

FTAAP: Next Generation Trade and Investments Issues - A Business Perspective

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Introduction

The benefits of open and free trade as tools to create sustainable growth, prosperity and well-being have been at the centre of international debate for the past few years. The surprising decision of the United Kingdom to leave the European Union (Brexit) and the new approach from some countries towards international trade have added more elements to reflect and analyze. This international debate has arisen at a crucial time because entrepreneurs, business people and citizens seem to have doubts and distrust about the inclusiveness and fairness of trade pacts. This dialogue is useful to enhance the transparency of each government's position with respect to free trade and trade liberalization, and the actions taken in consequence. This debate should clearly be in favor of cooperation and capacity building through either Bilateral or Mega-regional trade deals, but it is not.

This debate about the level of openness in trade has been occurring in all the regions around the globe, and the Asia Pacific is no exception. *The Asia-Pacific Economic Cooperation* (APEC) members have actively participated in this debate; they have decided to increase the promotion and defense of open trade; and they have intensified efforts to stimulate inclusive and sustainable growth to benefit all citizens. APEC economies have demonstrated their commitment to contribute to this purpose since 1994 through the definition of the *Bogor Goals*, in which they agreed to adopt a long-term path towards free and open trade and investment in the region. The eventual *Free Trade Area of the Asia Pacific* (FTAAP) is a cornerstone for building opportunities through regional economic integration, with businesses participating in international trade and integrated into global supply chains. Since the *Bogor Goals* were set, notable progress has been made due to the dedicated work of policy makers, officials, researchers, entrepreneurs, and overall stakeholders. However, there is still so much work to do.

The Lima Declaration, in 2016, provided a new framework to achieve the eventual FTAAP and added the Next Generation Trade and Investments Issues (NGeTI) onto the agenda as an important component to achieve a high quality and comprehensive FTAAP. Trade agreements, such as the *Comprehensive and Progressive Agreement for Trans-Pacific Partnership* (CPTPP), *the Pacific Alliance* (PA), and *the Regional Comprehensive Economic Partnership* (RCEP), are three current pathways that are considered not only contributors to deepening regional integration, but also contributors to tackling obstacles that have been inhibiting the NGeTI from delivering the best results. These three trade pacts are ambitious FTAs in different stages of development that share the goal of providing 21st-century agreements and play a complementary role on the path towards the eventual FTAAP.

Even though storms might appear during the journey to the eventual realization of a high quality and comprehensive FTAAP, this is possible to achieve if NGeTI are analyzed in depth and are added to either bilateral or mega-regional dialogues that are happening across the region. In this era of digital

economy, where electronic commerce, cross-border services, intellectual property rights, competition, transparency, small and medium enterprises, and other issues converge to present new challenges and opportunities of a significance never seen before, APEC economies need to keep working on issues and moving forward together. APEC officials, business people and stakeholders must take the issues of NGeTI seriously, learn how NGeTI have been implemented so far and work collaboratively to avoid rules and regulations that leave their businesses far behind in competitive global markets.

NGeTI can contribute to allow all size companies and economies to participate in the digital economic era. To achieve open trade and collaboration, NGeTI need to be incorporated in trade agreements, so that these agreements can reach their fullest potential, depending on the different circumstances and level of development of each economy. APEC governments need to encourage trade liberalization moving forward, addressing a higher level of commitments, learning from each other and incorporating NGeTI with a business perspective.

Summary of the main conclusions from the original report

The previous report, titled “*The TPP and PA: Complementary Agreements toward higher regional economic integration in the Asia-Pacific region,*” which was presented at the ABAC IV 2016 meeting in Lima, Peru, stressed that the Trans-Pacific Partnership (TPP) and the Pacific Alliance (PA) meant not only two pathways toward higher regional economic integration in the Asia-Pacific region, but also complementary agreements that could contribute to the creation of the eventual realization of the FTAAP. At that time, the TPP had already been agreed to by the twelve nations involved in the negotiation process and they were following domestic procedures for ratification, whereas the Pacific Alliance (PA) was already in force and demonstrating its pragmatic approach, swiftly moving from purposes to specific actions. In that first report, both the TPP and the PA were identified as potential opportunities for an improved global economy through an innovative approach to overcoming trade issues, breaking new ground on topics and supporting a multilateral trading system. The previous report presented a comparative analysis between TPP and PA in the three areas of investments, Intellectual Property Rights (IPRs), and state-owned enterprises (SOEs) with the goal of identifying similarities and differences in the approach of these two RTAs. The previous report supported the idea that the potential FTAAP might result from the convergence of different FTAs in the region, including the Regional Comprehensive Economic Partnership (RCEP), which is still in the negotiation process.

The context of the APEC Lima Declaration

The *Lima Declaration* was issued during the 24th APEC economic leaders’ meeting held in Peru in November 2016, just days after our first report came out, and instructed APEC officials to work on measures affecting trade and investments, and to advance the vision for the eventual realization of FTAAP. This declaration is considered an important announcement about the direction to follow to attain the prospective FTAAP and the tools to use to create a better business environment. The *APEC Lima Declaration* reaffirmed the commitment of APEC economies to continue to be an incubator of ideas of the future and it clearly defined the position of APEC economies against protectionist

measures and unilateral trade actions, and in favour of strengthening cooperation, integration and capacity building.

In the *APEC Lima Declaration*, the leaders reaffirmed their commitments to promote sustainable economic growth and shared prosperity in the Asia-Pacific region through facilitation of investments and free and open trade. The declaration endorsed their strong commitment to achieve the FTAAP based on the important contributions of both the *Bogor Goals* and the *Beijing Roadmap*. APEC economies recognized that more work needed to be done to create trade and investment opportunities for everyone across the region, in areas such as competitiveness, innovation, digital trade, micro, small and medium-sized enterprises (MSMEs), investments, service, global value chains (GVCs), energy, among others.

APEC leaders, in the *Lima Declaration*, endorsed the recommendations derived from the Collective Strategic Study on Issues Related to the Realization of FTAAP, which was included in one annex titled the Lima Declaration on FTAAP. This document included, as one of the five directions, the commitment of APEC economies “that the eventual FTAAP should do more than achieve liberalization in its narrow sense; it should be high quality, comprehensive, and incorporate and address ‘next generation’ trade and investment issues”¹.

The *Lima Declaration* contributed significantly to a new stage for attaining the realization of the FTAAP through the recognition of Next Generation Trade Issues (NGeTI), and it came out at a critical moment worldwide, when economic and social contributions of international trade and FTAs started to be seriously questioned. The *APEC Lima Declaration* is an instrument of public policy that should guide the efforts of governments across the Asia Pacific to strengthen the business environment, facilitate trade and investment, and improve regional integration.

Major changes since the original November 2016 report and the need for an update

Since our original November 2016 report, there have been several changes, globally and in the Asia-Pacific region, that deserve to be considered in the context of this new study. Six particular events in the last two years encouraged this new analysis: 1) the TPP did not enter into force due to the US decision to withdraw from this regional pact; 2) the decision of the remaining eleven nations to move forward without the US and negotiate the CPTPP; 3) the increasing perception of protectionism as a top risk in the region; 4) progress and improvements to the WTO; 5) NGeTI as strategic contributors towards the realization of an eventual FTAPP; and 6) NAFTA renegotiation. These six events are summarized below.

1. The exit of the United States from the Trans-Pacific Partnership agreement (TPP) and the change in US trade policy

Although the exit of the US from the TPP had been part of the debate of the US presidential election in 2016, it was not expected to happen with such speed. The Office of the U.S. Trade Representative

¹ https://www.apec.org/Meeting-Papers/Leaders-Declarations/2016/2016_aelm/2016_Annex-A

(USTR) issued a letter to the signatories of the TPP-12 on January 30, 2017 notifying them that the US had “formally withdrawn from the agreement per guidance from the President of the United States”². Along with this important announcement, the government of the US started to implement a new approach regarding trade relationships with its trading partners, including their long-term partners of Canada and Mexico through NAFTA.

2. The decision made by remaining TPP economies to move forward in the TPP without US participation

After the decision announced by the US to exit the TPP, there was uncertainty and questions about the future that would come to this trade pact. However, the eleven remaining TPP nations reaffirmed their commitment and formal intention to move forward with the TPP on the sidelines of the APEC summit in Vietnam in May 2017, where they announced that they had agreed to launch a new process to assess options to keep moving the TPP forward. In addition, they endorsed the economic and strategic relevance of this agreement that would create “new opportunities for workers, families, farmers, businesses and consumers”³. This decision to continue the TPP without US participation was based on the belief of these eleven nations that this agreement would not only contribute to strengthening the rules-based international trading system, promoting regional economic integration, and increasing the well-being of their citizens, but also would address their concerns about protectionism.

3. Rising concerns of protectionism

Concerns over protectionism have been on the rise, which is not good for businesses and for promoting trade and investments across the Asia-Pacific. While protectionism is part of the regular dialogue and debate of international trade, during the past two years the concerns about this issue have grown noticeably in both private and public sectors. The state of the region report 2018-2019 issued by the Pacific Economic Cooperation Council (PECC) shows the results of *the Asia-Pacific Policy Community Survey* and makes it evident that protectionism is a serious matter in the region that should be addressed: the percentage of respondents who selected “*increased protectionism and trade wars*” as the top risk to growth for their own economies over the next 2-3 years doubled from 31.7% in 2016 to 62.1% in 2018 (p. 11)⁴. The same report noted that protectionist measures have been implemented not only through increased import tariffs, but also through trade restricting measures called ‘creeping protectionism’ that includes anti-dumping, financial grants, public procurement localisation, tax or social insurance relief, labour market access, local sourcing, export tax, Foreign Direct Investment (FDI), entry and ownership rule, among others.

4. Progress and reform in the World Trade Organization (WTO)

Despite changes to economic trading during the last two years, the WTO has been working to overcome important challenges, including tackling trade and non-trade barriers, and promoting predictable and free trade based on the international trading system. The WTO has achieved some positive results that sends a positive message to the international community and deserves to be

² <https://ustr.gov/sites/default/files/files/Press/Releases/1-30-17%20USTR%20Letter%20to%20TPP%20Depositary.pdf>

³ <https://www.beehive.govt.nz/release/trans-pacific-partnership-tpp-agreement-ministerial-statement>

⁴ <https://www.pecc.org/resources/regional-cooperation/2584-state-of-the-region-2018-2019/file>

mentioned. For instance, on February 22, 2017, the Trade Facilitation Agreement (TFA) entered into force. It contains important clauses for supporting importers and exporters, allowing them to expeditiously move, release and clear their products through the reduction of paperwork, the elimination of red tape, and the simplification of procedures. The full implementation of this WTO agreement is estimated to boost global trade by up to one trillion annually and to reduce trade costs by an average of 14.3% ⁵. The poorest economies are estimated to benefit the most economically with the implementation of the TFA.

Likewise, WTO members successfully amended the WTO Trade Related Aspects of Intellectual Property Rights (TRIPS) agreement that, for instance, will improve the access to medicine for developing economies. This amendment to the agreement marks an important precedent in the WTO. Since the WTO opened its doors in 1995, this is the first time that a WTO accord has been amended. Other important events at the WTO level is the recent announcement on January 25, 2019 that 75 WTO like-minded economies, including the United States and China, confirmed their intention to start WTO negotiations on trade-related aspects of electronic commerce and to take into consideration the unique circumstance of each participating economy, including developing nations, during the negotiation process. They aim to achieve a high standard e-commerce agreement with the participation of “as many WTO Members as possible.” It is important to watch the opportunity of this plurilateral group of economies to advance new agenda under NGeTI. Other agreements being negotiated currently by like-minded WTO economies are the Environmental Goods Agreement (EGA) and Trade in Services Agreement (TiSA), which are obviously in categories of NGeTI. Furthermore, WTO has already achieved the Information Technology Agreement (ITA) and its continuous expansion.

Last but not least, during the past two years, the WTO has experienced a reform movement; some WTO members are promoting change in this global organization, with the intention to better equip the WTO to combat protectionist measures and to react more quickly to global trade challenges. Canada and the European Union are two visible WTO members that have been active in recent months to weigh alternatives for updating the WTO and to propose solutions to improve it. Nonetheless, despite this good news at the WTO level, resistance and a lack of consensus remains in the consolidation of the international trading system. For this reason, working at the regional level by strengthening RTAs, such as CPTPP, PA and RCEP, are valuable efforts in the promotion of multilateralism, cooperation and progressive liberalization.

5. The Next Generation Trade and Investments Issues (NGeTI) as a crucial element of the FTAAP

In Yokohama, Japan in 2010, APEC leaders decided that APEC should play “*a critical role in defining, shaping, and addressing the NGeTI that FTAAP should contain*”. The leaders recognized that they needed to promote solutions and improvements for both “at the border” issues and non-tariff “behind-the-border” barriers. Since our original report was released in November 2016, the interest to better understand the scope of the NGeTI in FTAs has increased thanks to the mention of these issues in the *APEC Lima Declaration* that addressing NGeTI will promote an efficient, competitive and sustainable

⁵ https://www.wto.org/english/tratop_e/tradfa_e/tradfa_e.htm

market place. NGeTI are issues that have been affecting trade and investments historically, and issues that have arisen in recent years as part of the emergence of the digital economy and technological progress in society. The relevance of NGeTI lies in the positive spillover effects that these might have in the performance of companies, the entire supply chain and the overall economy if solutions to these NGeTI are implemented effectively under high standard provisions and regulations.

As a part of the principles and directions of the *Lima Declaration on FTAAP*, APEC leaders agreed that they should continue promoting and exploring NGeTI to contribute to an eventual FTAAP. Deepening the understanding of NGeTI will be critical to achieving the direction addressed by APEC leaders. APEC economies have moved closer to the FTAAP since the *Bogor Goals* were outlined; the recognition of NGeTI represents concrete efforts to achieve sustainable economic integration. The list of NGeTI that might significantly contribute to creating the comprehensive agreement that meets the characteristics defined by APEC leaders is certainly broad. Thus, it is fundamental to study and analyze how NGeTI have been incorporated in current RTAs, which are considered pathways towards the eventual FTAAP. Solving historical border trade and investment matters, and simultaneously working towards solutions of issues produced by complex advances in the global economy, including the digital one, are challenges that the last years have increased in importance and, today, demand a combined effort.

6. NAFTA renegotiation

The request from the United States to renegotiate NAFTA with Canada and Mexico garnered worldwide attention, including the Asia Pacific, given the impact on global supply chains, investments and trade that this agreement would have beyond the borders of the three nations. NAFTA is considered a historic agreement because it set new provisions and standards in FTAs and it took the agenda of international trade issues beyond the WTO. Although there are different points of view regarding the benefits that NAFTA delivered for the three economies, this agreement developed and consolidated industries and supply chains in the three countries and expanded these to some Asia Pacific economies. During the more than 20 years of its operation, NAFTA achieved unprecedented integration, expanded cross-border investments and significantly increased regional trade. NAFTA provided major benefits to the three nations, increasing the regional trade from approximately 290 USD billion in 1993 to more than 1.1 trillion in 2016⁶.

However, NAFTA had been negotiated when the global economy and international trade faced different challenges; thus, the opportunity to renegotiate and update this agreement was valuable. NAFTA had become outdated, for example, the digital economy was just beginning and many of the NGeTI had not been considered as part of the trade and investment agenda. Thus, NAFTA was ineffective in solving and regulating many NGeTI. Some analyses shared the belief that the original TPP-12 would help to update NAFTA without the need to open discussions for that purpose, but the exit of the USA from the TPP12 moved NAFTA in a different direction. In August 2017, the three nations began negotiating and, after a year of intensive negotiations and difficult moments, the final agreement looked beneficial for all and sent a positive signal to the international trade community.

⁶ <https://www.cfr.org/backgrounder/naftas-economic-impact>

NAFTA has been updated not only under a new name USMCA (CUSMA in Canada and T-MEC in Mexico) but, most importantly, several NGeTI have been included that are fundamental to the current trade reality, such as intellectual property rights, electronic commerce and labor protection. With these results, the regional supply chain and overall businesses communities across North America and the Asia Pacific that have been operating under the NAFTA agreement will be relieved of the stress at the possibility of the cancellation of the deal. Indeed, they need to prepare to participate in a more competitive and efficient trade accord. NAFTA is updated and could contribute to the eventual realization of a FTAAPP.

The need for an update

This study aims to update the original report, titled “*The TPP and PA: Complementary Agreements toward higher regional economic integration in the Asia-Pacific region,*” and to conduct a comparative analysis among three of the FTAs considered as pathways to achieve an eventual FTAAP, namely the *Comprehensive and Progressive Agreement for Trans-Pacific Partnership* (CPTPP), the *Pacific Alliance* (PA), and the *Regional Comprehensive Economic Partnership* (RCEP). This comparative analysis is based on six NGeTI that, if implemented effectively, are extraordinary contributors not only to promote trade facilitation for goods and services, investments, and competitiveness, but also to create conditions for sustainable growth and to support the insertion of APEC economies in the digital economy. The six NGeTI that this study analyzes are: 1) electronic commerce, 2) state-owned enterprises (SOEs), 3) intellectual property rights (IPRs), 4) transparency, 5) competition and 6) cross-border trade in services as outlined by APEC. Our previous study is updated here by including the RCEP agreement that is now at a final stage, with the real possibility not only to close the deal, but also to converge with CPTPP and PA. All agreements work together in a complementary manner towards an eventual FTAPP.

The need to update the original report includes increasing the attention about the relevance of the NGeTI, promoting the analysis and formal incorporation of NGeTI in bilateral and/or mega-regional negotiations in order to reap their benefits across the region. Resolving NGeTI would contribute to creating better conditions to support APEC businesses, with particular focus in Micro, Small and Medium Enterprises (MSMEs). MSMEs are the core of the global, regional and domestic economy through generating jobs, participating in global supply chains, offering stability, and bringing wellbeing for people. According to official information, MSMEs account for between 60 and 80 percent of the jobs⁷ and over 97 per cent of all business across APEC economies⁸. Thus, analyzing the NGeTI in the three pathways that are considered for the eventual FTAAP is essential to promoting fair, inclusive and open trade and investment. Inclusion of high standards on NGeTI in trade negotiations should enable MSMEs, service companies trading across-borders and overall businesses to participate in a more inclusive, transparent and effective way in both local and foreign markets.

⁷ <https://www.apec.org/About-Us/About-APEC/Fact-Sheets/Small-and-Medium-Enterprises>

⁸ <https://www.apec.org/Groups/SOM-Steering-Committee-on-Economic-and-Technical-Cooperation/Working-Groups/Small-and-Medium-Enterprises>

This report analyzes, from a business perspective, the presence of six NGeTI in three trade pacts that have been considered pathways for the eventual realization of the FTAAP: CPTPP, RCEP and PA.

A quantitative review of trends in variables related to economic integration

APEC economies are key players in the development of the three FTAs that this study analyzes, the establishment of the Bogor Goals, and the promotion and construction of an eventual FTAAP. APEC economies are diverse in their economic structure and level of development, thus trying to understand the unique realities of each economy through the analysis of economic, trade and FDI indicators is useful if companies are interested in doing business in the region. The APEC region is home to some of the most important economies worldwide and, at the same time, economies facing substantial development gaps. Nonetheless, the economies lagging in economic development recognize international trade and FTAs as great instruments of public policy to close the gap. Some indicators on APEC members are shown below.

Economic indicators

GDP and population

The economic powerhouse that represents the APEC region worldwide is evident when the contribution to the Global Gross Domestic Product (GDP) is analyzed; The APEC economies had a combined GDP of 47.9 trillion USD in 2017, representing 59.6% of the worldwide GDP. The top three economies in the world are located in the Asia Pacific: the United States, China and Japan. The attractiveness of APEC not only lies in the size of their market that represents 39% of world population (2.9 billion people), but also in the sophistication and characteristics of each economy.

