

# **Building Blocks for the FTAAP: 21<sup>st</sup> Century New Issues**

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# What is New in 21<sup>st</sup> Century Trade?

- **Pervasive Influence of Production Networks and Global Value Chains**

## → **Shift in Emphasis**

- **From: Supplying Goods and Services Across Border**
- **To: Conducting International Business Across and Within Borders**

- **Rise and International Spread of the Digital Economy**

## → **Emphasis on**

- **E-Commerce**
- **Intellectual Property Protection in the Digital Age**
- **Cross Border Data Flows**  
etc etc

# Need for New Approaches

## 21<sup>st</sup> Century Trade Demands New Approaches to

- **Services**
- **Investment**
- **Intellectual Property Protection**
- **Competition Policy**
- **Electronic Commerce**
- **Trade Facilitation**
- **Capital movements**
- **Logistics and infrastructure**

# **“New” Issues:**

## **Selected Issues from Three Diverse Examples**

- **Intellectual Property**
- **E-Commerce**
- **Rules of Origin**

# Intellectual Property (1)

## Need a principles-based framework

- **welfare maximisation as the objective**
- **crucial difference between trade liberalisation and intellectual property protection**
  - **trade liberalisation: more liberalisation generally improves welfare**
  - **IP: welfare is maximised by optimising level of IPR protection**
    - **Too little reduces welfare → insufficient innovation**
    - **Too much reduces welfare → excessive capture of monopoly rents  
→ limits on access to ideas, information**

# Intellectual Property (2)

## Need to develop

- Paradigm based on optimisation rather than maximisation of IP protection
- Empirical resources to allow quantification of effects of competing proposals

## Constraints

- “blue sky” approach infeasible
- all potential FTAAP partners have existing obligations
- some existing commitments may be problematic
  - e.g. contradictory commitments on geographic indications (GIs) in separate FTAs
- need careful assessment of how far potential FTAAP framework is constrained by existing commitments

# Intellectual Property (3)

## Issues to Consider in FTAAP - Patents

- scope to adapt territoriality of patent law to encourage innovation within GVCS
- encouragement for innovation via flexibilities for experimental use
- curbs on excessive patent length by limiting “evergreening mechanisms e.g.
  - patent term extensions e.g. for new uses (e.g. new patient groups and new dosages for pharmaceuticals)
  - tighter definition of inventive steps (say what it does not cover)
- careful definition of utility/usefulness
- better articulated links between IP and investment
  - Ensure steps to limit excessive patent length (e.g. by setting limits on inventive steps or by adopting tight definitions of utility) cannot be classified as expropriation for ISDS purposes

# **Intellectual Property (4)**

## **Issues to Consider in FTAAP - Copyright**

- **avoid extensions of copyright term unsupported by evidence of social benefit**
- **ensure that FTAAP makes sufficient allowance for balancing flexibilities and exemptions to facilitate activities with public good characteristics e.g. news reporting, teaching, scholarship and research e.g. fair use**
  - **(build on TPP language on this issue?)**



# Electronic Commerce (1)

**Rapid spread of e-commerce and even more rapid technology development highlight several areas requiring coordinated action by APEC economies**

**(Jim Foster, (Keio University International Center for Internet and Society))**

- **Can APEC develop appropriate approaches for inclusion in FTAAP?**
- **Will require extensive work programmes by APEC in its role of “FTAAP incubator”**
- **A Common Framework for Privacy?**
  - **uncertainty created by gaps in legal frameworks for privacy hinder cross-border data flows and create compliance problems for SMEs**
  - **can APEC develop consensus around “accountability” based privacy governance?**
- **Regional Coordination on Cybersecurity**
  - **threat increasingly recognised**
  - **excessive cost and complexity of nationally mandated measures but capacity and resource constraints (an aspect of the “digital divide”) inhibit a region-wide response**
  - **is there a solution?**

# Electronic Commerce (2)

- **Standards for Internet Service**
  - Feasibility of a “common cyberspace” among APEC economies?
  - Problems include uneven adoption, slow and non-transparent processes
  - Need for attention to consumer requirements and expectations
- **Cross Border Data Flows and Trade**
  - Contentious issue in many economic relationships (including US-EU, also TPP)
  - Can APEC build consensus on framework for facilitating cross-border data flows?
- **Addressing the “Digital Divide”**
  - Requires attention to technological, human capacity, cultural, geographic and socio-economic dimensions
- **Internet Fragmentation**
  - Spread of separate national legal and policy frameworks may reinforce national, cultural and linguistic differences
    - Resulting increased reliance on encryption may undercut law enforcement and challenge sovereignty
  - Can APEC develop consensus around practical solutions to preserve integrity of the internet?

# Rules of Origin (1)

- **Crucially important for seamless flow of goods in the region**
- **Assume added importance from the increased role of value chains and production networks**
- **Must facilitate efficient regional allocation of production activities**
- **FTAAP provides attractive opportunity to rationalize the “noodle bowl” of complex and inconsistent rules of origin across the region**
  - **potential to achieve an equivalent to the EU PECS system**

# Rules of Origin (2)

## Desirable characteristics include:

- **Transparency, simplicity, flexibility**
  - Avoidance of onerous rules designed as deliberate impediments to trade
  - Exemptions where tariff of preference-receiving country exceeds tariff of importing country?
- **Full regional cumulation**
  - Also diagonal cumulation with FTAAP parties' FTA partners?
- **Choice of RVC, CTC, or PSR rules based on criteria of facilitating trade**
  - Co-equal rules (e.g. RVC and CTC) where practical and beneficial
- **Transparent, practical operational certification procedures (OCPs)**
  - Avoidance of unnecessary costs, uncertainties, risks
  - Self-certification where possible

# Rules of Origin (3)

## Outlook for TPP and RCEP rules as building blocks for FTAAP rules

- TPP ROO outcome appears better than expected (includes some regional cumulation, self-certification) but problems remain (e.g. extent of use of “yarn forward” rule)
- RCEP potential to develop progressive, forward-looking ROO by building on best practice among “ASEAN-Plus” FTAs
  - but this will be both politically and technically challenging
- FTAAP should aim to build on “best practice” features of TPP and RCEP