCEP (Ch. 10)
Definition of investment	article 9.1	article 10.1
Definition of investor	article 9.1	article 10.1
National Treatment (NT)	article 9.4	article 10.3
Most-favoured-nation treatment (MFN)	article 9.5	article 10.4
Fair and equitable treatment (FET)	article 9.6	article 10.5
Full protection and security (FPS)	article 9.6	article 10.5
Expropriation	article 9.8	article 10.13
Performance requirements	article 9.10	article 10.6
Investor-State Dispute Settlement	Section B	-
Security exceptions	article 9.24	article 10.15
Scope	article 9.2	article 10.2
Relation to other chapters	article 9.3	-
Treatment in Case of Armed Conflict / compensation for losses	article 9.7	article 10.11
Transfer	article 9.9	article 10.9
Senior Management and Boards of Directors	article 9.11	article 10.7
Non-Conforming Measures	article 9.12	article 10.8
Denial of Benefits	article 9.15	article 10.14
Investment and Environmental, Health and other Regulatory Objectives	article 9.16	-
Corporate Social Responsibility	article 9.17	-
Promotion of investment	-	article 10.16
Facilitation of Investment	-	article 10.17
Work Programme	-	article 10.18
Customary international law	Annex 9-A	-

Source: Elaborated by Navarro (author) using investment chapters from the CPTPP and RCEP

V. Policy recommendation from a business perspective

Upon completion of this report, seven observations are offered that could contribute to improving investment policies in FTAs as a tool to support supply chains resilience in a post-Covid-19 world.

I. **Under the current crisis, investment liberalization could have a significant impact on the economic recovery from the pandemic by facilitating regional investment activities to enhance the resilience of GVCs.** To accelerate economic recovery from Covid-19 and build diverse, flexible and resilient supply chains, APEC governments must join efforts and

facilitate investments in the region by simplifying procedures, harmonising investment standards, offering greater transparency on investment rules, opening markets and reducing restrictions, facilitating the link between foreign investors with local companies, sharing experiences and best practices via their Investment Promotion Agencies (IPAs), improving infrastructure required for targeted sectors, reforming as needed FDI policy to create an appropriate business climate, and, overall, guaranteeing investment protection and fair and non-discriminatory actions. Governments need to recognize that they simply do not have all the resources to invest in for all their needs. Therefore, a major portion of the required investment will need to come from trading partners via foreign investors. Investment should be recognized as a basic condition to set the foundation for resilience and economic revival, with the potential to act as a catalyst throughout GVCs.

II. **APEC governments may want to incorporate business priorities in FDI rulemaking to support business confidence to enhance GVCs resilience, encourage investments of Multinational Enterprises (MNEs) along supply chains, and, overall, improve the business climate.** Policymakers need to listen carefully to what businesses want and be active facilitators by making effective use of their public policy toolkit to support diversification and transition within GVCs to create improved economic conditions for their companies that are facing new challenges. APEC economies must be aware that GVCs of the future will no longer operate as they did before the Covid-19 pandemic and that investments are essential because of their close link and direct impact in trade and across supply chains. Likewise, the leadership role that MNEs play in supply chains must be recognized by investing in the different stages of international production and by coordinating and working with affiliates and domestic companies, including SMEs, which create significant benefits in terms of jobs and economic impact for local economies. APEC Governments must realize that foreign investments are an important complement to public, private, and domestic investments and, together, all these are needed to support businesses and create more resilience and robust economies.

III. **Despite unprecedented challenges posed by the pandemic during 2020, governments demonstrated their strong commitment and ability to come together on shared priorities to advance the liberalization of regional investment rules.** In spite of the pandemic, notable examples of progressing the investment liberalization agenda are, first, the signing of the Regional Comprehensive Economic Partnership (RCEP), which is now the world's largest free trade pact and comprises a diverse group of booming Asia Pacific economies. Second, the announcement of the deal reached for a Comprehensive Agreement on Investment (CAI) between the European Union and China, two of the three major economies worldwide, which, even though its legal and technical revisions are still ongoing, deserves to have its progress observed as it would certainly be an important precedent for future discussions about investment liberalization. Third, the continuous advancement of the trade and investment goals in the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), which continues capturing the interest of more economies that want to join this mega-regional trade agreement. Regardless the differences in the coverage and scope among their clauses, the CPTPP, RCEP and CAI texts contribute to investment facilitation by establishing commitments throughout all phases of the life of an investment, including the

pre-establishment stage, which is an excellent message for foreign investors. It should be noted that the CPTPP continues to be the most advanced trade pact due to its higher level of commitments that address critical issues affecting investments. APEC economies should be aware that robust investment rules could pave the way for economic recovery and resilience, and they should use the economic impact caused by Covid-19 as a wake-up call to increase negotiations in trade and investments agreements instead of slowing the pace of discussions.