Figure 1: Global GDP 2017

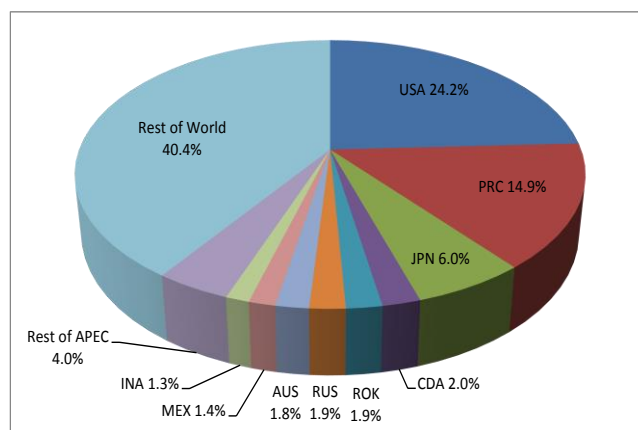
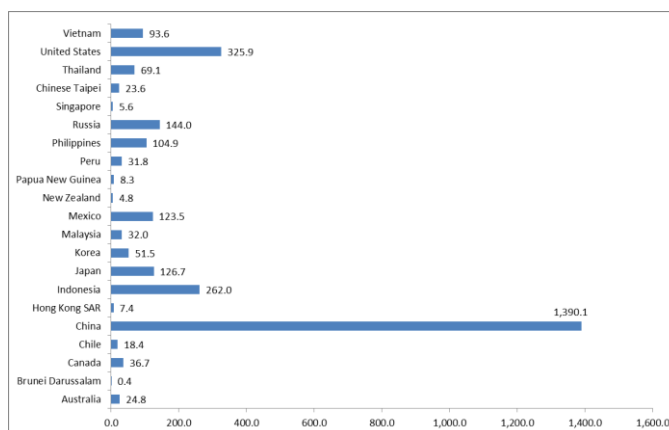


Figure 2: Population



Source: UNCTAD Data

GDP per capita

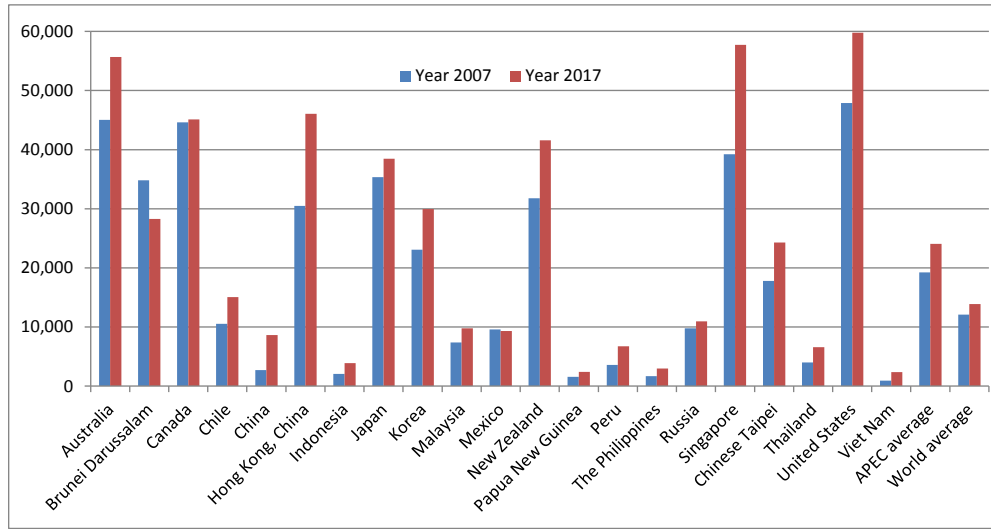
The economic progress that the APEC economies have made in recent years, based on a solid commitment to fair and free trade and investments facilitation, can be analyzed by comparing the GDP per capita before the global crisis (2007) to current data (2017). In these ten years, all the APEC economies increased their GDP per capita with exception of Brunei and Mexico, which decreased this indicator 18.8% and 2.8% respectively. In percentage terms, China increased more than 200% on this indicator from 2,703 USD to 8,643 USD; Vietnam grew 155% from 920 USD to 2,353 USD; and Hong Kong, Indonesia, Papua New Guinea, Peru, the Philippines and Thailand grow more than 50% in GDP per capita. In monetary terms, Singapore was the economy with highest GDP per capita growth from 39,224 USD to 57,713 USD, which represents an increase of 18,490 USD in 10 years. Australia, Hong Kong, and the United States grew more than 10,000 USD in their GDP per capita in this time. It should be noted that during this ten years period, APEC as a region grew 25.2% (4,849 USD), while the world average was only 14.7% (1,774 USD)

Table 1: GDP per capita 2007 and 2017 in USD

economy	2007	2017	Growth USD	Growth %
Australia	45,042	55,693	10,651	23.6%
Brunei Darussalam	34,811	28,278	-6,533	-18.8%
Canada	44,599	45,095	495	1.1%
Chile	10,516	15,068	4,552	43.3%
China	2,703	8,643	5,940	219.8%
Hong Kong, China	30,495	46,080	15,586	51.1%
Indonesia	2,064	3,876	1,812	87.8%
Japan	35,342	38,449	3,106	8.8%
Korea	23,061	29,938	6,878	29.8%
Malaysia	7,379	9,755	2,377	32.2%
Mexico	9,589	9,319	-270	-2.8%
New Zealand	31,784	41,572	9,788	30.8%
Papua New Guinea	1,576	2,402	825	52.4%
Peru	3,588	6,732	3,144	87.6%
The Philippines	1,684	2,989	1,305	77.5%
Russia	9,755	10,956	1,200	12.3%
Singapore	39,224	57,713	18,490	47.1%
Chinese Taipei	17,781	24,292	6,511	36.6%
Thailand	3,978	6,591	2,612	65.7%
United States	47,869	59,792	11,923	24.9%
Viet Nam	920	2,353	1,433	155.7%
APEC average	19,227	24,076	4,849	25.2%
World average	12,105	13,879	1,774	14.7%

Source: UNCTAD Database

Figure 3: GDP per capita 2007 and 2017
Current USD

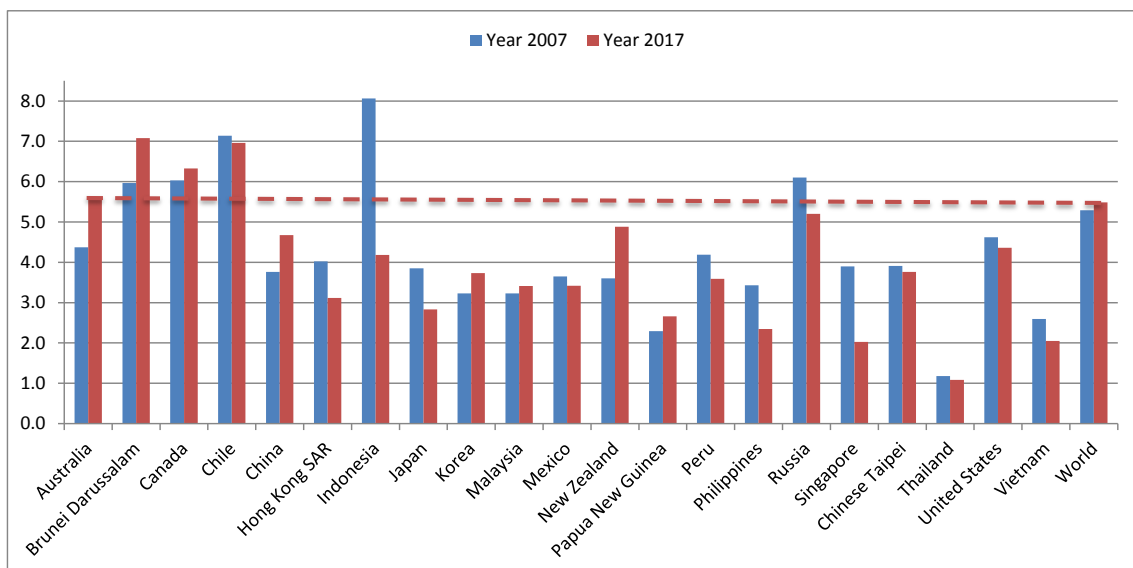


Source: International Monetary Fund, World Economic Outlook Database, October 2018 Edition

Unemployment

In most of the countries, the unemployment rate in the region has been below the world average, with Thailand registering 1.1% and the Philippines, Singapore and Vietnam lowering to 2.5%; however, economies such as Australia, Brunei Darussalam, Canada and Chile have reached higher levels than the world average.

Figure 4: Unemployment, total, 2007 and 2017
% of total labor force



Sources: World Bank and International Monetary Fund

Trade indicators

APEC represented 47.9% of Global Trade in 2017, 48.4% of imports and 47.5% of exports worldwide. Ten APEC economies accounted for 38% of International Trade in the same year: the United States 11.6%, China 10.4%, Japan 3.8%, Hong Kong 2.9%, Korea 2.8%, Canada 2.4%, Singapore 2.3% and Mexico 2.0%. As a region, APEC has improved its influence in trade worldwide during the last 10 years (2007-2017) and it has grown from 43.3% in 2007 to 47.9% in 2017.

Figure 5: APEC Total Trade, 2007-2017
Value at current USD Billion and Global trade percentage

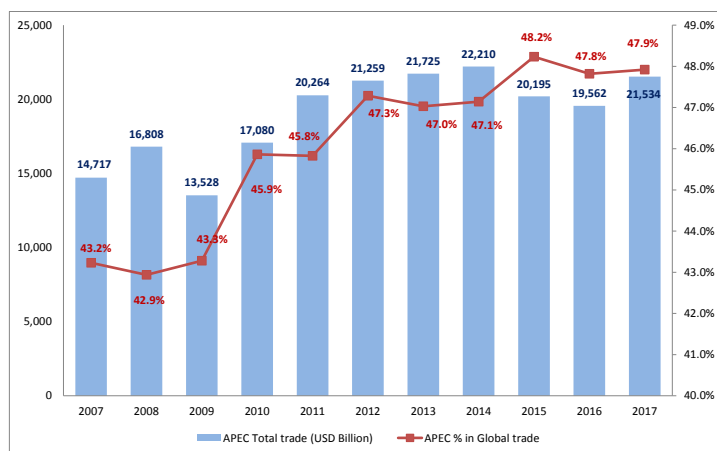
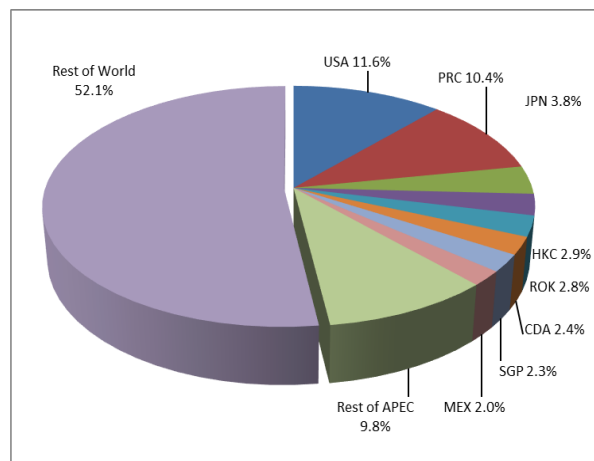


Figure 6: Total Trade, 2017
Global trade percentage



Source: UNCTAD Data Center

Intra-regional product Imports and Exports

The Intra-APEC product exports in 2017 reached 6.2 US billion representing 70% of APEC total, while Extra-APEC product exports reached 2.7 USD billion equal to 30%. Papua New Guinea with 89%, Mexico and Canada, both with 88%, are the economies whose percentage is highest in the intra-regional product exports. Russia is the country with the lowest level of intra-APEC exports with 23%. On the other hand, the Intra-APEC product imports in 2017 reached 6.4 US billion representing 71% of APEC total, while Extra-APEC product imports reached 2.6 USD billion equal to 29%. At the national level, Papua New Guinea is the economy with the highest level of intra-regional imports 93%, followed by Hong Kong 86% and Vietnam 86%. Russia is the country with lowest level of intra-regional imports with 41%.

Figure 7: Extra-APEC & Intra-APEC Product Exports (percent), 2017

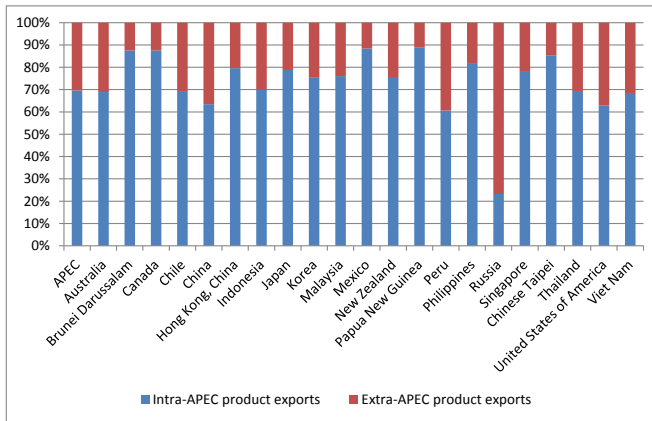
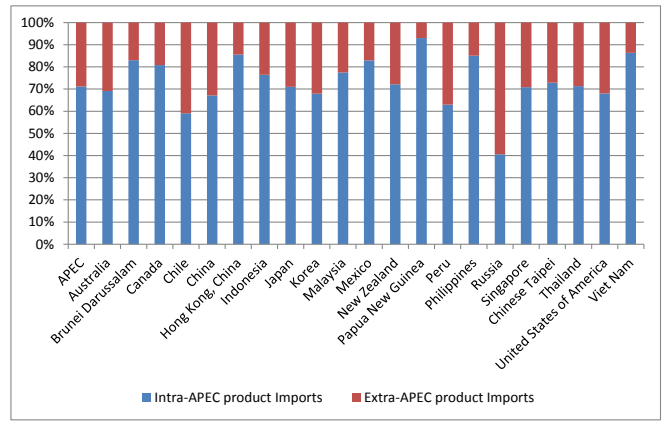


Figure 8: Extra-APEC & Intra-APEC Product Imports (percent), 2017

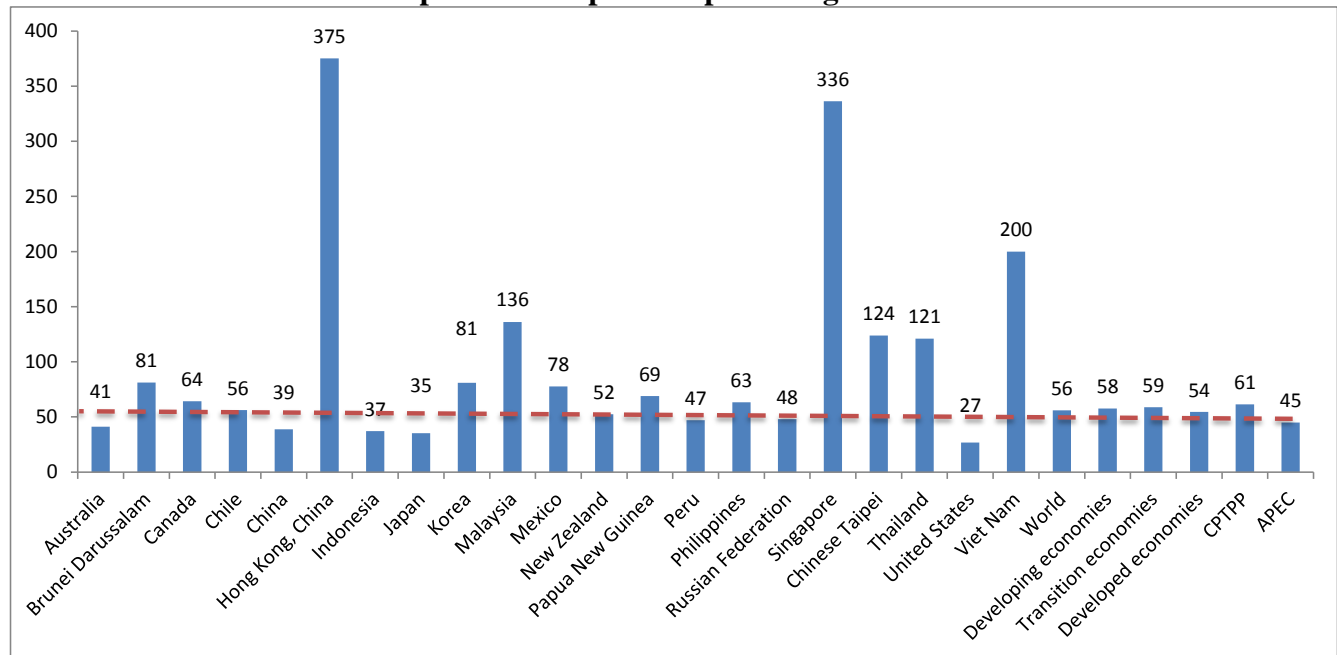


Source: Trade Map, International Trade Centre

Trade openness

Trade openness measures total trade (sum of imports and exports in goods and services) as a percentage of nominal gross domestic product (GDP). There is a wide variation in this indicator among APEC economies. On one hand, there are economies with high scores in this indicator, such as Hong Kong 375%, Singapore 336% and Vietnam 200%, but there are other countries that are below the world average, which is 56%.

Figure 9: Trade openness, 2017 imports and exports as percentage of GDP



Source: UNCTAD Category: International trade in goods and services

Foreign Direct Investments (FDI) Inflows and Outflows

APEC has grown significantly in its participation on Foreign Direct Investments (FDI) inflows and outflows. APEC grew from representing 37% (793.6 billion USD) of FDI outflows worldwide in 2007 to 66% (936.9 Billion USD) in 2017. The United States, Japan, China and Hong Kong are the economies that most contributed to this indicator, with around 50% of the FDI outflows worldwide in 2017. Likewise, APEC has grown its participation, attracting FDI inflows that represented 39.17% (741.9 billion USD) in 2007 to 57% (815.1 billion USD) in 2017. The countries that contributed the most in 2017 to this indicator were The United States, China, Hong Kong, Singapore, Australia and Mexico, with approximately 46% of the value of FDI inflows in the world.

Table 2: FDI Outflows
Percentage of total world, 2007/ 2012/2017

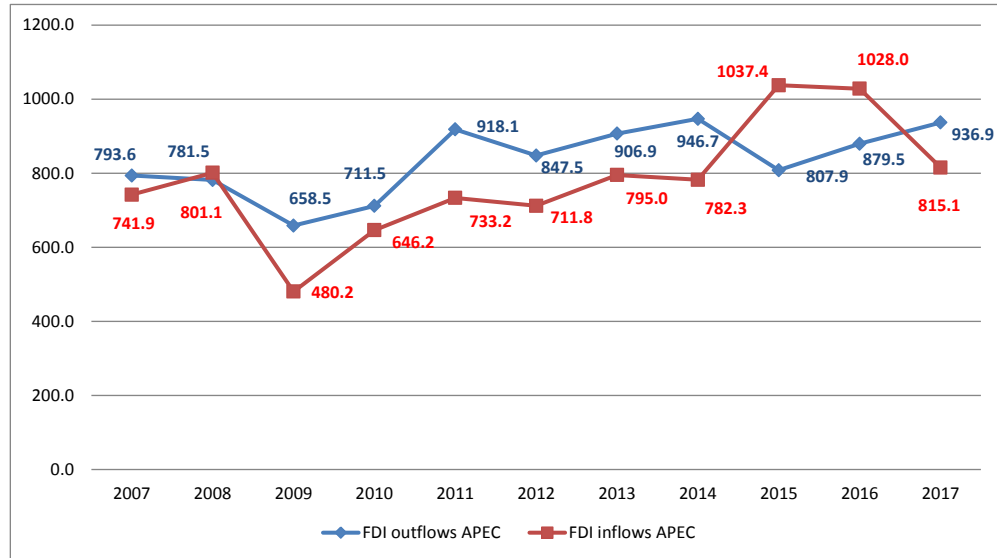
Economy	2007	2012	2017
World	100.00	100.00	100.00
Total APEC	36.59	61.88	65.52
Australia	0.55	0.58	0.34
Brunei Darussalam	0.00	0.06	-0.01
Canada	2.98	4.08	5.38
Chile	0.22	1.34	0.36
China	1.22	6.41	8.72
Hong Kong, China	2.96	6.09	5.79
Indonesia	0.22	0.40	0.20
Japan	3.39	8.95	11.22
Korea	1.02	2.24	2.22
Malaysia	0.52	1.25	0.41
Mexico	0.45	1.67	0.36
New Zealand	0.15	-0.03	0.04
Papua New Guinea	0.00	0.01	N/A
Peru	0.00	0.01	0.02
Philippines	0.24	0.25	0.11
Russia	2.02	2.08	2.52
Singapore	1.88	1.46	1.73
Chinese Taipei	0.51	0.96	0.79
Thailand	0.10	0.77	1.35
United States	18.14	23.23	23.94
Viet Nam	0.01	0.09	0.04
Rest of World	63.41	38.12	34.48

Table 3: FDI Inflows
Percentage of total world, 2007/ 2012/2017

Economy	2007	2012	2017
World	100.00	100.00	100.00
Total APEC	39.17	45.20	57.00
Australia	2.19	3.78	3.24
Brunei Darussalam	0.01	0.05	0.00
Canada	6.17	2.74	1.70
Chile	0.66	1.78	0.47
China	4.41	7.69	9.53
Hong Kong, China	3.08	4.46	7.30
Indonesia	0.37	1.22	1.61
Japan	1.19	0.11	0.73
Korea	0.47	0.60	1.19
Malaysia	0.45	0.59	0.67
Mexico	1.71	1.38	2.08
New Zealand	0.19	0.22	0.25
Papua New Guinea	0.01	0.00	-0.01
Peru	0.29	0.75	0.47
Philippines	0.15	0.16	0.67
Russia	2.90	1.92	1.77
Singapore	2.25	3.80	4.34
Chinese Taipei	0.41	0.20	0.23
Thailand	0.49	0.58	0.53
United States	11.40	12.64	19.26
Viet Nam	0.37	0.53	0.99
Rest of world	60.83	54.80	43.00

Source: UNCTAD, Foreign direct investment

**Figure 10: Foreign direct investment, 2007-2017
Inward and outward flows, USD billion**

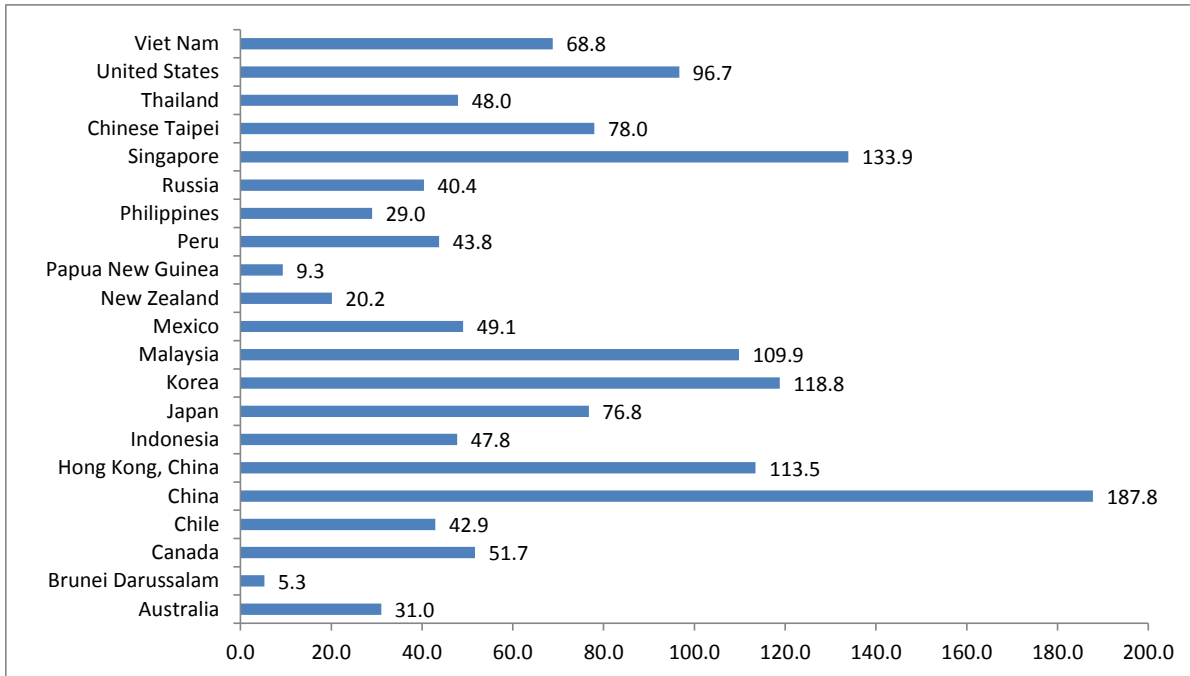


Source: UNCTAD Category: Foreign direct investment

The liner shipping connectivity index (LSCI)

The liner shipping connectivity index (LSCI) index offers information to understand the level of integration of any economy into global liner shipping networks. The LSCI tries to capture how efficient economies are connected to global shipping networks. This index is estimated by the United Nations Conference on Trade and Development (UNCTAD) based on five indicators of the maritime transport sector: 1) number of ships 2) container-carrying capacity, 3) maximum vessel size, 4) number of services, and 5) number of companies that deploy container ships in ports of a nation. The index produces the value of 100 for the economy with the highest average index of the five components in 2004. In the results of 2018, the top 5 places for this index for APEC economies were: China (1), Singapore (2), Korea (3) Hong Kong (4) and Malaysia (5), whereas Brunei and Papua New Guinea obtained an index lower than 10

Figure 11: Liner shipping connectivity index, 2018

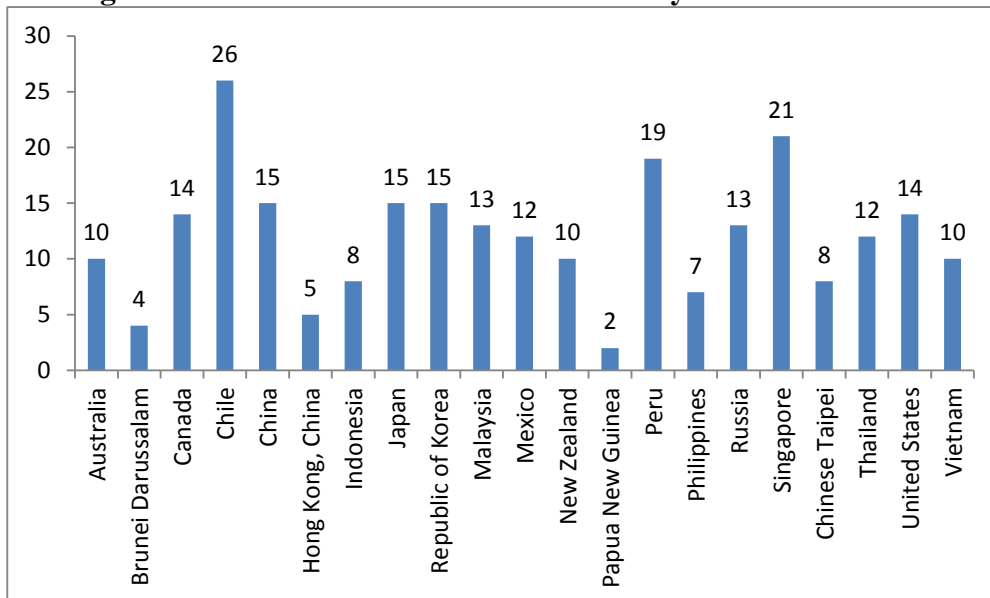


Source: UNCTAD, Division on Technology and Logistics

Trade Agreements in the APEC Region

During the 21st century, the APEC region has steadily grown the number of trade agreements, achieving the creation of an extensive network of both RTAs and FTAs among them and the rest of the world. As of December 2017, 175 trade agreements had been signed by APEC economies, 164 of these 175 are already in force and 66 of these 175 involve at least two APEC economies. Chile and Singapore led the list of agreements in force, 26 and 21 respectively (figure 12).

Figure 12: Number of RTA/FTA enforced by APEC Economies



Source: Bogor Goals Progress Report 2018

Update on the progress of TPP, RCEP and PA agreements

CPTPP, PA and RCEP are three agreements at different stages of development, but all of them contribute to liberalization, free trade and economic integration. These three trade pacts might be complementary in the realization of an eventual FTAAP. On one hand, CPTPP, signed in March 2018, is a Mega-regional agreement that is based on the TPP agreement. CPTPP has already been ratified by seven partners through their own domestic procedures and put into force. CPTPP is the leading pathway to the FTAAP. The Pacific Alliance is a regional trade agreement that was signed in 2012 and entered into force in May 2016. The PA has received worldwide attention thanks to its innovative and practical approach, and the traction that it has achieved in bringing new economies to the agreement and engaging with key stakeholders in the Asia Pacific. RCEP is an agreement that is still in the negotiation stage and undergoing discussions, but the conclusion seems close to being finalized. The RCEP, since its announcement in 2012, generated huge expectations due to the economies involved and, since then, it is considered a serious pathway towards the FTAAP. RCEP has been able to bring together economies with a commitment to open trade and willing to build capacity with others. Two of the most important contributions from RCEP are, first, inviting new members beyond the 21 APEC economies and second, accommodating much lower per capita economies.

The eleven CPTPP economies combined represent 13.3% of the global GDP (US\$10.6 trillion), 6.97% of world population (499 million people) and 14.4% of global trade. On the other hand, the Pacific Alliance is composed of four economies with a foreign trade vocation that represents 217 million consumers, 39% of regional GDP and 54 % of global trade in the region. While the RCEP is still in the negotiation process, it represents about half of the world population, 31.6% of global GDP and 28.5% of global trade. Economists have made estimates on the economic impact of the two largest agreements of this report, the CPTPP and RCEP, and these have shown positive results for all the member economies. Petri, Plummer, Urata and Zhai, (2017)⁹ showed that while the absence of the US reduced the overall value of benefits of the TPP-12, all the remaining eleven countries are still better off with the CPTPP than without it. Petri et al (2017) estimated that CPTPP might generate real incomes in 2030 of \$157 billion for member economies and \$147 billion globally, whereas RCEP could produce income gains of \$201 billion for member economies and \$286 billion for the world¹⁰.

Next, an update is presented on the progress of TPP, RCEP and PA agreements.

Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)

Since our original report was released and the US exited the deal, the eleven remaining nations have achieved an impressive example of what nations can accomplish when they have resilience and commitment to contribute to the international trading system and particularly to the economic integration of the Asia Pacific region. After the formal decision of the eleven nations (Australia, Brunei, Canada, Chile, Japan, Mexico, Malaysia, New Zealand, Peru, Singapore and Vietnam) to

⁹ Petri, Peter A. and Plummer, Michael G. and Urata, Shujiro and Zhai, Fan, Going It Alone in the Asia-Pacific: Regional Trade Agreements without the United States (October 4, 2017). Peterson Institute for International Economics Working Paper No. 17-10. Available at <https://piie.com/system/files/documents/wp17-10.pdf>

¹⁰ These results reflect changes in the year 2030 relative to the baseline solution for that year

remain negotiating the TPP in May 2017, they had to define a strategic direction to achieve their mutual goal of building a high standard, comprehensive agreement.

The eleven economies invested much time and effort to renegotiate the deal. They met in Japan (July 2017) and launched a process to assess alternatives for delivering a shared commitment to build an agreement based on their shared values of open, fair and progressive trade. After that meeting, they continued discussing the content and negotiated every month: in Australia (Aug 2017), Japan (Sept 2017), Japan (Oct 2017) and Vietnam (Nov 2017). During this last meeting carried out on the margins of the *APEC Leaders' meeting*, it was expected that they would announce that they had achieved a final agreement, but this didn't happen. Instead, during that gathering, the TPP-11 economies agreed on the core elements of the new trade pact.

The commitment to open markets and the resilience shown by the eleven nations to keep moving forward with the TPP deal paid off after eight months of intense renegotiations and they successfully concluded a final deal in Japan on January 23, 2018. According to Hugh Stephens, Vice-Chair of the Canadian Committee on Pacific Economic Cooperation (CANCPEC), Japan deserves considerable credit for its leadership in keeping the TPP alive after the US withdrew in 2017. Likewise, Stephens recognized that the US participation set a high standard for the TPP, and its provisions addressed both “at-the-border” and “behind-the-border” measures and encouraged the inclusion of provisions on e-commerce, intellectual property, investment, SMEs, labour, SOEs and other measures that led it to be described as a “Twenty-First Century gold-standard” agreement. The eleven nations signed the *Comprehensive and Progressive Agreement for Trans-Pacific Partnership* (CPTPP or TPP-11), in Chile on March 8, 2018.

The preamble of the CPTPP agreement stated that they will incorporate the obligations contained in the original TPP agreement, with some specific exceptions¹¹(Art. 1). Likewise, the preamble makes clear the suspension of 22 original TPP provisions (Art. 2) that will not go into effect. The suspended provisions do not have an impact on the high quality and comprehensive standards of CPTPP. In addition, the provisions were simply suspended, but not revoked, a way to leave the door open if the US decides to return to the deal. On the other hand, an important difference between the original TPP and the new CPTPP is the mechanism to allow for the agreement to enter into force (Art. 3). The CPTPP established that it will enter into force 60 days after the date when at least six or fifty percent of its signatories have ratified the Agreement. It will enter into force for the remaining signatories 60 days after they notify the depositary; this important difference prevents any member from being able to veto the entry into force of the CPTPP.

To date, the CPTPP has already come into effect for seven-member economies; six of them (Australia, Canada, Japan, Mexico, New Zealand and Singapore) started to reap the benefits of this agreement on December 30, 2018 and one of them, Vietnam, started in mid-January 2019. The CPTPP will allow all sizes of companies from participating economies to conduct business in an environment with reduced non-tariff barriers to trade and eliminate most of the tariffs among the eleven trading partners. The CPTPP economies will remove over 95% of their tariffs, with most tariffs being eliminated

¹¹ except for Article 30.4 (Accession), Article 30.5 (Entry into Force), Article 30.6 (Withdrawal) and Article 30.8 (Authentic Texts)

immediately upon the CPTPP's entry into force. Some countries that have expressed a possible interest to join the CPTPP are Korea, which also expressed its interest to join the PA agreement, Chinese Taipei, Indonesia, the Philippines, Thailand and the United Kingdom.

The CPTPP is considered one of the most important trade pacts negotiated in the last few years due to the high level of commitments and standards that the eleven nations incorporated into the text. Nonetheless, it is worth asking whether the CPTPP has missed any important NGeTI and has it achieved the level required by FTAAP?

The Pacific Alliance (PA)

The PA was formed by four economies committed to open trade (Chile, Colombia, Mexico and Peru) and has passed from being considered a potential option for supporting the economic integration in the region to being considered a real alternative to support the regional integration in Asia Pacific and the eventual FTAAP. When our first report came out in November 2016, there was less awareness of the existence of the PA and the contribution that this RTA might add to the Asia Pacific. The commitment with open trade and investments shown by PA members and its dynamics of innovation have attracted the attention of 55 nations across all the continents that have requested participating as observer countries in the PA: 14 from the Americas, 28 from Europe, 9 from Asia, 2 from Africa and 2 from Oceania. In the last two years, the PA has continued demonstrating their practical approach to promote business opportunities and to create networks worldwide, and it has made real progress in their objective *“to become a platform of political articulation, economic and commercial integration and projection to the world, with emphasis on the Asia-Pacific region”*¹².

Some of the most important achievements during the last two years for the PA are the creation of the associate membership, continuous business promotion, and strengthening relationships within the Asia Pacific region. Regarding the associate membership, the PA countries have progressed swiftly in their intention to contribute to economic integration in the Asia Pacific with the decision made in March 2017 PA meeting to include an “associate membership” in the agreement. The PA members agreed to establish the status of *Associate member* to promote commercial negotiations with other nations that shared PA goals. On June 30, 2017 during the XII Summit of PA Presidents, they announced the start of negotiations with Australia, Canada, New Zealand, and Singapore, all four APEC and CPTPP members, considered candidate nations to become associate States in the Pacific Alliance. PA countries have stated the result of this negotiation process should produce binding agreements between them and each associate state, agreements that should include high quality standards and whose content in addition to the provisions contained in the current agreement¹³ would include nine new disciplines¹³. To date, four rounds of negotiations have been held among PA members and candidates to become PA Associate members: the first round in Colombia (Oct 2017), the second in Australia (Jan 2018), the third round in Chile (March 2018) and the fourth one in Canada (May 2018). Likewise, the Republic of

¹² <https://alianzapacifico.net/en/what-is-the-pacific-alliance/>

¹³ The nine disciplines that PA economies are considering to include in the new agreements with associate members (Australia, Canada, New Zealand, and Singapore) are: Temporary entry of business people, Cooperation, Environment, Labor, Intellectual property, Competition policy and business enterprises of the state, Commercial defense, Gender and commerce and SMEs

Korea and Ecuador have expressed their interest to become associate states and they have started negotiations with the PA.

Regarding business promotion, as it was noted in our previous report, the PA countries, consistent with their practical approach since they signed the agreement in 2011, have been in a constant investment promotion campaign organizing business summits and contacting business people. During the last year, the PA has promoted high profile initiatives in benefit of trade and business such as the *Pacific Alliance Forum for Women Business Leaders*, established the Network of Accelerators of the PA, and participated with 177 companies from the four nations in one of the largest fairs of the food and beverage sector, SIAL 2018 in France. Furthermore, they announced that they will create a *Network of Technology Transfer Offices* to promote innovation and entrepreneurship in the region, and they formed a regional initiative called the *Investment Facilitation Instance of the PA* (IFIAP by its acronym in Spanish) aiming to coordinate the efforts to identify and tackle the main obstacles derived from regulations or governmental actions that prevent or hinder the expansion of FDI within this commercial block. This initiative was designed with the support of the World Bank.

PA has built and strengthened a relationship with *the Association of Southeast Asian Nations* (ASEAN), setting a Work Plan from 2017 with the intention to promote common objectives to benefit their businesses and people. Likewise, PA has started talks with Mercosur and signed a joint declaration aiming to strengthen commercial, economic and social ties. Furthermore, with the goal to promote a more integrated, global and connected region, they developed *the Strategic Vision 2030 of the Pacific Alliance* that sets out the objectives to be achieved in the next twelve years. In this document, they highlighted their intention to duplicate intra-alliance trade through productive linkages and the incorporation of Small and Medium Enterprises (SMEs) to international trade. As of May 1, 2016, 92% of the products traded between PA economies were free of tariffs and the remaining products will be eliminating their tariffs in periods of three and seven years. Sugar and some related products were excluded from preferential treatment.

The Regional Comprehensive Economic Partnership (RCEP)

Since the sixteen economies promoting this trade initiative defined *the Guiding Principles and Objectives for negotiating the RCEP* in August 2012, this trade pact has been considered as a pathway to contribute to the eventual FTAAP. RCEP includes ten ASEAN countries (Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Viet Nam) and six countries with which ASEAN has FTAs in force (Australia, China, India, Japan, Republic of Korea, and New Zealand). These sixteen nations started negotiations in 2013, and to date, they have held 24 formal rounds, about ten ministerial meetings and two RCEP Summits. Since they started negotiations, RCEP parties have been effective in communicating and issuing frequent updates through joint statements providing information on the progress of RCEP negotiations. An important announcement, issued after our previous report was issued in November 2017, was an outline on the final text that they would pursue to build and enlist the eighteen disciplines that they would seek to incorporate in the agreement, including NGeTI.

One year later, at the 2nd summit held in Singapore in November 2018, the Joint Leaders' statement endorsed their commitment to achieve a mutually beneficial, high quality, modern and comprehensive agreement, and they also recognized the sense of urgency to conclude negotiations due to the “*current headwinds faced by the global economy*”. In that statement, RCEP leaders expressed publicly their support to their ministers and requested them to intensify negotiations to bring the RCEP negotiations to a conclusion in 2019. It should be noted that RCEP parties have already reached an agreement on seven chapters, but they are still negotiating on the remaining eleven chapters¹⁴. Dr. Elms, Executive Director of Asian Trade Centre, has pointed out that there are at least four chapters in which negotiators are facing difficulties creating consensus, namely the trade in services, the e-commerce, the market access for goods, and the rules of origin (ROOs) chapters due to the different interests and expectations of the countries involved.

Despite the challenges that RCEP is facing during negotiations, there is a positive environment to reach a comprehensive agreement. RCEP has brought together several nations with great experience and commitment to trade and investment promotion that can help this agreement conclude negotiations successfully in 2019. Some data to consider is that seven out of the sixteen economies negotiating RCEP are members of the CPTPP, and twelve of the sixteen parties dealing with the agreement are members of APEC. These nations are champions of free and open trade, and of economic integration and liberalization without hesitation. For instance, during the last negotiating round in Oct 2018, New Zealand, which is both an APEC and CPTPP member, emphasised and reminded the participants in the RCEP negotiation process that any agreement should be “*consistent with standards set out in the Guiding Principles, for a modern comprehensive, high-quality and mutually beneficial economic partnership, and one that fosters regional economic integration.*” Another factor that offers positive signals to achieve a high-quality agreement is that RCEP is an ASEAN-led initiative and so ASEAN has an important role in the negotiation process. Regarding this, ASEAN has always demonstrated a strong commitment to promote trade values and to seek progress in the solution of trade and investment issues, benefiting regional integration and supporting the international trading system.

An important issue to consider in RCEP negotiation is that ASEAN has agreements with Australia, China, India, Japan, Republic of Korea, and New Zealand, but not all these six nations have FTAs in place with each other. Analysts have pointed that four of the most critical negotiations in RCEP are between China and Japan, Japan and Korea, China and India and Korea and China. Thus, although RCEP might not achieve the same number of high-level provisions as CPTPP due to different positions from negotiating parties, this study considers that RCEP will add a good set of provisions in order to improve the performance of NGeTI and, in this way, together with PA and CPTPP complement the framework of the eventual FTAAP. In addition, RCEP contribution to the regional integration can be analyzed from a different perspective. For example, RCEP might be the first regional agreement in which China participates; and the RCEP is building bridges with countries beyond APEC and

¹⁴ The chapters where the 16 economies negotiating RCEP have reached an agreement are: Economic and Technical Cooperation, Small and Medium Enterprises, Customs Procedures and Trade Facilitation, Government Procurement, Institutional Provisions, Sanitary and Phytosanitary Measures, and Standards, Technical Regulations and Conformity Assessment Procedures, of which 5 were concluded in this year alone.

accommodating much lower-per-capita economies, such as Cambodia, Laos, and Myanmar. Thus, RCEP will make a significant contribution to the eventual realization of the FTAAP. CPTPP cannot accommodate Cambodia, Laos, or Myanmar, at this moment, because these countries are not prepared to assume the level of CPTPP commitments, but the RCEP has created a means to include these countries, while still establishing the highest-standard agreement possible.

Participants in the CPTPP, PA, RCEP

The participation of countries in more than one agreement might facilitate the convergence of these agreements in the eventual FTAAP. Facts about the participants in the three FTAs (table 9) are presented below:

- A total of 21 Asia Pacific economies participate in the 3 agreements which are part of this study
- 16 of these 21 nations are APEC economies; whereas there are 5 APEC economies that don't participate in any agreement: Hong Kong, Papua New Guinea, Russia, Chinese Taipei and the USA
- Regarding the CPTPP and PA, there are three economies that form part of both agreements (Mexico, Chile and Peru). It should be noted that Australia, New Zealand, Singapore and Canada, a CPTPP members, are currently negotiating their adherence as PA associate members.
- Regarding CPTPP and RCEP, there are seven economies participating in both trade pacts (Australia, Brunei, Japan, Malaysia, New Zealand, Singapore and Vietnam).
- There are three economies participating actively in the three agreements: Australia, New Zealand and Singapore, which are already members of CPTPP, and they are currently in negotiations in RCEP and PA. This means that these three nations might be countries with a seat in the three agreements.

Table 9: Participants in the CPTPP, PA, RCEP

Economy	APEC	CPTPP	PA	RCEP
Australia	✓	✓	÷	✓
Brunei	✓	✓		✓
Chile	✓	✓	✓	
Japan	✓	✓		✓
Mexico	✓	✓	✓	
Malaysia	✓	✓		✓
Hong Kong	✓			
New Zealand	✓	✓	÷	✓
Peru	✓	✓	✓	
Singapore	✓	✓	÷	✓
Vietnam	✓	✓		✓
Canada	✓	✓	÷	
China	✓			✓
Indonesia	✓			✓
South Korea	✓			✓
Papua New Guinea	✓			
Russia	✓			
Philippines	✓			✓
Chinese Taipei	✓			
United States	✓			
Thailand	✓			✓
Colombia			✓	
India				✓
Cambodia				✓
Laos				✓
Myanmar				✓

Notes: Elaborated by author / (÷) means in negotiation (no admitted yet)

Disciplines covered in the CPTPP, PA and RCEP

After doing an analysis of the disciplines covered by the three agreements and considering the CPTPP to be the leading pathway of the eventual FTAAP, this study found the following facts regarding the disciplines covered by the three agreements:

- The CPTPP is the agreement which covers more exhaustively the six NGeTI which are part of this study. Likewise, the CPTPP is the agreement which covers the greater number of trade and investments issues through 30 chapters; whereas PA covers these issues through 19 chapters and RCEP listed 17 chapters and one specific annex under the Trade in Services Chapter.
- In analyzing the content of the topics and disciplines covered for each agreement, it is interesting to realize that PA chose 18 disciplines out of 19, as did the CPTPP, while all the topics (chapters) defined by RCEP are included in the CPTPP chapters. Nonetheless, despite these similarities in the topics covered, it doesn't mean that PA and RCEP are covering these disciplines to the same level of detail as CPTPP did, nor does it mean that the quality of the provisions are the same; however, it shows that PA and RCEP are covering very similar

disciplines as CPTPP and this is good news towards the successful conclusion of an eventual FTAAP.

- There are 13 disciplines that all three agreements of this study (CPTPP, PA and RCEP) are covering in their trade pacts. These disciplines are: market access, rules of origin and procedures related to origin, trade facilitation, customs cooperation, sanitary and phytosanitary measures, technical barriers to Trade, investment, trade in services, financial services, telecommunications, electronic commerce, government procurement, and dispute resolution.
- Some of the disciplines that CPTPP included in their text but were omitted in the RCEP and PA are the following: state-owned enterprises and designated monopolies, labour, environment, competitiveness and business facilitation. On the other hand, PA included the maritime services chapter that was omitted from both the CPTPP and RCEP.

Table 10 includes all the disciplines and chapters that the three agreements have decided to address and to create commitments among trading partners. The topics have been included in the same line when agreements (CPTPP, PA and RCEP) cover similar topics.