IV. **Learning from challenges posed by Covid-19, including supply chain disruptions and inward-looking and restrictive measures, should be leveraged to advance regional discussions and activities and improve rules in investment facilitation and liberalization.** The Covid-19 crisis provided a valuable opportunity to discover vulnerabilities in the regional economy, and recovery from the pandemic should be utilized as an opportunity not only for cooperation between APEC economies, but to realize economic activities, including a more resilient supply chain for future challenges, recognizing that liberalization of investment provides a powerful contribution. Moreover, sharing more information and implementing collective actions among APEC economies on the pandemic and their responses is needed, but also more dialogue on trade, travel, migration, and the strengthening and development of strategic industries in GVCs is imperative to create the resilience that every government aims to build. It is vital that APEC economies develop collective initiatives to keep markets and borders open, goods and investments flowing and supply chains functioning. Investments must be facilitated, not restricted, under the current scenario and beyond. While recognizing that each government has the right to regulate and implement any measure that it considers appropriate, governments should guarantee that any investment rule is designed and implemented under the principles of transparency, non-discrimination, and predictability.

V. **APEC governments need to ensure that regulations on FDI meet high standards and offer appropriate market access based on transparent and predictable rules that guarantee investment liberalization, protection and an Investment Dispute Settlement (IDS) mechanism.** In this respect, the CPTPP offers a comprehensive template to encourage and safeguard FDI and to resolve, if needed, investment disputes by including a suitable Investor-State Dispute Settlement (ISDS) mechanism that aims to solve claims in any of the three different stages: consultation, negotiation and/or arbitration. It must be noted, the establishment and use of ISDS contributes to business confidence to facilitate investments, significantly mitigating risk assessment. APEC Governments should consider incorporating investment dispute resolution mechanisms in their own FTAs that guarantee equity and impartiality of arbitral proceedings, but also be open to continuing to enhance these provisions by participating in discussions where improvements and reforms on IDS are analysed. In this respect, it must be noted, there are few APEC economies that seem to prefer to have no IDS for their protection. Thus, it is time to have an open discussion from a business perspective among APEC members to identify the desirable IDS provisions for the region towards the FTAAP goal.

VI. **Digital technology with facilitated data flow is essential to building stronger, smarter and more efficient supply chains, advancing connectivity and promoting innovation.**

Future disruptions in GVCs might happen again, and businesses along the supply chains operating under the new normal should be better equipped to respond to unforeseen changes in production or purchasing and selling patterns. Modernizing the supply chains with advanced technologies, by facilitating investment in digitalization across GVCs, should be a shared goal in the APEC region. These investments could help to overcome the digital divide across GVCs by incorporating technologies, such as artificial intelligence, internet of things (IoT), big data analytics, and cloud computing, offering risk management tools, and allowing end-to-end supply chain visibility on the status and location of raw materials, intermediate and final products. Digitalization could be a gamechanger for enhancing the relationships between companies with providers and consumers, which previously have been mainly paper based. Likewise, facilitating the free flow of data across borders could help to stimulate investments and enable efficient and timely supply of goods and services across GVCs, which would minimize disruptions and offer higher levels of stability and certainty to all.

VII. **Recognition of the FTAAP in the Putrajaya Vision 2040 has proved APEC's firm commitment to advance the liberalization of trade and investment with higher standards and comprehensive rulemaking to advance regional economic integration.** The FTAAP could provide a powerful solution for the recovery from the pandemic by addressing regional, consistent, high quality investment rules that reassure businesses with transparent and predictable FDI to improve the enhancement of GVCs' resilience. It is true that many FTAs/BITs have incorporated investment-related provisions in their texts; however, these clauses are already insufficient to address the current problems faced by companies across more sophisticated, complex and interconnected GVCs, problems that have been magnified by the pandemic. Thus, investment rules need to be revised, challenged and updated from a business perspective and these need to anticipate future developments and opportunities, keeping in mind that provisions that facilitate and encourage more investments in supply chains are an extremely important agenda for solving issues that the FTAAP is aiming for. Regarding the two leading pathways towards the FTAAP goal analyzed in this report, the early entry into force of the RCEP, and the accession of new CPTPP membership, including the return of the United States to this trade pact, are desired goals that APEC economies participating in these agreements should pursue and contribute to achieving. To have CPTPP and RCEP at their current stage should be stimulating for all and should make APEC economies redouble their efforts to achieve higher levels of economic integration under a fair, inclusive, predictable, transparent and comprehensive framework. Now is the time to plan and act together for sustainable economic recovery, re-ignite growth and lasting resilience.