Table 10: Disciplines covered in the CPTPP, PA and RCEP

CPTPP	PA	RCEP
1. Initial Provisions and General Definitions	1. Initial Provisions / 2. General Definitions	
2. National Treatment and Market Access for Goods	3. Market Access	Trade in Goods
3. Rules of Origin and Origin Procedures	4. Rules of Origin and Procedures Related to Origin	Rules of Origin
4. Textile and Apparel Goods		
5. Customs Administration and Trade Facilitation	5. Trade Facilitation and Customs Cooperation	Customs Procedures and Trade Facilitation
6. Trade Remedies		Trade Remedies
7. Sanitary and Phytosanitary Measures	6. Sanitary and Phytosanitary Measures	Sanitary and Phytosanitary Measures
8. Technical Barriers to Trade	7. Technical Barriers to Trade	Standards, Technical Regulations and Conformity Assessment Procedures
9. Investment	10. Investment	Investment
10. Cross-Border Trade in Services	9. Cross-Border Trade in Services	Trade in Services
11. Financial Services	11. Financial Services	Financial Services
12. Temporary Entry for Business Persons		Movement of Natural Persons
13. Telecommunications	14. Telecommunications	Telecommunications Services (Annex under the Trade in Services Chapter)
14. Electronic Commerce	13. Electronic Commerce	Electronic Commerce
15. Government Procurement	8. Government Procurement	Government Procurement
16. Competition Policy		Competition
17. State-Owned Enterprises and Designated Monopolies		
18. Intellectual Property		Intellectual Property
19. Labour		
20. Environment		
21. Cooperation and Capacity Building		Economic and Technical Cooperation
22. Competitiveness and Business Facilitation		
23. Development		
24. Small and Medium-Sized Enterprises		Small and Medium Enterprises
25. Regulatory Coherence		
26. Transparency and Anti-Corruption	15. Transparency	
27. Administrative and Institutional Provisions	16. Administration of the Additional Protocol	
28. Dispute Settlement	17. Dispute Resolution	Dispute Settlement
29. Exceptions and General Provisions	18. Exceptions	
30. Final Provisions	19. Final Provisions	
Chapters no included in the CPTPP	12. Maritime Services	

NGeTI in the CPTPP, PA and RCEP

In the next sections, we present the analysis carried out in six NGeTI in the context of the three agreements (CPTPP, PA and RCEP) which have been defined as relevant to build a comprehensive and high-quality agreement towards the realization of the eventual FTAAP. The six NGeTI are: state-owned enterprises (SOEs), electronic commerce, intellectual property rights (IPRs), transparency, Competition; and Cross-border trade in services.

To complete this analysis, this study has made a review of the signed agreements in the CPTPP and PA including the preamble of the agreements, the TPP text, the PA framework agreement and the Additional Protocol to the Framework Agreement on the Pacific Alliance. Regarding the RCEP, we analyzed all the official documents that have been released since negotiations started, including the Guiding Principles and Objectives for negotiating this agreement, and the ministerial and Joint Leaders' Statements.

State-owned enterprises (SOEs)

The inclusion of high-standard SOEs provisions in FTAs offers an even playing field for private companies to compete in local or foreign markets. Efficient SOEs regulations might stimulate investments, exports and imports because of the safety that these regulations represent for both small and large companies. The inclusion of SOEs provisions in the text of trade accords is a positive signal to the private sector, allowing all companies to compete fairly when they are engaged in providing commercial activities. SOEs are part of the NGeTI and they represent an excellent opportunity to promote a fairer and open trade and to increase the flows of investments among nations.

The relevance of this NGeTI is not about deciding between SOEs or private businesses, but about establishing non-discriminatory rules. SOEs play a very important role in different APEC economies, such as stimulating business activity and providing key services to their people. SOEs are active players in local and international markets providing strategic services or products. Thus, offering a legal framework that guarantees the proper operation of SOEs, but, at the same time, offering certainty and a level playing field for businesses to compete with SOEs is crucial. According to the Organisation for Economic Co-operation and Development (OECD, 2018)¹⁵:

Today more than a fifth of the World's largest companies are state owned. State-owned enterprises (SOEs) play an important role in the global economy, particularly in key sectors such as public utilities, as well as natural resources, extractives and finance. They take different corporate forms -often combining commercial and non-commercial objectives - with increasingly international operations.

Even though specific WTO+ provisions related to SOEs discipline have been in place since 1947 through *GATT Article XVII on State Trading Enterprises (STEs)*, and these rules had an addition in

¹⁵ OECD (2018), *State-owned enterprises and corruption: what are the risks and what can be done?* OECD Publishing, Paris

1994 through the *Understanding on the Interpretation of Article XVII*, these provisions have faced some limitations. Article XVII is applicable only to trade in goods and this applies only to State Trading Enterprises (STEs) that are monopolies and have special rights or privileges. From our last report to date, the interest to integrate more exhaustive provisions on SOEs in RTAs has continued to be present in the debate as a key discipline that might contribute to the strengthening of the international trading system. There is no doubt that SOE discipline is one of the NGeTI which might have a positive impact across the Asia-Pacific Region promoting a fair trade for all.

The main issues relating to SOEs have been the lack of transparency, and how they have affected and distorted the market through building monopolies, using privileged information, obtaining subsidies of governments and receiving preferential regulatory treatment. All these issues might have been overcome with the inclusion of exhaustive provisions that offer a balance between SOEs participation and free and fair trade. In this regard, of the three agreements analyzed in this study, the trade agreement that stands out in regard to the inclusion of SOEs provisions is the CPTPP. The CPTPP text has set new standards putting together the solution for several SOEs issues in a separate chapter and addressing SOEs directly as no other RTA had tried before.

Although some of the articles contained in the CPTPP text are not completely new, the way these were incorporated and integrated, together with advanced SOEs provisions, contributed to advance the discussion of this discipline to the next level. Some CPTPP countries, such as Malaysia, Mexico and Vietnam, have a strong presence of SOEs in their economies and these rules will offer important guarantees to foreign investors. Both the Pacific Alliance and RCEP might use provisions from this CPTPP chapter as an important reference when they are ready to include high-level SOEs clauses in their respective trade pacts. Indeed, PA members have announced that they have included this discipline as a part of the discussions with candidate countries that are negotiating to become PA associate members.

PA

In our previous 2016 study, it was mentioned that the Pacific Alliance didn't include a chapter about SOEs in its text, but it was highlighted that PA members might include SOE provisions as a separate chapter if they believed the topic deserved special consideration, as they did when they added a new chapter on regulatory improvement in 2015. In this regard, the probability of including an SOE chapter seems to have increased with the current ongoing negotiations between PA nations and candidate PA associate nations. PA members have recognized that one of the key elements of the negotiations with these nations is the possible incorporation of new disciplines, such as on SOEs and other NGeTI that are not currently contained in the Additional Protocol. PA nations have mentioned that the incorporation of these NGeTI, including discipline on SOEs, in the PA text would be beneficial to achieve a deeper integration and would open new opportunities for all parties because these represent issues that are already marking the international trade agenda of the future.

RCEP

With the information available to date, it is not expected that RCEP will include a specific chapter on SOE discipline. Instead of a separate chapter, perhaps some SOE provisions will be included in the competition chapter as previous RTAs have done. As part of the competition chapter, language on SOEs has been considered since the beginning of the RCEP negotiations, and it has been incorporated in the Joint Leaders' Statement on November 2017, which included an outline of the RCEP Agreement. However, the level of commitment is unclear as to whether the RCEP members would be willing to include SOE provisions in the final text. The SOE framework of the CPTPP might serve as an example of minimum standards according to the new realities that SOEs are facing worldwide. Mikyung (2016) pointed out that the TPP text on the SOE regime, which has been incorporated in the CPTPP agreement, will set "a new standard, a minimum floor, which will affect other negotiations such as TISA, TTIP and RCEP that are still on-going" (p.4).¹⁶

CPTPP

To date, the common practice had been to frame the SOE discipline within the competition chapter, but the CPTPP has broken new ground with the inclusion of a separate chapter on SOE provisions. It is important to stress that the CPTPP nations decided *not* to suspend any provision of this chapter originally agreed to in the TPP-12 Agreement. Chapter 17 titled "State Owned Enterprises and Designated Monopolies" consists of 15 articles that cover the definitions, the scope, non-discriminatory treatment and commercial considerations, courts and administrative bodies, non-commercial assistance, transparency, technical cooperation, among others. This chapter is based on one key principle called "competitive neutrality" which aims to offer a level playing field for private companies that compete against SOEs, to avoid trade friction, market distortions and inequitable competition among CPTPP parties. In addition, this chapter offers enforceable provisions in order to discipline unfair advantages that SOEs currently enjoy in most of the markets.

The SOE chapter includes six annexes that cover the process for developing information concerning SOEs, some statements to guide further negotiations on SOEs within five years of the date of entry into force, and some provisions related to the application to sub-national SOEs. Noticeably, not every SOE is subject to these provisions and these provisions apply only to firms operating at the federal level of CPTPP governments. The chapter in the article 17.9 (Party-Specific Annexes) refers to a separate Annex (IV) that lists the non-conforming activities of SOEs by nation. These exceptions include SOEs related to certain kinds of financial services suppliers, pension funds, wealth funds, and SOEs involved in monetary policy decisions such as central banks, sovereign and entities engaged in government procurement.

¹⁶ The Trade in Services Agreement (TISA) is a services-trade only agreement currently being negotiated by 23 Members of the WTO whereas the Transatlantic Trade and Investment Partnership (TTIP) is a comprehensive and high-standard trade and investment agreement being negotiated between the United States and the European Union (EU)
Mikyung, Y. (2016). An analysis of the new trade regime for state-owned enterprises under the trans-pacific partnership agreement. *Journal of East Asian Economic Integration (jeai)*, 20(1).

According to Dr. Deborah Elms, the executive director of the Asian Trade Centre, the SOE chapter “*demonstrate(s) the careful balancing act found throughout the TPP [CPTPP] between encouraging fair trade between members and allowing governments to pursue a variety of public policies in the public interest*”. The main contributions of this CPTPP chapter are providing clear definitions on important concepts related to SOEs and planting the seeds for solutions on important SOE issues. An important contribution, for instance, is the definition of an SOE as “*an enterprise that is principally engaged in commercial activities in which a Party: (a) directly owns more than 50 per cent of the share capital; (b) controls, through ownership interests, the exercise of more than 50 per cent of the voting rights; or (c) holds the power to appoint a majority of members of the board of directors or any other equivalent management body.*”

Likewise, this chapter set a positive precedent in article 17.4 (non-discriminatory treatment and commercial considerations) which establishes that commercial sales and purchases of SOEs need to be made in accordance with commercial criteria. Likewise, article 17.6 (non-commercial assistance) restrains SOEs from providing goods or services other than general infrastructure on terms more favourable than those commercially available to non-SOEs and it prohibits direct transfers of funds from Governments to SOEs. This provision prevents CPTPP governments from providing non-commercial assistance to SOEs that produces an *adverse effect* or an *injury* to trade and investments to other trading partners. However, causation between these two negative effects and the provision of non-commercial assistance need to be proved. Further, the article 17.10 (transparency) mandates that each CPTPP nation discloses its list of SOEs, together with some specific information to the other parties, such as the percentage of government shares held in each SOE, the government titles of officials serving as officers on the SOE’s boards, the total assets over the most recent three years for which information is available, the annual revenues of SOEs, and information on any program or policy that provides subsidies to SOEs.

Electronic Commerce

The State of the Region Report issued by the Pacific Economic Cooperation Council (PECC) stated that the “*digital economy is not only the future of our economy, it is the economy*” (p. 9)¹⁷. According to Gestrin and Staudt, Digital Economy can be defined “*as the broader economy as it undergoes the process of becoming increasingly digital*”¹⁸. For the global firm *Deloitte*, digital economy is the result “*from billions of everyday online connections among people, businesses, devices, data, and processes*”; they state that the foundation of digital economy is *hyper connectivity* that is possible thanks to the mobile technology, the internet and the internet of things¹⁹. There are projections that foresee that by 2022, 60% of global GDP will be digitized²⁰.

¹⁷ <https://www.pecc.org/resources/regional-cooperation/2516-state-of-the-region-2017-2018/file>

¹⁸ Gestrin, Michael V. and Staudt, Julia (2018), The digital economy, multinational enterprises and international investment policy, OECD, Paris, www.oecd.org/investment/the-digital-economy-mnesand-international-investment-policy.htm

¹⁹ <https://www2.deloitte.com/mt/en/pages/technology/articles/mt-what-is-digital-economy.html>

²⁰ <https://www.idc.com/getdoc.jsp?containerId=prUS44417618>

The Digital Economy is breaking paradigms about how businesses are structured, demanding that companies transform themselves digitally by changing their business models, processes, and practices. Digital Economy is impacting how companies interact with their suppliers, clients, and employees, and, also, how they manage their inventories and overall assets. Digital economy has created opportunities for MSMEs to participate in Global Value Chains (GVC) in a quicker and more inclusive way like never done before. Digital economy has changed the business game significantly, such as the dynamics in the services sector where services have penetrated the cyberspace in an outstanding manner. The Online services has achieved the largest share of the total digital market with 47.3% (1,637 billion) in 2015; it is expected that online services will reach 52% of the digital market (3,063 billion) by 2020²¹.

One important component of the digital economy is the electronic commerce, considered as an NGeTI itself due to its worldwide impact. International organizations, such as the WTO, APEC, the Organisation for Economic Development (OECD), the G20 and the World Economic Forum (WEF), have working groups and different initiatives that focus only on the analysis and study of the e-commerce agenda. To understand the scope of this discipline, we can consider the definition from The Work Programme on Electronic Commerce at WTO that states “*Electronic commerce is understood to mean the production, distribution, marketing, sale or delivery of goods and services by electronic means.*” According to UNCTAD (2017)²², the total worldwide e-commerce in 2015 equaled 25,293 billion USD, which represented 34% of global GDP. Business to Business operations (B2B) represented 89% of total e-trade represented (22,389 billion USD) and the remaining 11% were Business to Consumers (B2C) e-commerce transactions (2,904 billion USD).

In the international trading system, even though the WTO has e-commerce provisions in the General Agreement on Tariffs and Trade (GATT) 1994, due to the rapid progress in this discipline, the trade rules on GATT are insufficient to cover the vast ranges of issues. The WTO established the work programme on e-commerce in September 1998, but it has not reached a consensus yet on whether to elaborate a specific multilateral agreement that includes new provisions and measures to solve the issues facing this discipline. Instead, the WTO has included some provisions related to automation and e-services in the *WTO Trade Facilitation Agreement (TFA)* that entered into force on February 22, 2017; these clauses require WTO members to accept electronic versions of certain documents and e-payments, when possible. Nonetheless, according to Wu (2017), even though the TFA included several references to electronic documentation for making commerce easier at the border, e-trade was not explicitly included as part of the negotiation of this agreement (p. 5)²³.

WTO members have maintained the commitment to work and discuss this topic in the work program; and they have extended, on eight occasions since 1998, the practice of not imposing customs duties on electronic transmissions, currently valid until their next session scheduled for 2019.²⁴ During the last

²¹ https://www.gsma.com/publicpolicy/wp-content/uploads/2016/05/GSMA_The-internet-Value-Chain_WEB.pdf

²² UNCTAD, E-Commerce: Global trends and developments, Session on the eTrade For All Initiative, Thailand, June, 15, 2017

²³ Wu, Mark. 2017. Digital Trade-Related Provisions in Regional Trade Agreements: Existing Models and Lessons for the Multilateral Trade System. RTA Exchange. Geneva: International Centre for Trade and Sustainable Development (ICTSD) and the Inter-American Development Bank (IDB).

²⁴ They ratified this decision during the last Ministerial Conference in Buenos Aires, Argentina in December 2017.

few years, more like-minded WTO countries have moved forward to include NGeTI. For instance, on December 13, 2017, a group of 71 WTO members, including the United States, announced that they would start exploratory talks towards future negotiations on e-trade related aspects, and they stressed that participation would be open to all WTO economies. Likewise, on January 25, 2019 on the sidelines of the World Economic Forum, the same group plus other WTO members issued a new joint statement, in which they confirmed their intention to begin negotiations in this discipline with the goal to build “*a high standard outcome that builds on existing WTO agreements and frameworks with the participation of as many WTO Members as possible.*”²⁵ The joint statement highlighted their intention to identify and to take into account the particular circumstances that each economy and small and medium businesses are facing in relation to e-trade. Even this is great news to advance the e-commerce agenda; it will take still some time to see the results of this renewed effort at the WTO level.

Due to the lack of a comprehensive multilateral agreement that meets the current challenges and opportunities of e-commerce, trading partners have been using FTAs as a tool to advance the e-commerce agenda and to include specific rules that allow them to protect online consumers, to support businesses, to make e-trade easier across borders, and to offer a framework according to the new e-commerce realities. As of November 2017, over 70 FTAs with separate chapters on e-commerce were in force and the most common e-trade provision was the obligation not to impose customs duties on electronic transmissions. However, considerable differences in the content and depth of these FTAs are evident. Regarding this, the CPTPP and PA are good examples of how trading partners have gone deeper in setting provisions in this discipline and framed a chapter that covers current e-commerce issues. Both agreements cover most of the e-trade issues that businesses are facing, which include data localization, data protection, consumer protection, privacy, transparency, paperless trading and binding commitments. Likewise, it is expected that the RCEP will add a high-quality set of e-commerce provisions when it is finalized.

PA

Chapter thirteen of the PA agreement defines a separate set of provisions related to e-trade through fourteen articles that includes provisions on electronic transactions of products and services, including digital goods, and how these are regularized to guarantee their safety and efficiency. Paperless trade and appropriate regulation are promoted through electronic authentication and digital certificates. In addition, there is a permanent commitment not to apply customs tariffs for digital products among PA partners. In addition to the content of chapter thirteen, PA members created a working group to put into action the defined roadmap of their Digital Agenda. This agenda was established by presidential mandate in order to implement specific actions in accordance with what was established in the e-commerce and telecommunications chapters of the agreement. The Digital Agenda Group works on the development of specific initiatives under four pillars: Digital Economy, Digital Government, Digital Ecosystem and Digital Connectivity.

²⁵ <https://ustr.gov/sites/default/files/files/Press/Releases/20190125-joint-statement-on-electronic-commerce.pdf>

CPTPP

The CPTPP is considered the first major agreement to cover this NGeTI, establishing new rules for data flows and data localization. Chapter fourteen of the CPTPP is dedicated to outline the E-Commerce provisions through eighteen articles. CPTPP partners did not suspend any provision from the original chapter negotiated under the TPP-12 umbrella. The e-commerce chapter of the CPTPP is considered a state-of-the-art text that covers e-commerce issues more broadly than any RTA before this. For example, CPTPP incorporates provisions such as the guarantee in cross-border data flows, and it sets a positive precedent by not prohibiting data from being transferred out of its territory, addressing issues such as cyber security, and avoiding handing over source codes as a condition of market entry. From a business perspective, the CPTPP is considered an RTA that will help businesses, including SMEs, to export their products by enabling flow of data and information across borders and lowering their costs by ensuring them access to the cloud. At the same time, the CPTPP will promote the protection and privacy of consumers so they can buy online in a safer manner.

RCEP

In the Joint Leaders' Statement issued on November 14, 2017, RCEP negotiating economies announced that they will include a dedicated chapter on e-commerce. RCEP economies have defined this chapter as one that will help to situate their agreement as a modern one that promotes digital trade, encourages cooperation and creates opportunities especially for small and medium enterprises (SMEs). In this respect, ASEAN Nations have vast experience and the mutual interest to boost e-commerce in the region; for instance, at the 50th Meeting of the ASEAN Economic Ministers (AEM) on 29 August 2018, they made it clear that e-trade is one of their top priorities and they announced that they would sign the *ASEAN Agreement on Electronic Commerce* at the sidelines of the 33rd ASEAN Summit at the end of 2018." Furthermore, ASEAN economies announced that they had adopted the *ASEAN Digital Integration Framework* for submission to the ASEAN Economic Community (AEC) Council. This Framework comprises six priority areas to be implemented over the next 12-18 months that would have significant effects on digital integration. For the above reasons, this study concludes that RCEP might include a comprehensive set of e-commerce provisions.

Table 1 presents a comparison on the presence of e-trade provisions included in CPTPP and PA, and expected in RCEP.

Table 1: E-commerce Provisions

E-trade provisions	CPTPP	Pacific Alliance	RCEP
Chapter number and title	✓ Ch. 14 Electronic Commerce	✓ Ch. 13 Electronic Commerce	✓
e-trade definition	×	✓ Art. 13.1	✓
Digital Product Definition	✓ Art. 14.1	✓ Art. 13.1	✓
computing facilities definition	✓ Art. 14.1	✓ Art. 13.1	✓
Unsolicited commercial electronic message definition	✓ Art. 14.1	✓ Art. 13.1	✓
Electronic authentication and electronic signatures	✓ Art. 14.1 & 14.6	✓ Art. 13.10	✓
Customs Duties (obligation to not impose customs duties on electronic transmissions)	✓ Art. 14.3.2	Art. 13.4	✓
Non-discriminatory treatment of Digital Products	✓ Art. 14.4	✓ Art. 13.4 BIS	✓
Adoption of the UNCITRAL Model Law on e-commerce	✓ Art. 14.5	×	✓
Paperless Trading	✓ Art. 14.9	✓ Art. 13.7	✓
Online Consumer Protection	✓ Art. 14.7	✓ Art. 13.6	✓
Protection of Personal Information	✓ Art. 14.8 ^a	✓ Art. 13.8	✓
Unsolicited Electronic Messages	✓ Art. 14.14 ^b	✓ Art. 13.9	✓
Cross-Border Transfer of Information	✓ Art. 14.11	✓ Art. 13.11	✓
Data Localisation	✓ Art. 14.13	✓ Art. 13.11 BIS	✓
Treatment of Source Code	✓ Art. 14.17	×	✓
Cooperation	✓ Art. 14.15	✓ Art. 13.12	✓
Transparency	×	✓ Art. 13.5	✓
Cybersecurity Matters	✓ 14.18	×	✓

Notes: ^a Brunei Darussalam and Vietnam are not required to apply this Article before the date on which that Party implements its legal framework that provides for the protection of personal data of the users of electronic commerce.

^b Brunei Darussalam is not required to apply this Article before the date on which it implements its legal framework regarding unsolicited commercial electronic messages.

Intellectual property rights (IPRs)

Intellectual Property Rights (IPRs) are fundamental to encouraging investment and business activity in any economy, regardless of its stage of economic development. IPRs guarantee to individuals and companies of all industries that their designs, inventions, distinctive marks and overall products or services will be protected under IP law for a certain length of time. As was emphasized in the previous report, IPRs should be encouraged to boost innovation and economic growth, and to balance the legal rights of creators and overall society to access innovative products and services. IPRs are considered part of the NGeTI because they have the capacity to improve the business environment, to attract more inflows of foreign direct investment and to facilitate technology transfer.

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), signed by WTO members, has been a key component to promote IP protection worldwide since it entered into force in 1995. Likewise, the amendment made to TRIPS, which took effect on 23 January 2017, represented a great advance in this discipline as it aimed to adapt the rules of the global trading system to the public health needs of developing economies. The TRIPS agreement has been a great tool to guide trade negotiations during the last 20 years and is a solid foundation on which to build new IP regulations. Developing countries and least developed countries (LDCs) have been granted an extended length of time to implement TRIPS to ensure these nations could prepare to derive the greatest benefit from IP law. Since its conception, the TRIPS Agreement has served as the benchmark for IP defense, administration and enforcement, and trade negotiations. Valdes and McCann (2014) found that the percentage of FTAs that included IP provisions increased from less than 40% before 2000 to 80% or more after that date (p.29)²⁶. Nonetheless, the scope and depth of IP provisions included have varied widely across trade pacts. We now turn to the analysis of this NGeTI in the three agreements that form part of this study.

PA

The PA agreement doesn't have a specific chapter addressing IPRs separately, but the Alliance members have already announced that this NGeTI is part of the negotiations with candidate nations that want to become PA associate members. Thus, it is expected that IPRs will be formally included in the agreement as a result of this process. Currently, the PA agreement has some articles referring to IP issues in the text; for example, IP issues are mentioned in chapter 8 Procurement (art. 8.20 exceptions and annex 8.2), in chapter 10 Investments (art. 10.1 definitions and art. 10.12 Expropriation and Compensation) and in Chapter 13 E-Commerce (art. 13.12 cooperation). Furthermore, as was mentioned in the original report, PA has a working group developing initiatives on IPR that is focused on three specific areas: copyrights, industrial property and cross-cutting issues. The two main goals of this technical committee are, first, to advertise and to encourage the use of the Patent Prosecution Highway (PPH), and second, to determine and discuss new cooperation activities in the fields of industrial property and copyright. The PPH goal consists of sharing information among the Intellectual

²⁶ Valdes, Raymundo; McCann, Maegan (2014): Intellectual property provisions in regional trade agreements: Revision and update, WTO Staff Working Paper, No. ERSD-2014-14, World Trade Organization (WTO), Geneva

Property offices of the four PA nations and making the registration processes simpler and faster to the benefit of the final user.

RCEP

Nations negotiating the RCEP agreed from the very beginning of the negotiations, in August 2012, that they would include a specific chapter on Intellectual Property. They included this intention in the *Guiding Principles and Objectives for Negotiating the RCEP* in which they set the IP theme as one of their goals to achieve:

“The text on intellectual property in the RCEP will aim to reduce IP-related barriers to trade and investment by promoting economic integration and cooperation in the utilization, protection and enforcement of intellectual property rights”

Likewise, the *Joint Leaders’ Statement on the Negotiations for the RCEP* issued in November 2017 enshrined their commitment to include IP disciplines as a separate chapter in the final text. This Joint Statement provided an outline of how the IP chapter would be composed. The Leaders stated that this chapter would aim to enhance creativity and innovation, and would include clauses related to promotion, protection, and the enforcement and utilization of IPRs. They left open the possibility to provide special considerations to countries with differences in the level of economic and IP development. RCEP parties mentioned that they would take into account a government’s right to determine public policy.

CPTPP

Of the three regional trade agreements analyzed in this study, the CPTPP is the agreement that has the most comprehensive coverage of IPRs. The US participation during the TPP negotiations added a special incentive to include WTO-X provisions to this chapter. The United States has been one of most active countries championing the inclusion of IP content in FTAs. After the US withdrew from the agreement, the CPTPP parties suspended 11 of the 83 articles from the original TPP chapter that were of particular interest to the US. Some of the suspended IP provisions are related to issues such as pharmaceutical patents, technological protection measures (TPMs), and safe harbors for internet service providers. CPTPP parties suspended the provision related to the term of protection for copyright and related rights that had been established as the life of the creator plus 70 years.

Nonetheless, despite the exit of the US and the suspended provisions on IP regarding the original TPP text, the IP chapter in the CPTPP kept an extensive number of state-of-the-art IP provisions due to the commitment of all the parties and the leadership role of Japan, which had a particular interest to preserve high IP regulations. The final IP chapter included clauses in a broad range of topics, including trademarks, country names, geographical indications, industrial designs and copyrights, internet service providers, cooperation, enforcement, patents and undisclosed test or other data that includes measures relating to pharmaceutical products. The IP chapter in the CPTPP includes the commitment of each party to ratify or accede to relevant international agreements related to the IP system, such as the Paris

Convention, the Patent Cooperation Treaty, the Berne Convention, the Madrid Protocol and the Budapest Treaty. A comparative table between the IP provisions in the three agreements is shown below.

Table 1: General IP Provisions

IP provisions	CPTPP	Pacific Alliance	RCEP ^a
Chapter on IP	✓ Ch. 18: IP	× No chapter	✓
Statement of commitment to IP protection	✓ Art. 18.2	✓	✓
TRIPs reaffirmation	✓ Art. 18.1 and 18.6	✓ Art. 10.1	✓
References to WIPO treaties	✓ Art. 18.1		✓
National treatment or MFN provisions	✓ Art. 18.8	✓ Art. 10.1	✓
Assistance, cooperation or coordination	✓ Section B: Cooperation	✓	✓
Enforcement procedures	✓ section I: Enforcement	×	×
Exhaustion	✓ Art. 18.11	×	✓
Border measures	✓ Art. 18.76	×	×
IP defined as investment	✓ Art. 9.1	✓ Art. 10.1	✓
Copyright and Related Rights	✓ Section H	×	✓
Trademarks	✓ Section C	×	✓
Geographical Indications	✓ Section E	×	✓
Cooperation	✓ Section B	×	✓
Patents	✓ Section F	×	✓
Transparency	✓ Art. 18.9	×	×
Industrial Designs	✓ Section G	×	✓
Internet Service Providers	✓ Section J	×	×
Trade secrets	✓ Art. 18.78	×	✓
Enforcement	✓ Section I	×	✓
Domain names	✓ Art. 18.7	×	✓
International Agreements	✓ Art. 18.7	×	×

^a Estimated by Author

Transparency

According to the report titled “*Market access, transparency and fairness in global trade*” issued by the International Trade Centre (ITC) (2011)²⁷, transparency applied to trade means to be transparent in the law governing international trade (p. 10). The ITC identified the meaning of trade transparency from three perspectives that are interrelated to each other and provide clarity about how transparency should be managed in RTAs. The first transparency meaning refers to the facilitation of knowledge, comprehension and clarity of legal agreements; the second meaning refers to the translation from the

²⁷ *Market access, transparency and fairness in global trade: Export impact for good 2010*. (2011). Geneva: International trade centre.

objectives and purposes of the agreements to specific clauses and provisions; and the third meaning refers to the correct application and implementation of the objectives and purposes of the legal agreements (p. 10-11). Trade transparency is considered a NGeTI due to the broad range of actions it covers, including publishing any issue related to the FTAs, making the texts of the agreements available to the general public, notifying the parties and stakeholders of any changes or issues affecting the FTA, offering the space to participate in the assessment and analysis processes of eventual FTAs, giving access to relevant analysis, and offering the possibility of asking questions about the operation and implementation of the agreements.

As the number of trade pacts being negotiated and put in force continues growing, there is concern in the international business community about how these agreements are built, implemented and managed by the governments and institutions involved. The results of the *Asia-Pacific policy community survey (PECC survey)* shows that one of the most important challenges that the services trade faces in the region, considered as a *very serious impediment*, is related to transparency issues, such as the multiple layers of authority and the lack of predictability of regulations²⁸. A transparent regulatory framework is imperative in RTAs for its multiplier effects offering certainty, increasing the flow of trade, attracting new investments, and generating positive incentives to investors and business people to take risks and do business regardless of the size and current development level of any nation.

According to Helble, Shepherd, & Wilson (2009) there is evidence of the links between transparency and trade; they showed through a case study implemented in APEC economies that higher levels of transparency are associated with increased bilateral trade flows and they pointed out that increasing transparency of the trading environment can be a relevant complement to traditional liberalisation of tariff and non-tariff barriers (p.p. 479-480)²⁹. One of the symptoms of lack of trade transparency is the appearance of corruption either in the import or export process of products and/or services. Corruption works as a hidden non-trade barrier that blocks and damages the operations and finance of the entire supply chain and both the local and international economies. Corruption in trade takes the form of irregular payments for exports and imports, bribes and/or gifts; and it appears where there is a gap among the regulations, the surveillance and the implementation of these. Helble at all (2009) defined corruption as “the outcome of a complex set of interactions among traders and officials taking place against the background of national trade policy choices” (p. 504).

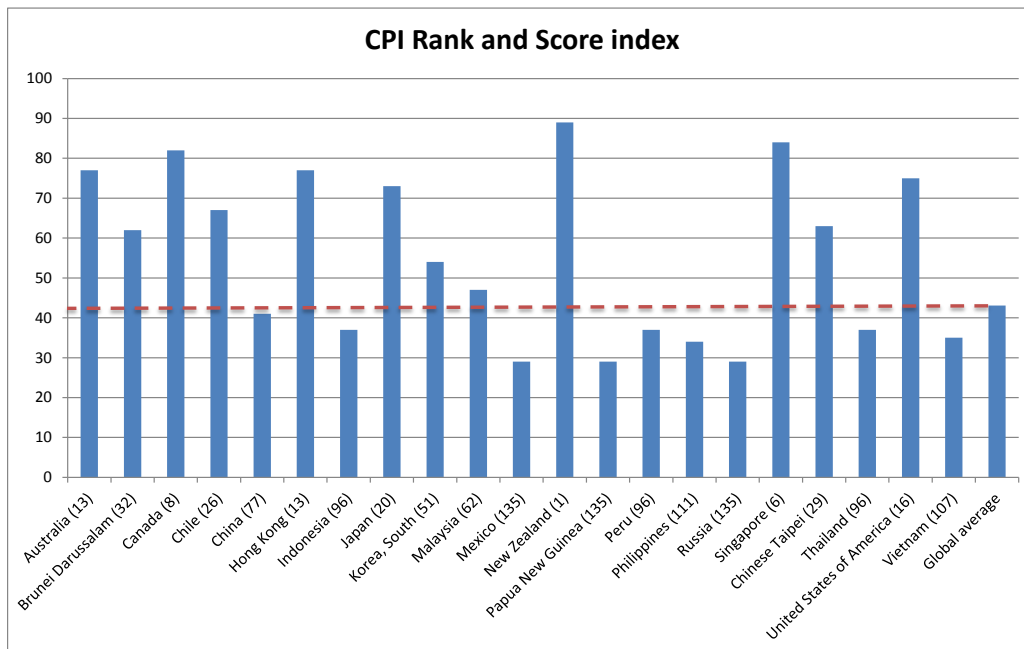
According to the Corruption Perceptions Index (CPI) issued in 2017 by the global organization *Transparency International*, “the majority of countries are making little or no progress in ending corruption”. This index ranks 180 economies based on the perception of public sector corruption according to business people and experts, and it applies a scale from zero (highly corrupt) to 100 (very transparent). The 2017 Index showed that more than two-thirds of economies score below 50. The performance of APEC economies on this index show nations ranking very high in the top 20 as New Zealand, Singapore, Canada, Australia, Hong Kong, the United States and Japan, and nations ranking

²⁸ <https://www.pecc.org/state-of-the-region-reports/273-2016-2017/689-annex-b>

²⁹ Helble, M., Shepherd, B., & Wilson, J. (2009). Transparency and regional integration in the asia pacific. *The World Economy*, 32(3), 479-508

below the global average as Mexico, Papua New Guinea, Russia, the Philippines, Vietnam, Indonesia, Peru, Thailand and China (figure 1). Transparency International is very clear on this point, stating that “most of the world’s biggest exporters are failing to punish corporations paying bribes overseas”. Therefore, the fight against corruption through transparency-related measures should continue being a top priority in the trade and global agenda. Moving forward on anti-corruption measures demands a detailed analysis and the design of transparency provisions that can be translated into effective trade policies.

**Figure 1: Corruption Perceptions Index (CPI) 2017
APEC economies: score index and global ranking**



Source: Corruption Perceptions Index 2017 - Transparency International

At the international trading system level, the WTO has promoted and included several provisions on transparency in their agreements, with three of the most important are included in *GATT Article X Publication and Administration of Trade Regulations*; *GATS Article III transparency*; and *TRIPS Article 63 transparency*. These three articles aim at improving and ensuring transparency and good governance; facilitating trade negotiations, providing information to importers, exporters, stakeholders and general public; and assisting in the avoidance of disputes. The WTO transparency rules can be divided into three main commitments: 1) the commitment to promptly publish and give public notice all the laws and trade regulations, and not to enforce them until officially published, 2) the commitment to notify the WTO and its membership of any change to trade regulations and of various forms of

governmental action³⁰ 3) the commitment to manage fairly and provide predictable trade regulations and make decisions in a consistent, impartial and reasonable manner³¹.

WTO transparency provisions on the GATT, GATS and TRIPS include exceptions³² that make it clear that members are not obligated to provide confidential information that would impede law enforcement, be contrary to the public interest, or that would prejudice legitimate commercial interests of certain enterprises, public or private. In addition to the transparency provisions on these three WTO agreements, another important WTO instrument that promotes trade transparency is *the Trade Policy Review Mechanism (TPRM)*. The goal of the TPRM is "*to contribute to improved adherence by all Members to rules, disciplines and commitments made under the Multilateral Trade Agreements...and hence to the smoother functioning of the multilateral trading system, by achieving greater transparency in, and understanding of, the trade policies and practices of Members*"³³. The analysis on transparency in the context of the three agreements is presented below.

PA

In the development of the objectives and principles established in the Framework Agreement, the PA economies stated, in the preamble, their commitment to promote transparency in goods trade, services trade, and investment. Furthermore, PA parties defined a separate chapter on transparency provisions built on the architecture of the WTO trade rules. For instance, with respect to providing timely information on any issue related to the FTA, article 15.3 requires the parties to publish as soon as possible any trade or investment matter that would impact the agreement, in accordance with their own legislation and administrative resolutions of general application. As well, it requires the parties, to the extent possible, to publish in advance any measure related to the agreement that they intend to adopt and provide interested parties with a reasonable opportunity to comment on the proposed measures. The transparency chapter of the PA includes six articles related to the topics of publication, administrative proceedings, contact points, notification and provision of information. In addition to this separate chapter on transparency, PA parties added provisions on this discipline in the following chapters; sanitary and phytosanitary measures (chapter 6), technical barriers to trade (chapter 7), cross-border trade in services (chapter 9), investment (chapter 10), financial services (chapter 11), electronic commerce (chapter 13), and telecommunications (chapter 14).

³⁰ As example of this commitment, GATS article III:3 states that each Member shall promptly and at least annually inform the Council for Trade in Services of the introduction of any new, or any changes to existing, laws, regulations or administrative guidelines which significantly affect trade in services covered by its specific commitments under this Agreement

³¹ As example of this commitment, GATT Article X: 3b states that WTO members "shall maintain, or institute as soon as practicable, judicial, arbitral or administrative tribunals or procedures for the purpose, inter alia, of the prompt review and correction of administrative action relating to customs matters. Such tribunals or procedures shall be independent of the agencies entrusted with administrative enforcement..."

³² GATT Article X:1, GATS Article III bis and TRIPS Article 63:4.

³³ https://www.wto.org/english/docs_e/legal_e/29-tprm.pdf

CPTPP

The CPTPP economies did the same thing as the PA parties, demonstrating their commitment to transparency by embodying this value in the preamble of the original agreement (TPP). The reaffirmed preamble stated that parties have resolved to “promote transparency, good governance and the rule of law, and eliminate bribery and corruption in trade and investment”. Indeed, every single chapter in the CPTPP includes provisions related to transparency. Furthermore, the stand-alone chapter on transparency (chapter 26) includes, in addition to provisions on this discipline, regulations to strengthen good governance, and measures to address the harmful effects of corruption. It requires that parties ensure their laws and administrative rulings of general application, with respect to any matter covered by the agreement, are promptly published in a manner that enables interested parties to become familiarized with them and, to the extent, possible are notified in advance. Likewise, the transparency chapter requests, to the extent possible, that any measure that might affect trade or investment among the CPTPP Parties are subject to notification and receive a reasonable opportunity to comment. With respect to the anti-corruption measures, the CPTPP included six detailed articles aimed at eliminating bribery and corruption in international trade and investment that have no counterpart in GATT, GATS or TRIPS.

RCEP

With the outline of the RCEP Agreement presented in November 2017 and with the experience and commitment of many participating nations in this discipline, even though the negotiating parties of the RCEP are not considering including a separate chapter titled transparency, this study considers that RCEP parties will include greater commitments than what are currently required by the WTO in the final text. For instance, the RCEP parties have stated publicly their commitment to transparency be included in the Customs Procedures and Trade Facilitation Chapter in which they agreed to create an “environment that is conducive for global and regional supply chains to thrive by ensuring predictability, consistency, and transparency in the application of customs laws and regulations, and by promoting efficient administration of customs procedures and expeditious clearance of goods”. Likewise, the parties negotiating the RCEP agreement have mentioned their commitment to promoting transparency within the following chapters: government procurement, financial services, movement of natural persons, and dispute settlement.

ASEAN, which represents 10 nations in the RCEP negotiation process, has relevant experience on transparency that could be useful to build an agreement that incorporates this discipline properly, even though they will not have a separate chapter. For instance, they have current operating initiatives, such as the *ASEAN Work Programme on Electronic Commerce 2017-2025*, in which they are trying to offer greater transparency by posting their respective e-commerce-related regulations, as available, online. Furthermore, ASEAN countries are currently in talks to improve the ASEAN Comprehensive Investment Agreement (ACIA), in which they are looking to transit from their current ACIA reservation lists to two-annex negative lists by 2023, with the intention to offer greater transparency and certainty to investors. In addition, ASEAN members have ratified their goals to facilitate trade by improving the transparency and management of non-tariff measures. Another factor is that twelve out

of the sixteen nations negotiating RCEP are members of APEC, where they have been supporting initiatives for transparency, such as the *APEC Principles on Trade Facilitation*, the *APEC Transparency Standards*, the *Services Trade Access Requirements (STAR) database* and the *APEC Trade Repository*, which provides companies with useful links to navigating international trade in the region. Furthermore, in 2012, APEC economies released a *model Chapter on Transparency* to be utilized in trade pacts.

Table 1 shows a summary of the findings on transparency in the three agreements.

**Table 1: Transparency chapter and related-provisions
Pacific Alliance, CPTPP and RCEP**

Transparency provisions	Pacific Alliance	CPTPP	RCEP
Chapter number and title	✓ Ch. 15 Transparency	✓ Ch. 26 Transparency and anti- corruption	✓
Information availability (Publication)	✓ Art. 15.3	✓ Art. 26.2	✓
Due process (Administrative Proceedings)	✓ Art. 15.5	✓ Art. 26.3	✓
Review and appeal	✓ Art. 15.6	✓ Art. 26.4	✓
Dispute Settlement	×	✓ Art. 26.12	×
Notification and provision of information	✓ Art. 15.4	✓ Art. 26.5	✓
contact points	✓ Art. 15.2	✓ Art. 26.5: 3	✓
Anti-corruption provisions	×	✓ from Art. 26.6 to Art. 26.11	×
On specific trade issues into the transparency chapter	×	✓ Annex 26-A Transparency and procedural fairness for pharmaceutical products and medical devices	×

Note: RCEP provisions are estimated by the author

Competition

Competition is a crucial element to increase the productivity of companies, to strengthen the supply chain and to promote a sustainable and inclusive economic growth in any economy. Buccirossi, Ciari, Duso, Spagnolo, and Vitale (2013) estimated the impact of an effective competition policy on total factor productivity growth (TFP) for 22 industries in twelve OECD economies over a ten-year period of time (1995-2005), and they found a causal effect of competition policy on productivity growth (p.1334)³⁴. Likewise, the United Nations Conference on Trade and Development (UNCTAD) identified important benefits derived from competition policy as greater levels of employment and economy growth. UNCTAD stressed the importance of competition, stating that it contributes to an effective business environment that offers better conditions for SMEs to compete, reduces possibilities for corruption, increases a nation's attractiveness as a business location, and eliminates barriers that defend "entrenched elites". Furthermore, competition will result, not only in the final customer receiving greater choice, better services and products measured by price, quality, customer service, innovation or a mix of all them, but also it will encourage companies to increase their competitiveness, better enabling them to participate in local and global markets, to streamline their operations and to make their processes more efficient. Competition is considered an NGeTI due to the benefits that it produces to the marketplace generating sustainable economic growth.

According to the International Competition Network (ICN), a global organization focusing exclusively on competition law enforcement, policy in this discipline could advocate a fair set of regulations that support businesses via transparent market entry and help SMEs to compete, reducing the influence and ability of large companies to use their market power over them. Governments need to find the correct balance to put in place policies that encourage business activity, promote competition and penalize anti-competitive practices. Deterring anti-competitive actions as part of the competition policy is crucial because these limit competition along the supply chain and negatively impact the marketplace, without necessarily providing better services or products. Anti-competitive practices are commonly divided within one of two categories: vertical and horizontal. The vertical category includes practices affecting competition in the supplier-distributor relationship such as geographic market restrictions, tied selling and exclusive dealing, whereas the horizontal category consists of restrictions among market competitors such as cartels, price discrimination, collusions, mergers and acquisitions. An economy where competition is encouraged can achieve an entire supply chain that works efficiently in benefit of all, from suppliers and manufacturers to service providers, sales companies and distributors.

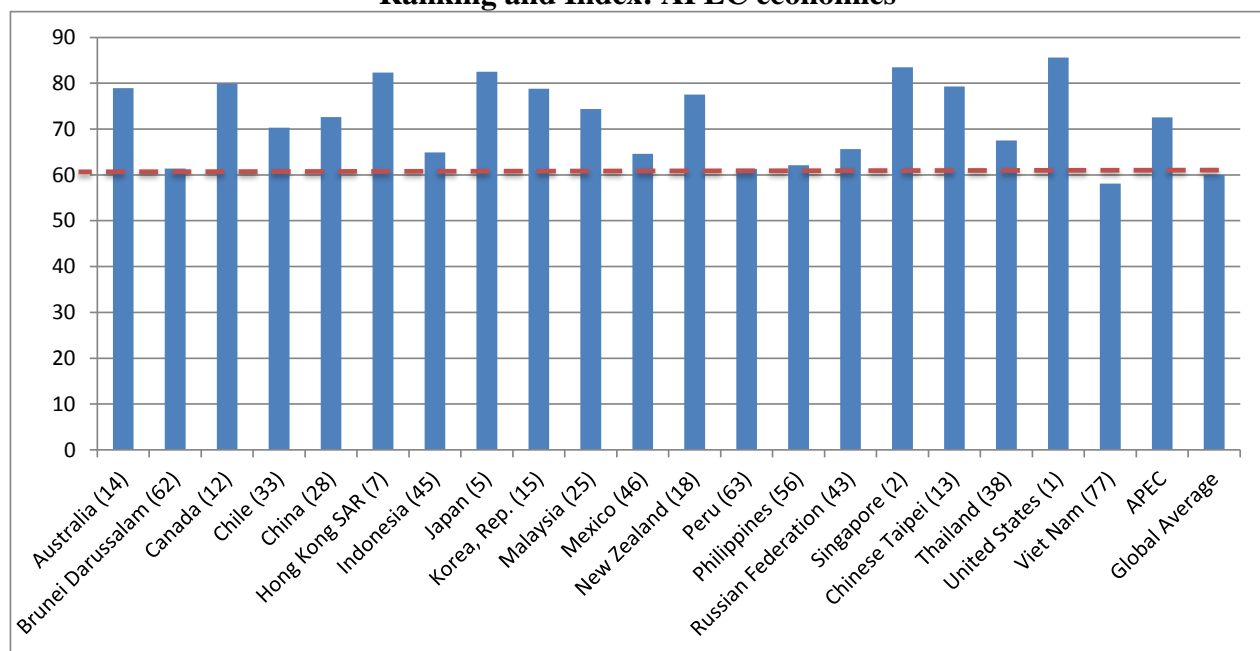
Some objectives for including competition-related provisions in FTAs have been to eliminate anti-competitive behaviours at the border and behind the border, and to keep moving forward in trade liberalization and economic integration efforts. Are nations making their best efforts to promote competition? What is the status on competition worldwide and in the Asia-Pacific Region? To answer these questions, the Global Competitiveness Report 2018 issued by The World Economic Forum (WEF) provides an objective analysis about the current status on competition³⁵. The WEF's report,

³⁴ Buccirossi Paolo, Ciari Lorenzo, Duso Tomaso, Spagnolo Giancarlo, & Vitale Cristiana (2013). Competition policy and productivity growth: An empirical assessment. *The Review of Economics and Statistics*, 95(4), 1324-1336

³⁵ The Global Competitiveness Index (GCI) has been renewed this year, and is now called GCI 4.0 and it measures national competitiveness, defined as the set of institutions, policies and factors that determine the level of productivity. The GCI is

based on its Global Competitiveness Index (GCI) composed of a total of 98 indicators grouped in twelve pillars, concluded that most economies have failed in putting in place reforms and policies needed to underpin competitiveness. The report pointed out that most nations are far from their competitiveness frontier that represents the aggregate ideal across all the components of competitiveness. WEF suggested that most economies should implement new competition-related policies to improve sustainable growth and broaden their opportunities. The results of the GCI shows that there is still work to be done due to the wide range of performance across regions, even though Asia Pacific is the best performer by regions and four of the APEC economies are in the top 10 of the most competitive nations: United States (1), Singapore (2), Japan (5) and Hong Kong SAR (12). Regional agreements offer an excellent platform to advance this NGeTI further (Table 1).

**Table 1: The Global Competitiveness Report 2018
Ranking and Index: APEC economies**



Source: The Global Competitiveness Report 2018 / Note: Score 0-100 (best)

Competition law has been considered and discussed as part of the global trade agenda for a long time, but no agreement has been reached at the multilateral level despite some important efforts. At the WTO level, during the Singapore Ministerial Conference in 1996, participants agreed to create a working group to study the relationship between competition and trade, including anti-competitive practices. The working group’s mandate was to diagnose if competition should be formally included in the WTO framework. The diagnosis completed by this working group resulted in the WTO recognition for a

measured in 140 economies (Papua New Guinea is not part of the list) under twelve pillars: institutions; infrastructure; ICT adoption; macroeconomic stability; health; skills; product market; labour market; financial system; market size; business dynamism; and innovation capability.

multilateral framework on competition during the Doha Ministerial Conference in 2001; the working group was instructed to focus on the analysis and definition of competition-trade issues³⁶.

Despite the Doha declaration on competition that included the consideration of capacity building, technical cooperation and development needs, the WTO dropped its intention to reach a multilateral agreement on competition during the Doha Round in 2004 due to lack of consensus in its membership. According to different experts, the reason why no consensus has been reached is due to different visions and approaches to address this NGeTI between developed and developing nations. Hufbauer & Kim (2009) from the Peterson Institute for International Economics pointed out that, even though most nations support the strong relationships between competition and trade, they have divided opinions on how competition rules should be applied in the international trading system: “countries diverge on the merits, potential modalities, and even the necessity of adopting competition law in the WTO” (p. 330).

While WTO dropped its intention to achieve an agreement on international competition law, several economies and institutions around the globe have decided to move forward on this NGeTI and they have added this discipline as a part of their agenda. For instance, APEC has promoted high profile initiatives in benefit of competition policy through their *Competition Policy and Law Group (CPLG)* as the *APEC-OECD Framework on Competition Assessments*, and the *Competition Policy and Law Database*, which provides a searchable database on several competition related regulations and laws. *Competition Provisions in Regional Trade Agreements: How to Assure Development Gains*, issued by UNCTAD in 2005, noted that, of the approximately 300 trade agreements in negotiation or in force at that time, over 100 included competition-policy related provisions; however, as with other disciplines included in FTAs, the depth and coverage of competition provisions varies across the agreements. Competition and how it is approached in the three agreements of this study is outlined next.

PA

Even though both documents of the PA, *the framework agreement* and the *additional protocol*, set out, as part of their intentions, to promote regulations and conditions of fair competition, there is not a separate chapter on competition issues to date. The good news is that PA nations have announced that they are negotiating a competition policy chapter with the candidate economies that want to become an associate member of the PA. Currently, the PA economies added competition-related provisions in five chapters, as follows: chapter 7 on technical obstacles to trade (art. 7.5 trade cooperation and facilitation), chapter 8 on public procurement (art. 8.6 technical specifications, art. 8.9 contracting procedures, and art. 8.19 non-disclosable information), chapter 9 on cross-border services trade (art. 9.9: National Regulation), chapter 10 on investments (art. 10.8 performance requirements and art. 10.30 Social Responsibility Policies), and chapter 13 on Electronic Commerce (art. 13.3 general provisions). In addition, the PA economies established the consumer protection committee in 2014 with the mandate to design and develop strategies and public policies on consumer protection and cooperation.

³⁶ WTO members instructed the Working Group to focus “on the clarification of core principles, including transparency, non-discrimination and procedural fairness provisions on hardcore cartels; modalities for voluntary cooperation; and support for progressive reinforcement of competition institutions in developing countries through capacity building”

CPTPP

Chapter sixteen is the stand-alone chapter to address competition in the CPTPP and includes nine articles and one annex that reflect a high level of commitment with the goal of promoting consumer welfare and economic efficiency and eliminating anti-competitive practices. This chapter did not have any suspension of their articles or content as other chapters did after the withdrawal of the US, which means that this chapter was kept the same as that negotiated during the TPP process. The provisions included in this chapter make it clear that the intention of the parties is to offer a framework to promote free and fair competition and to defend consumers from fraudulent practices. Three important conditions to promote a competitive environment can be identified after reading the competition clauses of CPTPP: due process, non-discrimination and transparency.

CPTPP plans to promote competition through the adoption and maintenance of national competition laws, the maintenance of national competition authorities, and the adoption of provisions to ensure transparency and fairness in procedures related to competition law enforcement. Likewise, CPTPP parties made recognition in this chapter of *the APEC principles to enhance competition and regulatory reform*. An important caveat is that CPTPP partners have recognized that the level of development of each economy is at a different stage of development and, for that reason, they have included not only provisions on cooperation and consultations, but they have also granted extra time to prepare competition policies domestically for economies that need it as set out in for Brunei in annex A of the competition chapter. The CPTPP decided that this chapter would not be subject to dispute settlement (Art. 16.9)

RCEP

The guiding principles and objectives for negotiating the RCEP included competition policy as one of the areas to focus on during the negotiation process. The Joint Leaders' Statement on the negotiation status, issued in November 2017, confirmed the intention to include the competition discipline as part of the topics being discussed, and it clarified that this topic would deserve a separate chapter. RCEP negotiating countries recognize that competition is an important element to obtain the full benefits of the agreement for facilitating investments and promoting trade. The goal of the economies negotiating this agreement on competition policy is improving consumer welfare, enhancing economic efficiency and encouraging competition through the inclusion and maintenance of competition laws to hinder anti-competitive practices. RCEP aims to build a chapter in which cooperation on the development and implementation of competition policies are encouraged among all parties, which is a key issue for developing countries. Based on the previous information, this study considers that RCEP negotiating parties will include provisions in a competition chapter with a stringent level of commitments as CPTPP parties did on their agreement. A comparative table on how the three agreements are integrating competition law in their texts is presented below.

**Table 1: Competition Policy Chapter
PA, CPTPP and RCEP**

Competition provisions	CPTPP	PA	RCEP ^a
Chapter number and title	✓ Ch. 16 Competition Policy	× No chapter	✓
Adoption or maintenance of national competition laws and competition authorities	✓ Art. 16.1	×	✓
Procedural fairness	✓ Art. 16.2	Art. 9.9: National Regulation on cross-border services trade	✓
Private Rights of Action	✓ Art. 16.3	×	✓
Cooperation and coordination between national competition authorities	✓ Art. 16.4	Art. 7.5 trade cooperation and facilitation	✓
Technical Cooperation	✓ Art. 16.5	×	✓
Consumer Protection	✓ Art. 16.6	×	✓
Transparency	✓ Art. 16.7	Art. 8.6 technical specifications and art. 8.9 contracting procedures on public procurement	×
Consultations between parties to address specific matters that arise under this chapter	✓ Art. 16.8	×	✓
Dispute Settlement	× Art. 16.9: Non-Application of Dispute Settlement for any matter arising under the competition Chapter.	×	×
Recognition of APEC Principles to enhance competition and regulatory reform	✓ Art. 16.1	×	×
Recognition of the APEC Competition Law and Policy Database in enhancing the transparency of national competition laws	✓ Art. 16.7	×	×
Supra-national authority acting on private entities	×	×	×

Annexes	✓ Annex A: special considerations for Brunei Darussalam which was granted an extra time to set out domestic competition laws and to create a national authority on competition	×	✓
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^aNote: RCEP provisions are estimated by the author

Cross-border trade in services

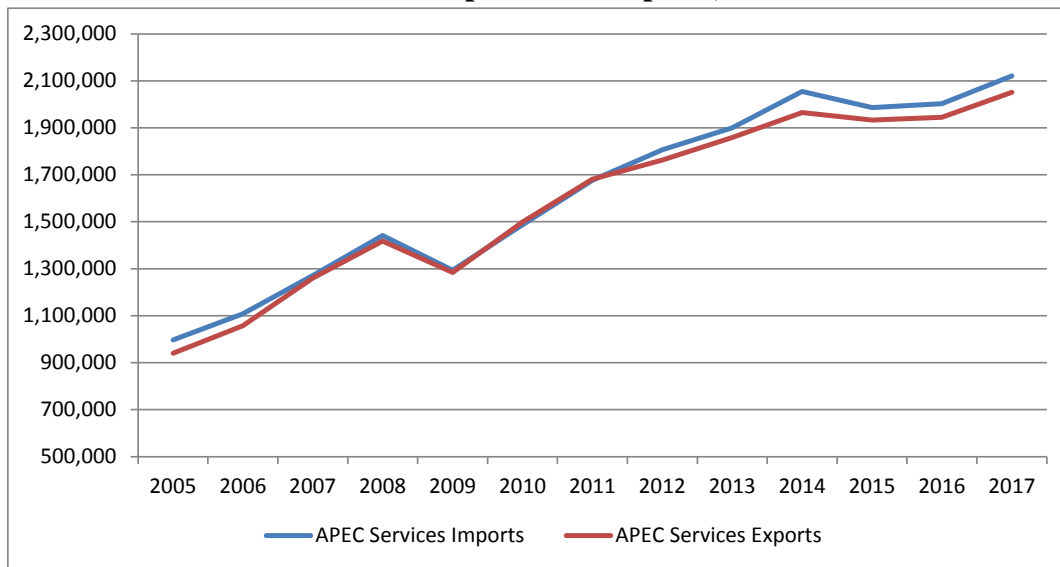
A recent report issued by *McKinsey Global Institute* (2019), applying an innovative approach, found that services already add more value in international trade than products; they argued that flows of services and data together are playing a key role to boost the global economy beyond the traditional way.³⁷ The cross-border trade in services is creating value to the entire global value chains (GVC) through the delivery of an endless list of services, and this has allowed small businesses and/or start-ups to participate in and obtain the benefits from the digital economy.

The services sector represents 52 percent of the employment in the Asia-Pacific region and about 70 percent of APEC output. Despite the global economic crisis of 2008-2009, APEC’s services export grew and followed an upward trend from US\$ 940,690 million in 2005 to US\$ 2,051,670 million in 2017, representing an annual average growth rate of 7.0 percent. Likewise, APEC’s services imports also increased during the same length of time from US\$ 996,990 million to US\$ 2,120,630 million, representing an annual average growth rate of 6.8 percent (see Figure 1).

The services sector in APEC, similar to service sectors in other regions around the world, is growing faster than goods, generating an increase in services as percentage of total trade (Figure 2). For example, the Philippines and United States have 43 and 33.5 percent of services export as a percentage of trade respectively; however, this indicator is still low for economies such as Papua New Guinea and Vietnam, at 1.9 and 5.8 percent respectively. These numbers show the increased relevance of the services sector as a part of the NGeTI and the potential that they will continue growing. The effective inclusion of cross-border services trade in FTAs would help to unleash the potential of this sector in the APEC region.

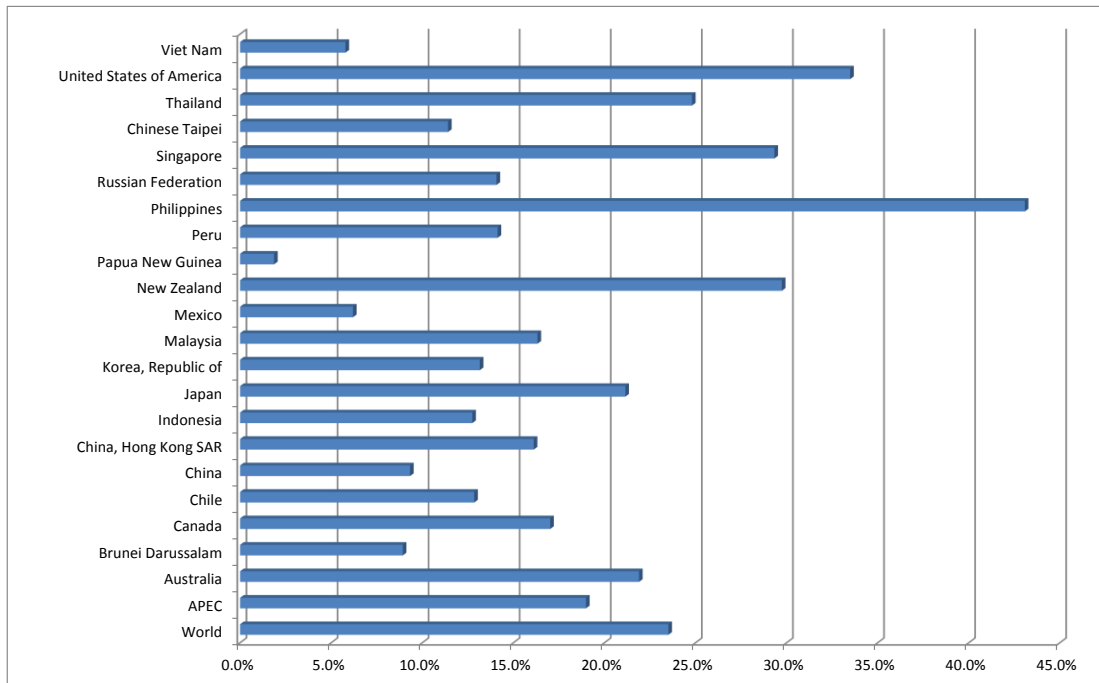
³⁷ <https://www.mckinsey.com/featured-insights/innovation-and-growth/globalization-in-transition-the-future-of-trade-and-value-chains>

Figure 1
APEC Services Exports and Imports, 2005-2017



Source: UNCTAD

Figure 2
Services Exports as percentage in total trade, 2017



Source: UNCTAD

At the international level, since January 1995, the WTO has in force the General Agreement on Trade in Services (GATS) covering this discipline in the international trading system. The GATS established a framework for people and businesses to run service activities in WTO economies and mandated WTO economies to liberalize services trade progressively. GATS is the only set of provisions regulating global trade in services. GATS has two components: 1) the clauses and general provisions,

and 2) the schedules in which each country defined the list of services and conditions for which they grant access to their market. Furthermore, one of the most important contributions of the GATS is the recognition of four modes of supply or delivery of traded services. The four modes that the GATS agreement recognizes are: 1) cross-border trade such as international couriers, 2) consumption abroad, such as medical tourism, 3) commercial presence such as a retail franchise from one economy setting up operations in another economy; and 4) movement of natural persons, such as business consultants or musicians visiting another country other than their own.³⁸

The WTO has completed different rounds of negotiations and implemented different efforts since 2000, aiming to advance and go deeper than the scope of the GATS, and even though it has not been possible to achieve a consensus among all the WTO parties, there has been progress in this discipline. For instance, a group of 23 like-minded WTO member economies have been negotiating since 2013, the Trade in Services Agreement (TiSA). TiSA is a services-trade “*to further liberalize trade in services by developing new and enhanced disciplines and to improve market access*”³⁹. On the other hand, APEC has promoted relevant initiatives to benefit this NGeTI, such as the APEC Services Trade Access Requirements (STAR) Database, the Manufacturing Related Services Action Plan, and the Principles for Cross-Border Trade in Services and the Services Competitiveness Roadmap, which includes specific actions and mutually agreed upon goals to be achieved by 2025. The analysis of trade in services within the three agreements is presented below.

Trade accords have been other instruments that economies have been using to include new standards that guarantee services do not face barriers, to promote even more liberalization in this discipline, to enhance its regulatory capacity and, overall, to move forward in the cross-border services trade agenda.

PA

Chapter nine of the PA text addresses cross-border trade in services and contains a set of trade rules building on commitments made under the WTO, GATS and their principles of national treatment, most-favoured nation treatment, market access and no requirement of local presence to provide cross-border services. The PA text is designed under a negative list approach, which means that all the services are included in the possibility to doing business among the parties, with the exception of those listed in the annexes (Art. 9.7 Non-Conforming Measures). According to Soprana (2018), the Pacific Alliance included provisions that may facilitate trade in services in the region (p.5)⁴⁰. A good example of the PA provisions in this NGeTI is, for instance, article 9.9 related to National regulations, which states that each Party shall ensure that all measures of general application that affect trade in services are managed in a reasonable, objective and impartial manner. Furthermore, chapter nine includes regulations on subsidies, transparency, services trade statistics, and complementary services. In addition, article 9.12 establishes that the PA partners shall endeavor to publish, update and exchange

³⁸ According to the WTO “GATS covers all internationally-traded services with two exceptions: services provided to the public in the exercise of governmental authority, and, in the air transport sector, traffic rights and all services directly related to the exercise of traffic rights”.

³⁹ <https://international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/services/tisa-acs.aspx?lang=eng>

⁴⁰ Soprana, Marta. 2018. Facilitation 2.0: Services and Trade in the Digital Age. RTA Exchange. Geneva: International Centre for Trade and Sustainable Development and Inter- American Development Bank.

information about their service providers that they consider relevant, and, particularly, the services provided to companies, with the goal of promoting the establishment of global value chains.

The PA text does not have its own chapter on movement of people (temporary entry), though this Agreement includes Annex 9.10 relating to professional services whose purpose is to encourage the relevant agencies of PA countries, and these elaborate the norms and criteria for the granting of licenses and certificates to professional service providers, and these can submit recommendations to the Subcommittee on Services about their mutual recognition (this subcommittee is established in Art. 9.15). This Annex particularly promotes setting up the procedures for the temporary Licensing for Engineers. Furthermore, the PA economies have included separate chapters for financial services (chapter 11), telecommunications (chapter 14), and maritime services (chapter 12). Lastly, the PA has created the *Services and Capital* working group, dedicated to developing initiatives on this discipline. Part of its goals are to promote the free circulation of services among all the parties, to create the conditions to increase trade in services intra-regionally and, with other regions, to position the PA region as an attractive destination for services trade. Other sectors related to services such as education, tourism and investment have their own specific working groups in the PA.

CPTPP

Chapter 10 of the CPTPP includes the provisions on cross-border trade in service. This chapter contains trade rules aimed at improving the exchange of services and building on commitments made under the WTO GATS. From the original TPP12 text, the CPTPP parties suspended two paragraphs of Annex 10-B regarding the express delivery services but the rest of the chapter remains unchanged. The CPTPP used the same strategy as the PA and applied a negative list approach to open the entire service sector for business among all the eleven parties, with the exception of those closed and listed explicitly under annexes I and II of the agreement. Noticeably, the group of closed sectors is a very small list without commercial significance. This approach offers certainty, transparency and a favorable environment for companies interested in offering services abroad and accessing new markets.

The CPTPP agreement opens approximately 160 sectors and subsectors for the eleven parties. Some examples of these services are: education, research and development, legal and accounting, engineering and architecture, transportation and logistics, construction, travel and tourism, app and games development. Soprana (2018) analyzed a group of seven RTAs that were either concluded or entered into force in the past decade, and Soprana pointed out that the CPTPP is one of the two agreements where the parties committed to taking into account international standards to determine conformity with the disciplines on domestic regulation contained in the Agreement (Art. 10.8), which is a reference to GATS Article VI: 5(b).⁴¹

Furthermore, the CPTPP also encourages recognition of the experience or education gained in a particular economy for purposes of the fulfilment, in whole or in part, of standards or criteria for the authorization, licensing, or certification of services suppliers (art. 10.9). Related to this recognition, the Annex 10.A provides relevant provisions on specific professional services and encourages making use

⁴¹ The other one is the New Zealand–Hong Kong, China RTA

of the APEC's initiative "to promote the mutual recognition of professional competence in engineering and architecture, and the professional mobility of these professions, under the APEC Engineer and APEC Architect frameworks". The CPTPP, as the Pacific Alliance did, created stand-alone chapters for regulating key services such as financial services (Ch. 11) and telecommunications (Ch. 13). In addition, the CPTPP text includes a chapter on Temporary Entry for business persons (Ch. 12) to facilitate and encourage the travel of people for the purpose of doing business.

RCEP

There are different opinions regarding the coverage, scope and depth that RCEP will include in the final text of the chapter on services trade. However, *the Guiding Principles and Objectives for Negotiating the RCEP* offers a good guide to foresee the level of depth that RCEP members are pursuing to reach in this discipline. They have committed to follow the GATS agreement and to promote services liberalization based on the commitments of members under the WTO and ASEAN+1 FTAs. The same document states that all the modes of delivery and all sectors will be subject to negotiations, and it make it clear that this will be "comprehensive, of high quality and substantially eliminate restrictions and/or discriminatory measures with respect to trade in services between the RCEP participating countries". As the CPTPP did, the RCEP is planning to include annexes related to Financial Services and Telecommunications Services. However, an important difference between RCEP and the CPTPP and PA agreements is that RCEP economies are negotiating this chapter under a positive list approach⁴². Furthermore, RCEP is planning to have a separate chapter on Movement of Natural Persons.

The ASEAN experience might be useful to build a chapter with innovative provisions and beyond WTO commitments. ASEAN has accumulated vast experience in line with the goal of liberalizing services that can be put on the table when parties negotiate this chapter. For instance, they created the ASEAN Framework Agreement on Services (AFAS) in 1995. Since then, they have been working together under the goal to "substantially eliminate restrictions to trade in services among ASEAN countries in order to improve the efficiency and competitiveness of ASEAN services suppliers". During the 50th AEM meeting in August 2018, the Ministers signed a new Protocol to implement the tenth and last Package of Commitments of the AFAS that includes the highest level of commitments agreed to date by ASEAN economies⁴³. This is the final AFAS package as ASEAN moves into the next phase of integration under the *ASEAN Trade in the Services Agreement (ATISA)*, which is the new platform to take services trade to the next level after AFAS⁴⁴. ASEAN also has experience with the recognition of

⁴² According to the dictionary of trade terms of the Foreign Trade Information System, the Positive list approach is "the voluntary inclusion of a designated number of sectors in a national schedule indicating what type of access and what type of treatment for each sector and for each mode of supply a country is prepared to contractually offer service suppliers from other countries".

⁴³ "Under this tenth Package, ASEAN Member States have not only increased the depth of their services commitments for sectors previously committed under previous Packages, but also opened up new services sectors to market access".

⁴⁴ The ASEAN Trade in Services Agreement (ATISA) aims to build upon and enhance the ASEAN Framework Agreement on Services (AFAS), and will enhance services integration in the region. The ATISA encompasses all commitments that ASEAN Member States have made to-date under the AFAS and provides the mandate for ASEAN Member States to transition towards even deeper integration using the negative list approach within a fixed number of years in the future.

qualifications of professional services suppliers to facilitate mobility of professional services providers. They also created the *Mutual Recognition Arrangements (MRAs)*, which is another important area of ASEAN cooperation on trade in services. To date, ASEAN has negotiated MRAs in seven professional services. For all the above-mentioned reasons, ASEAN economies might use all that extensive knowledge that they have acquired through AFAS and ATISA to negotiate a services chapter that includes modern standards in this NGeTI. A summary on the Cross-Border trade in Services (CBTS) provisions within these three agreements is presented below.

**Table 2: Provisions on Cross-Border trade in Services
CPTPP, PA and RCEP**

Provisions	CPTPP	Pacific Alliance	RCEP ^a
Approach	✓ Negative List approach	✓ Negative List approach	✓ Positive List approach
Definition on cross-border trade in services	✓ Art. 10.1	✓ Art. 9.1	✓
Modes of supply or delivery the services	✓ Art. 10.1 It covers three Modes of delivery	✓ Art. 9.1 It covers three Modes of delivery	✓ Based on GATS
National treatment, Most-Favoured-Nation Treatment, Market and Local Presence	✓ Art. 10.3, 10.4, 10.5 & 10.6	✓ Art. 9.3, 9.4, 9.5 & 9.6	✓
Transparency	✓ Art. 10.11	✓ Art. 9.8	✓
Domestic regulation	✓ Art. 10.18	✓ Art. 9.9	✓
Non-Conforming Measures	✓ Art. 10.7	✓ Art. 9.7	✓
Provision pertaining to recognitions	✓ Art. 10.9	✓ Art. 9.10	✓
permit transfers and payments that relate to the cross-border supply of services	✓ Art. 10.12	✓ Art. 9.13	
facilitating movement of natural persons	✓ Annex 10-A and Ch. 12	✓ Annex 9.10 × no chapter	✓ Chapter on movement of natural persons
Other chapters on services	✓ Financial services (Ch. 11) and Telecommunications (Ch. 13)	✓ Financial services (Ch. 11), Telecommunications (Ch. 14) services and Maritime Services (Ch. 12)	✓ Financial services and Telecommunications

^a Because RCEP is still under negotiations some information is estimated by Author

Summary of the analysis of the six NGeTI in CPTPP, PA and RCEP

Upon completing the analysis of the six NGeTI in the context of the three agreements considered pathways towards the eventual FTAAP, namely CPTPP, PA and RCEP, this study found that CPTPP is the only agreement that has separate chapters for each of the six NGeTI that are part of this study (Table 1). Furthermore, this study concluded that the CPTPP is the agreement that covers more extensively the six NGeTI, considering the depth and high-level content of their provisions.

Regarding the PA agreement, this study found that this agreement currently has provisions in three of the six NGeTI that were a part of this study (E-commerce, Transparency and Cross Border Trade in Services) (table 1). However, PA economies have declared that they will create specific chapters on the remaining NGeTI (SOEs, IPRs and Competition) as a result of the negotiations with candidate nations that want to become associate members of the PA. Thus, it is expected that during 2019, the PA agreement will develop provisions and regulations for all the NGeTI that are covered in this study.

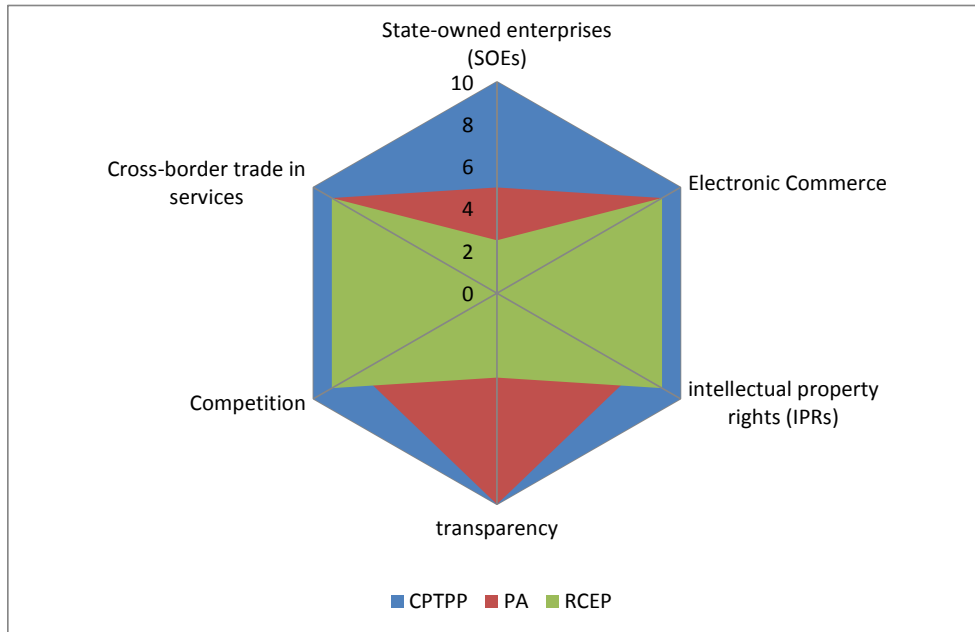
With respect to RCEP, the participating economies are considering including four out of the six NGeTI that are part of this study (e-commerce, IPRs, competition and trade in services) (table 1). RCEP economies have not declared plans to set separate chapters on the two remaining NGeTI of this study (SOEs and transparency), even though many of the participating economies have experience and have demonstrated commitment to these two disciplines.

To summarize our findings and expectations on these six NGeTI, a radar graph has been prepared (Figure 1). To create this graph, a rating from zero to ten points for every FTA was assigned in each of the six NGeTI. Zero was assigned when no separate chapter was found in the agreement. 2.5 points was assigned when no separate chapter was found, but there were some articles related to the NGeTI in the agreement. Eight points were assigned when the agreement had a stand-alone chapter on this NGeTI and extra points were given when the stand-alone chapter goes in depth in the coverage of the NGeTI. Five to 10 points were assigned when the agreement had declared the intention to include this NGeTI in the agreement. It will be interesting to follow up on the performance on the NGeTI in areas where the PA and RCEP have low scores and see the progress that they can make in the future.

Table 1
Current presence of six selected NGeTI as stand-alone chapters in CPTPP, PA and RCEP

NGeTI	CPTPP	PA	RCEP
State-owned enterprises (SOEs)	✓	x	x
Electronic Commerce	✓	✓	✓
intellectual property rights (IPRs)	✓	x	✓
transparency	✓	✓	x
Competition	✓	x	✓
Cross-border trade in services	✓	✓	✓

Figure 1
Presence of Six NGeTI in CPTPP, PA and RCEP



WTO-plus and beyond WTO areas in the CPTPP

In the last few years, FTAs have been analyzed from two main categories based on the policy areas that they are covering. The first category is known as *WTO-plus (WTO+)* and includes FTAs that set provisions on areas already covered by WTO Agreements, but going further in terms of commitments. The second category is known as *beyond the WTO (WTO-X)* and includes FTAs that address policy areas not covered in WTO agreements before. The CPTPP, considered to be the leading pathway of FTAAP, has covered an extensive number of WTO-X areas and deserves recognition as one of the most important trade agreements over the last two decades. WTO-plus and beyond the WTO areas that this study identified in the CPTPP are presented below.

WTO-plus (WTO+)	<ul style="list-style-type: none"> ▪ National Treatment and Market Access for Goods ▪ Rules of Origin and Origin Procedures ▪ Customs Administration and Trade Facilitation ▪ Sanitary and Phytosanitary Measures ▪ Technical Barriers to Trade ▪ Cross-Border Trade in Services ▪ State-Owned Enterprises and Designated Monopolies ▪ Dispute Settlement ▪ Textile and Apparel Goods ▪ Trade Remedies ▪ Government Procurement
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<p>Beyond the WTO (WTO-X)</p>	<ul style="list-style-type: none"> ▪ Temporary Entry for Business Persons ▪ Telecommunications ▪ Electronic Commerce ▪ Competition Policy ▪ Intellectual Property ▪ Labour ▪ Investment ▪ Financial Services ▪ Environment ▪ Development ▪ Cooperation and Capacity Building ▪ Competitiveness and Business Facilitation ▪ Small and Medium-Sized Enterprises ▪ Regulatory Coherence ▪ Transparency and Anti-Corruption
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Moving forward with the CPTPP

The CPTPP, considered the leading pathway of the FTAAP, will make doing business easier locally and abroad through a legal framework in which NGeTI will operate more efficiently in benefit of businesses, regional supply chains, customers, and their citizens. However, these opportunities will come with challenges, more competition and new regulations for consider for companies. Thus, to reap the benefits of the CPTPP, senior officials, policymakers, business people and stakeholders need to strive not only to better understand the framework of the agreement, but also the scope of the NGeTI and prepare to participate in creating solutions. In the next section, data is provided in order to nurture the business perspective with respect to the six NGeTI that are part of this study and that have been included in the CPTPP.

State Owned-Enterprises

Ensuring that SOEs operate on a level playing field with businesses is considered an important NGeTI that might contribute to increasing business activity, attracting investments and boosting economic growth. Likewise, recognizing that SOEs play a strategic role in many countries, particularly in developing countries, is needed in order to create domestic laws and/or trade deals that offer transparency, fair competition while maintaining the national interest. The issue when SOEs are analyzed is not deciding between SOEs versus private businesses but supporting both through the design of non-discriminatory rules. If non-discriminatory laws are created and implemented, an inclusive business environment is offered to benefit all companies, including small and medium enterprises. In addition, non-discriminatory rules create a non-discriminatory business field where real

competition exists and where foreign companies receive the same treatment as domestic ones. To compare the economic relevance and sectoral distribution of SOEs, the OECD (2017) provides a report from 40 economies, in which it is possible to find SOEs information for six CPTPP members (Australia, Canada, Chile, Japan Mexico and New Zealand)⁴⁵. This report offers information on the total number of SOEs, and their size by value and employment. The OECD (2017) stated that China has, by far, the biggest number of SOEs: “the central government is a full or majority owner of over 51,000 enterprises, together valued at USD 29.2 trillion and employing approximately 20.2 million people.” The six CPTPP economies included in the OECD report together total 200 SOEs with a total value equal to 197,379 USD million and they employ 542,595 people (Table 1). From the CPTPP economies in the OECD report, Mexico accounts for the highest number of SOEs (78), followed by Canada (44) and New Zealand (37). Based on the SOEs value, Japan has the highest with 82,365 USD million, followed by Canada and New Zealand, 30,316 and 29,053 USD million, respectively. Measured by level of employment, Japan has the highest level of the CPTPP economies with 256,265 employees in SOEs, followed by Canada and Mexico, 83,462 and 73,686 employees, respectively.

Table 1 Presence of SOEs in six CPTPP economies
No. of enterprises, No. of employees and value in USD million

		Total	Primary sectors	Manufacturing	Finance	Telecoms	Electricity and gas	Transportation	Other utilities	Real estate	Other activities
Australia	N° of enterprises	8		1		2	1	2	1		1
	N° of employees	42,607		2,500		5,000	650	1,100	32,732		625
	Value of enterprises	13,602		210		6,558	1,561	2,735	1,437		1,101
Canada	N° of enterprises	44	4	1	7			13	5	2	12
	N° of employees	83,462	3,760	1,200	6,930			4,749	64,346	945	1,532
	Value of enterprises	30,316	-4,921	216	32,247			1,422	-828	376	1,805
Chile	N° of enterprises	25	3		1	1		12	2		6
	N° of employees	50,361	24,118		13,826	1,076		5,219	5,294		828
	Value of enterprises	20,811	13,637		2,284	514		3,639	427		311
Japan	N° of enterprises	8						7	1		
	N° of employees	256,265						37,953	218,312		
	Value of enterprises	82,365						26,526	55,839		
Mexico	N° of enterprises	78	1	3	20	5	2	22	1		24
	N° of employees	73,686	1,136	1,024	15,281	9,499	1,201	10,352	19,671		15,522
	Value of enterprises	21,232	213	266	15,748	400	46	3,612	92		856
New Zealand	N° of enterprises	37	3		3	4	5	6	1	2	13
	N° of employees	36,214	2,297		365	770	3,828	15,018	8,504	312	5,120
	Value of enterprises	29,053	1,015		121	263	9,097	4,842	814	12,301	600
Total	N° of enterprises	200	11	5	31	12	8	62	11	4	56
	N° of employees	542,595	31,311	4,724	36,402	16,345	5,679	74,391	348,859	1,257	23,627
	Value of enterprises	197,379	9,943	692	50,399	7,735	10,704	42,776	57,780	12,677	4,672

Source: OECD (2017), *The Size and Sectoral Distribution of State-Owned Enterprises*, OECD Publishing, Paris.

⁴⁵ OECD (2017), *The Size and Sectoral Distribution of State-Owned Enterprises*, OECD Publishing, Paris, <https://doi.org/10.1787/9789264280663-en>

The CPTPP achieved advances in the SOEs agenda by adding provisions that go beyond previous trade deals. For instance, CPTPP mandates the disclosure of SOEs on a public website that offers transparency; requests relevant information, such as the percentage of government shares held in SOEs and asks for information about programs or policies that governments subsidize. CPTPP states that government contracts should be decided under the basis of commercial criteria with no discrimination in favour of local enterprises.

Intellectual Property Rights

Promotion of high-quality standards on Intellectual property is beneficial for developed and developing economies. For this reason, the provisions included in the CPTPP agreement seek to promote innovation in the region under a common set of rules which guarantee protection and enforcement. CPTPP provisions on Intellectual property will help businesses, not only from creative and innovative industries, but also from any businesses that create products or services that can be protected by patents or trademarks to lower their costs and to have certainty and transparency when they develop innovations. IP provisions aim to create a better business environment that incentivizes innovation as an engine to job creation and sustainable growth. The APEC region is home to several nations that drive their economies through innovation and many others that are in the process of integrating innovation as a tool to transit from traditional manufacturing to high tech.

According to the Global Innovation Index (GII), there are eight APEC economies in the top 20 of the most innovative economies: Singapore (5), United States (6), Korea (12), Japan (13), Hong Kong (14), China (17), Canada (18) and Australia (20), with four of these CPTPP members; and there are some economies lagging behind in this index, such as Indonesia (85), Philippines (73) and Peru (71). This index relies on seven pillars that capture the status of economies around the globe that enable innovative activities. Two of those pillars represent the innovation outputs of each economy. In this regard, APEC economies such as Hong Kong, the United States, Korea, New Zealand and China are in the top 20 of the Creative outputs pillar. The GII report recognizes Vietnam and Thailand as innovation achievers, and it stated that China is “an *impressive example for other middle-income countries to follow as they seek to join the echelons of high-income economies.*”

The ranking of APEC economies in the global index and the seven pillars of the GII are presented below. Companies participating in CPTPP might want to explore and breakdown the analysis to better understand the innovation environment of each economy.

**Table 1: Global Innovation Index 2018
APEC economies**

Economy	Global Innovation Index	Pillar 1: Institutions	Pillar 2: Human capital and research	Pillar 3: Infrastructure	Pillar 4: Market sophistication	Pillar 5: Business sophistication	Pillar 6: Knowledge and technology outputs	Pillar 7: Creative outputs
Australia	20	12	3	16	7	28	38	22
Brunei Darussalam	67	30	60	47	17	50	113	105
Canada	18	5	18	20	3	24	22	30
Chile	47	37	61	53	54	48	48	58
China	17	70	23	29	25	9	5	21
Hong Kong, China	14	10	25	1	2	15	26	13
Indonesia	85	97	94	82	59	89	86	71
Japan	13	8	16	9	10	11	12	31
Korea	12	26	2	13	14	20	9	17
Malaysia	35	43	31	43	22	39	33	47
Mexico	56	63	54	56	58	69	60	62
New Zealand	22	4	15	22	9	27	37	18
Peru	71	69	98	69	27	42	88	81
Philippines	73	93	86	67	100	44	49	92
Russia	46	74	22	63	56	33	47	72
Singapore	5	1	1	5	4	2	11	35
Thailand	44	65	57	72	28	62	40	50
United States	6	13	21	24	1	8	6	14
Vietnam	45	78	66	78	33	66	35	46

Source: Global Innovation Index 2018

To promote innovation of products and/or services effectively, building capacities and partnerships with others is necessary. In this respect, the CPTPP offers eleven innovation clusters that are considered within the top 100 innovation clusters worldwide and where companies might find allies to promote initiatives to increase their innovation capacity. The CPTPP has eleven innovation clusters located in four nations: Japan, Singapore, Australia and Canada. CPTPP counts with the cluster considered in first place of the list, the *Tokyo-Yokohama cluster*, specializes in Physics. Entrepreneurs and business people might want to explore the possibilities of partnerships and/or the development of initiatives on innovation in these clusters that specialize in different fields, from electrical machinery, computer technology and civil engineering to pharmaceuticals, medical technology and digital communication. A list of CPTPP clusters that are part of the Top 100 innovation clusters is presented below.

**Table 2: CPTPP innovation clusters
Included in the top 100 innovation clusters ranking**

Rank	Cluster name	Economy	Top science field	Top scientific organization	Top patenting field	Top applicant
1	Tokyo-Yokohama	Japan	Physics	University of Tokyo	Electrical machinery	Mitsubishi Electric
6	Osaka-Kobe-Kyoto	Japan	Chemistry	Kyoto University	Electrical machinery	Murata Manufacturing
11	Nagoya	Japan	Physics	Nagoya University	Electrical machinery	Toyota
28	Singapore	Singapore	Chemistry	National Univ. of Singapore	Computer technology	A*Star
33	Melbourne	Australia	Gen. & internal med.	University of Melbourne	Pharmaceuticals	Monash University
36	Sydney	Australia	Gen. & internal med.	University of Sydney	Medical technology	Cochlear
37	Toronto, ON	Canada	Neurosciences	University of Toronto	Computer technology	Synaptive Medical
50	Montreal, QC	Canada	Engineering	McGill University	Digital communication	Ericsson
73	Vancouver, BC	Canada	Neurosciences	Univ. of British Columbia	Medical technology	Univ. of British Columbia
80	Ottawa, ON	Canada	Engineering	University of Ottawa	Digital communication	Huawei
83	Brisbane	Australia	Engineering	University of Queensland	Civil engineering	University of Queensland

Source: Global Innovation Index 2018

E-commerce

A report by the McKinsey Global Institute (2016) noted that about 12 percent of the global products trade is conducted via international e-commerce platforms. The report added that the flow of data across borders has contributed significantly to global economic growth, raising the world GDP by at least 10 percent over a decade.⁴⁶ Likewise, cross-border B2C e-commerce has grown rapidly worldwide from 236 billion in 2014 to 401 billion in 2016, with a projection to reach 994 billion by 2020. The same indicator in the Asia Pacific region showed a considerable growth from 71 billion in 2014 to 144 billion in 2016, with a projection of 476 billion in 2020.⁴⁷

E-commerce is having a huge impact on the digital economy due to the reach of internet penetration, internet users, mobile subscribers and social media users that continue growing steadily worldwide (Table 3). The number of internet users globally reached 4 billion people in 2017, which represented 53% of the world population. This indicator compares with 2.0 billion (28.9%) in 2010 and 1.0 billion (15.8%) in 2005. The number of internet users in APEC is 1,873 million and in the CPTPP market is 392.90 million, which represents 10% of the total worldwide. The three CPTPP economies with the highest number of internet users are Japan, Mexico and Vietnam, with 118.50, 85 and 64 million users respectively. With respect to mobile subscribers, the CPTPP economies had 3,363 million in 2017, which represented 12.4% worldwide.

**Table 3: Key Digital Statistical Indicators
(Millions)**

	Economy	Internet users	Active Social Media Users	Mobile Subscriptions	Active Mobile Social Users
CPTPP	Australia	21.74	17.00	31.92	15.00
CPTPP	Brunei Darussalam	0.41	0.41	0.53	0.35
CPTPP	Canada	33.05	25.00	32.78	21.00
CPTPP	Chile	14.11	14.00	25.54	13.00
	China	751.00	911.00	1,396.00	911.00
	Hong Kong, China	6.46	5.80	12.71	5.20
	Indonesia	132.70	130.00	415.70	120.00
CPTPP	Japan	118.50	71.00	191.30	71.00
	Republic of Korea	47.35	43.04	59.40	43.04
CPTPP	Malaysia	25.08	24.00	42.25	22.00
CPTPP	Mexico	85.00	83.00	110.50	78.00
CPTPP	New Zealand	4.18	3.50	6.36	3.10
	Papua New Guinea	0.91	0.73	3.61	0.67
CPTPP	Peru	22.00	22.00	39.35	20.00

⁴⁶ Manyika, J., Lund, S., PhD., Bughin, J., Woetzel, J., Stamenov, K., Dhingra, D., & McKinsey Global Institute. (2016). *Digital globalization : The new era of global flows*. Washington, D.C.: McKinsey Global Institute.

⁴⁷ https://unctad.org/meetings/en/Presentation/dtl_eweek2016_AlibabaResearch_en.pdf

	Philippines	67.00	67.00	121.40	62.00
	Russia	110.00	67.80	253.60	55.90
CPTPP	Singapore	4.83	4.80	8.61	4.30
	Chinese Taipei	20.82	19.00	31.12	18.00
	Thailand	57.00	51.00	93.61	46.00
	United States	286.90	230.00	340.50	200.00
CPTPP	Viet Nam	64.00	55.00	146.53	50.00
	Total CPTPP economies	392.90	319.71	635.67	297.75
	Total APEC economies	1,873.04	1,845.08	3,363.32	1,759.56
	World	4,021.00	3,196.00	5,135.00	2,958.00

Source: *We are social: Global Digital report 2018*

While the numbers shown in table 3 show an increase in e-commerce, the opportunity that the internet offers for businesses and users will continue growing. According to the report *The Mobile Economy* (GSM Association, 2018), there are two major trends to observe over the next 10 years that refers to the transition from the *connected consumer* (subscribers who utilize their phones mainly to access internet-based social media and messaging) to *the digital consumer* (those who regularly consume digital services and content via their smartphones). The first trend will occur in the developing economies where smartphone users will gradually transition to higher levels of engagement. The second trend will happen in the most developed economies where digital consumers will “*increasingly adopt emerging technologies such as augmented reality; virtual reality; technology solutions and applications for smart homes, cities and buildings; and emerging services such as drone delivery, consumer robotics and autonomous cars.*”⁴⁸

Regarding the flow of data, contrary to what some people might believe, both data outflows and inflows are beneficial for economies as they circulate innovative ideas, new technologies, and best practices that make more efficient and productive companies. Cross-border flows of data contribute considerably to both local and global economies, as much as flows of traditional manufactured products do. Proof of the powerful impact of data flow is the growth of the volume of global data flows that grew 45-fold from 2005 to 2014, and estimates anticipate that the volume of data generated globally will continue growing in an unprecedented manner from 220 zettabytes (ZB) in 2016 to nearly 850 ZB by 2021 (Cisco, 2018, p. 23).⁴⁹

In order to seize the opportunity that e-commerce offers in the Asia Pacific. Based on information presented by UNCTAD (2017)⁵⁰, it is important to note that six of the 10 major e-commerce markets are located in the APEC region: the United States (1), Japan (2), China (3), Korea (4), Canada (8) and Australia (10). These six economies together represent 53% of the e-commerce worldwide. Three of these six APEC economies listed as part of the top ten e-commerce markets are part of the CPTPP (Japan, Canada and Australia). The solid presence of three CPTPP markets as a part of the 10 major e-

⁴⁸ <https://www.gsma.com/mobileeconomy/wp-content/uploads/2018/05/The-Mobile-Economy-2018.pdf>

⁴⁹ Cisco Global Cloud Index: Forecast and Methodology, 2016–2021

⁵⁰ UNCTAD, E-Commerce: Global trends and developments, Session on the eTrade For All Initiative, Thailand, June, 15, 2017

trade economies shows the potential that this agreement represents for the digital economy to leverage business opportunities.

The future on e-commerce in the CPTPP lies on a solid foundation of regulations and provisions that CPTPP parties defined with respect to the free flow of data across borders for service suppliers and investors as part of their business activity. This data flow is relevant to all kinds of businesses and the CPTPP has guaranteed this free flow. CPTPP governments have retained the capacity to maintain domestic regulations related to data flows, but they have undertaken to do so in a way that does not create barriers to trade.

Transparency

Non-transparent regulations and non-transparent practices work as trade barriers to exporters and importers, and both increase the costs and the time that the companies need to invest to sort out these obstacles. Regulations on transparency in the CPTPP might have a positive effect at behind-the-border and at-the-border business practices, as well as having a positive impact on the economic and operational performance of companies. Researchers have pointed out that transparency is expressed through different dimensions such as the predictability and simplification of procedures, regulations and laws. Predictability offers companies the possibility to reduce the cost of uncertainty and simplification offers the opportunity to reduce information costs.

The Doing Business Report 2019 of the World Bank⁵¹ offers valuable information to deduct how transparency and other factors are impacting businesses in the region, in particular in customs and border procedures. The data released by the World Bank provides light on sizing the gap that exists in the APEC and the CPTPP economies regarding transparency applied to trade. Specific areas are identified in which businesses can focus their efforts to support their businesses across the region via predictability and simplification of domestic and trade regulations added to RTAs. Table 1 presents the data of the *Doing Business Report* for all the APEC economies on the time to export and the costs that companies need spend to ship their products abroad.

The first interesting observation on the time to export is the impressive total hours needed to export in economies such as Hong Kong (two hours), and Canada and the United States (three hours); time that includes both the documentary and border compliance. The opposite reality is experienced by countries such as Brunei, where it takes 272 hours, and in Indonesia, Papua New Guinea and Vietnam where companies need to invest more than 100 hours to get their documents issued and stamped, to complete their customs declaration, to wait for the relevant authority to issue a phytosanitary certificate, among other activities behind the border and at the border.

Regarding the costs to export, Hong Kong has the lowest one in APEC with \$12 USD, followed by Korea \$196 USD, the United States \$235 USD, and Malaysia \$248 USD. On the other hand, the economies where most expensive is to export are Australia \$1,030 USD, Papua New Guinea \$735, Peru \$680 and Russia \$672 USD. The information available regarding the invested time and costs to

⁵¹ The Doing Business initiative offers objective measures of business regulations for local firms in 190 economies and selected cities at the subnational level.

export offers the possibility to break down the analysis in the documentary compliance and the border compliance which allows us to see if economies need to improve more either their trade regulations at the border or behind the border. For instance, Japan and New Zealand have a good documentary compliance time, but they may want to improve their time with regard to border compliance.

The benefits that transparency provisions in the CPTPP might offer to businesses if they are implemented effectively are endless: reducing costs and eliminating red tape, avoiding corruption, and increasing certainty, predictability and simplification.

**Table 4: Trading across Borders
Time and cost to export**

Economy	Time to export: Documentary compliance (hours)	Time to export: Border compliance (hours)	Total time to export	Cost to export: Documentary compliance (USD)	Cost to export: Border compliance (USD)	Total cost to export
Australia	7.0	36.0	43.0	264.0	766.0	1030.0
Brunei Darussalam	155.0	117.0	272.0	90.0	340.0	430.0
Canada	1.0	2.0	3.0	156.0	167.0	323.0
Chile	24.0	60.0	84.0	50.0	290.0	340.0
China	8.6	25.9	34.5	73.6	314.0	387.6
Hong Kong, China	1.0	1.0	2.0	12.0	0.0	12.0
Indonesia	61.3	53.3	114.6	138.8	253.7	392.5
Japan	2.4	22.6	25.0	54.0	264.9	318.9
Korea, Rep.	1.0	13.0	14.0	11.0	185.0	196.0
Malaysia	10.0	28.0	38.0	35.0	213.0	248.0
Mexico	8.0	20.4	28.4	60.0	400.0	460.0
New Zealand	3.0	37.0	40.0	67.0	337.0	404.0
Papua New Guinea	96.0	42.0	138.0	75.0	660.0	735.0
Peru	48.0	48.0	96.0	50.0	630.0	680.0
Philippines	36.0	42.0	78.0	53.0	456.0	509.0
Russian Federation	25.4	66.0	91.4	92.0	580.0	672.0
Singapore	2.0	10.0	12.0	37.0	335.0	372.0
Chinese Taipei	5.0	17.0	22.0	84.0	335.0	419.0
Thailand	11.0	44.0	55.0	97.0	223.0	320.0
United States	1.5	1.5	3.0	60.0	175.0	235.0
Vietnam	50.0	55.0	105.0	139.0	290.0	429.0

Source: Doing Business report 2019, The World Bank

Notes: Documentary compliance captures the time and cost associated with compliance with the documentary requirements of all government agencies of the origin economy, the destination economy and any transit economies.

Border compliance captures the time and cost associated with compliance with the economy's customs regulations and with regulations relating to other inspections that are mandatory in order for the shipment to cross the economy's border, as well as the time and cost for handling that takes place at its port or border. The time and cost for this segment include time and cost for customs clearance and inspection procedures conducted by other agencies.

Competition

Poorly conceived competition laws can generate uncertainty and distortions in the marketplace and impose additional costs to companies, whereas strong competition policies can produce more innovative and cost efficiency industries. Competition provides companies with strong incentives to plan and act more strategically, to optimize their processes, to analyze their finance and make their management more efficient. For this reason, the comprehensive competition policy included in the CPTPP is good for businesses because it promotes a level playing field in which to compete, regardless of the business sector, and it demands companies develop competencies based on efficiency and innovation.

According to the OECD, competition is “a situation in a market in which firms or sellers independently strive for the patronage of buyers in order to achieve a particular business objective, e.g., profits, sales and/or market share”⁵². With robust competition, companies of all sizes benefit along the supply chain because they not only can prevent anti-competitive conducts, but they can also negotiate better deals with local or global suppliers. The International Chamber of Commerce (ICC) affirmed that competition law is key to minimising market distortions and ensuring that businesses compete fairly; however, the ICC recognizes that compliance of competition law might be challenging for businesses, especially for SMEs and that the “the risks of non-compliance, deliberate or not, are significant”. ICC added that sanctions for non-compliance on competition regulations are usually significant and these can generate adverse publicity and reputational damage for companies⁵³.

How to increase awareness in the international business community on the benefits of the competition policy of the CPTPP? According to the International Competition Network (ICN), promoting effective and regular communication between businesses and competition authorities are beneficial for both. Such dialogue can be a valuable investment for competition authorities because prevention is cheaper than enforcement actions. Moreover, companies can share their insights about the nature of competition that they face and can help authorities better understand the dynamics of their industries. On the other hand, competition authorities can support businesses by educating them on the importance of competition law compliance and clarifying for them any issue or concern on competition laws. ICN pointed out that communication between these two important players can help develop trust among parties, promote compliance with the corresponding competition regulations and raise the profile of competition law. Thus, an active and dynamic dialogue between CPTPP competition authorities and businesses might raise awareness of the benefits and encourage compliance both locally or abroad.

Cross-border trade in services

Currently, it is impossible for any kind of business to compete and participate in local and global markets without a reliable, affordable and solid network of services providers supporting it. Companies of all sizes and sectors rely on services providers to efficient communicate with their daily operators, from carriers, marketers and designers to accountants, lawyers, and other professionals. Imports and

⁵² <http://www.oecd.org/regreform/sectors/2376087.pdf>

⁵³ <https://iccwbo.org/global-issues-trends/competitive-markets/antitrust-competition/>

exports of services can trigger not only an increase in business productivity, but also the inclusion of MSMEs in global supply chains (GSC). Service is handled predominantly by MSMEs that account for over 97% of all businesses and employ more than fifty percent of the workforce across the APEC region. Thus, regulations of the CPTPP facilitating and improving cross-border trade in services can have a positive impact on MSMEs.

The relevance and growing presence of the services sector is boosting the global and regional economies, creating new jobs, promoting new investments, improving competitiveness and allowing MSMEs to venture into new markets. Sergio Arzeni, President at the International Network for SMEs, pointed out during his presentation on *APEC Public-Private Dialogue on Enhancing Capacities of MSMEs in Exporting Services* (Dec, 2017) that the number of jobs created by the services sector globally grew an average of 3 per cent every year from 2000 to 2016, and it represented around 50% of world trade assessed through the Trade in Value Added method.

World services exports reached \$5.3 trillion USD in 2017, representing 23.5 percent of total trade (\$22.7 trillion) and about one third of the value of merchandise exports (\$17.4 trillion). Developed Economies accounted for 68.2% of total services exports, which means that not all the developing economies are participating in the benefits of this growing sector. The world's top services exporter in 2017 was the US with \$780 billion worth of services exported, representing 14.6 percent of total services exports. Among developing economies, five Asian nations represent half of services exports from this group: China, India, Singapore, Hong Kong, and the Republic of Korea.

The United Nations Conference on Trade and Development (UNCTAD) stated that services trade is particularly important for developing countries to not only enhance their position in international trade, but also to improve their economic and social development. In its report *Trade in Services and Employment* (2018),⁵⁴ UNCTAD stated that only a small number of nations are going global in services export and highlighted that the gap is growing between developing nations participating in this sector: “Just ten countries produced about 70 per cent of developing countries’ services exports in 2015, which corresponds to 21.2 percent of the global total. The gap was much smaller a few years ago: the top 10 accounted for about 61.9 percent of developing countries’ services exports in 2005” (p.6).

From the above-mentioned information, CPTPP provisions in cross-border services might result in a more inclusive participation of developing economies and MSMEs from participating economies. Services sector have the capacity to generate positive spillover effects in the marketplace. An increase in the demand of one specific service will produce increased demand for goods and services in other sectors following an increase in their own output.

⁵⁴ <https://unctad.org/en/pages/PublicationWebflyer.aspx?publicationid=2172>

NGeTI: key contributors to achieving the eventual FTAAP

Upon completion of this report, there are seven important observations resolving NGeTI that would contribute to achieving the eventual FTAAP and supporting businesses across the region.

- 1. NGeTI are not issues that will occur in the future, these issues are happening now.** NGeTI have existed for a long time but have recently increased in relevance and visibility during the 21st Century. Currently, it is not possible to ignore these issues because they are present everywhere, impacting the performance of companies and industries of all sizes. Resolving NGeTI provides the opportunity to compete and participate in the marketplace more successfully. NGeTI, therefore, has turned out to be not the next-generation issues, but critical issues that need to be identified and addressed to articulate consistent rules for trade and businesses in the region. If these issues are not dealt with in trade agreements, businesses will not have the assurance to make positive steps for new opportunities and would be a challenge to opportunities for future growth.
- 2. FTAAP remains a powerful vehicle to advance economic integration and create prosperity across the region.** FTAAP is a very important direction to pursue if it reflects the dynamic evolution of businesses and it includes the best possible solutions to trade and investment issues. Free trade agreements, either Bilateral or Mega-regional, will be useful for businesses if they keep evolving at the same pace that business do. The *Lima Declaration* articulated a clear path to advance FTAAP completion, but APEC economies must make more individual and collaborative efforts to achieve this one, especially with the issues of next generation of trade and investment. Therefore, it is important to emphasize the need for inclusion of NGeTI in the eventual FTAAP, incorporating them more in the APEC agenda, and establishing a clear set of objectives to pursue about them. FTAAP articles would need to keep up with how businesses develop and NGeTI evolve.
- 3. The three current Mega-regional agreements are not in competition, but they are complementary to a possible FTAAP.** CPTPP, RCEP and PA have mutual goals of promoting trade liberalization and economic integration and building a comprehensive and high standard agreement. Based on these mutual goals, each agreement articulates a different growth path towards FTAAP, building consensus under its own dynamics and group features, and adding a complementary element to regional integration. First, CPTPP concluded a high-level agreement, creating a state-of-the-art trade pact that included 21st century provisions on a considerable number of issues that businesses had noted were priorities. CPTPP showed that is possible to discuss and agree on contentious issues, including the six NGeTI included in this report, when every country contributes with its expertise and commits to open and free trade. Second, PA continues delivering its hands-on and innovative approach, demonstrating how an agreement can be kept constantly responding to rapidly changing market conditions with innovative solutions. PA is open and willing to add new members to the deal, to discuss new initiatives and to explore new contents that support business activity, including NGeTI. Third, RCEP has demonstrated, during the negotiation period, their commitment to inclusiveness by bringing new members, inside and outside of APEC economies, to the negotiating table, so that it can form a bigger group to advance towards an FTAAP. RCEP seems

to be balancing efficiently among achieving mutual benefits, responding to new challenges, and creating a high quality of an agreement.

4. **Is there anything missing in the CPTPP dealing with NGeTI?** CPTPP has taken the NGeTI agenda to the next level not only in the six disciplines analyzed in this report, but also beyond these disciplines. The CPTPP has taken a strategic position as the leading pathway towards the eventual realization of the FTAPP due to the depth and extensive treatment of Next Generation Trade and Investments Issues that goes beyond WTO rules. The CPTPP, however, is not alone in its purpose to integrate the Asia Pacific. PA and RCEP are two complementary agreements that will be relevant in the construction of the eventual FTAAP. At this time, we can confirm that CPTPP has produced high quality achievements in covering NGeTI and it has set an important precedent not only for APEC region, but also for the entire international community. However, it cannot be considered as the definitive and unique solution for NGeTI towards the FTAAP realization. There is still room for improvement, developing better provisions for NGeTI both outside and inside the CPTPP. Indeed, CPTPP members are aware of the need to keep the possibility open to improve solutions to NGeTI, despite the outstanding progress they have already achieved; it is for this reason that they created mechanisms to maintain the dialogue flowing among members. Regarding improvements to NGeTI coming from outside the CPTPP, there is no doubt that the PA and RCEP will contribute as well. We need to remember, for example, that the PA is currently negotiating the addition of four new members to the deal through the associate membership, in which NGeTI are part of the negotiating agenda. The candidates to associate membership and the PA have vast expertise in NGeTI and might come up with some interesting ideas to address the challenges and opportunities on NGeTI. While RCEP contribution regarding NGeTI will be unveiled once the final text is public, for now, we should highlight that, although they are dealing with only four of the NGeTI analyzed in this report (E-commerce, IPRs, competition and cross-border trade in services), their perspectives will come to enrich the dialogue about solutions on trade and investments issues.

5. **Should the new NAFTA be considered another pathway toward FTAAP?** Even though CPTPP, PA and RCEP are three excellent pathways towards FTAAP, these should not be considered the only ones. APEC economies need to keep possibilities open to add new pathways and no trade pact, either Bilateral or Mega-regional, should be discarded as useful and informative for future FTAAP conversations. With excellent reason, the new NAFTA, now called USMCA in the US should be considered as a pathway to FTAAP because the members have vast expertise in dealing with complex trade issues and the new agreement has added a modern template to the international trading system. Most importantly, the three members had the capacity to update the old agreement and bring this agreement to the new trading era, contributing with new NGeTI clauses to the stocktake of trade policy in the Asia Pacific. According to experts, the new rules in the updated and changed NAFTA will significantly affect the business environment beyond the North-American market. The United States will probably use USMCA as its new template for future negotiations with the European Union, the United Kingdom, Japan, and other countries. Canada, Mexico and the United States made meaningful changes to the agreement and, as the CPTPP did, created solutions to important issues affecting businesses. One of the most significant updates that USMCA made can

be found in chapter 19: the chapter on digital trade. Indeed, the original NAFTA doesn't even have a digital trade chapter. In the new one agreement, the three partners recognize the opportunities and economic growth provided by digital trade, the relevance of frameworks that promote consumer trust in this NGeTI and the importance of avoiding unnecessary barriers to using it. In this chapter, the trading partners acknowledge *the APEC Cross Border Privacy Rules system* as a valid mechanism to protect personal information and facilitate cross-border information transfers. In addition, USMCA partners recognize that compliance with any restrictions on cross-border flows of personal information should be necessary and proportionate to the risks presented and should not discriminate against parties from the other economies. USMCA achieved high standard provisions on a vast number of cutting-edge trade and investment issues, including the six NGeTI analyzed in this report, and would be definitely useful as a potential pathway towards FTAAP.

6. **Business environment in the region must be fair, inclusive and non-discriminatory.** It is imperative to promote a fair, inclusive and non-discriminatory business environment; for instance, SOEs has to operate transparently in order to create fair competition, business certainty and a level playing field for all kinds of companies, with a special focus on small and medium enterprises. In addition, guaranteeing that member countries will give equal treatment to foreign enterprises and local companies is crucial. Considering the growing number of powerful SOEs and their strategic role in many economies, particularly in developing countries, a level playing field between SOEs and private companies must be reaffirmed. Furthermore, it is necessary to continue to promote and support MSMEs to participate in cross-border trade by ascertaining the fair playing field between large multinational corporations and MSMEs and enhancing MSMEs participation in global value chains (GVC). Likewise, considering the impact of digital economy in the business world is crucial, especially for services utilizing cross-border transactions. The service industry depends on free data flow that is sometimes controlled or strictly restricted in the various countries or regions of the world. Contentious issues, such as data flow across-borders and data localization, can be solved by finding the correct balance of cyber security, privacy, connectivity and the facilitation of data flow.
7. **APEC must continue to play an incubator role to advance NGeTI discussion to respond to next-generation business needs.** APEC needs to play an even more active role in promoting and addressing NGeTI that FTAAP should contain. It is imperative to recognize solutions to NGeTI as strategic engines to energize business and to support businesses to reach their full potential. Addressing issues of NGeTI has to be taken seriously, keeping in mind that if action isn't taken today, regulations will be left too far behind from the current, complex, and e-connected world and a large number of MSMEs will not be able to survive. Thus, it is critical to stop delaying discussions to create a consensual list of NGeTI, advance the analysis and suggest solutions to these issues to include NGeTI chapters in FTAAP. APEC Senior officials, policymakers, ABAC members and stakeholders need to encourage these dialogues and work together to advance the NGeTI agenda. The reality is that progress on the NGeTI agenda requires a collective effort. The most important point is that this dialogue about solutions to NGeTI needs to happen now; if this dialogue happens and resolutions are included in trade agreements, a high standard FTAAP is possible, and would contribute to the ultimate goal of free, inclusive and open trade and investment in the Asia-Pacific.