

APPENDIX 1

CTI Agreed RTAs/FTAs Model Measures Texts

MODEL MEASURES FOR RTAS/FTAS

Contents

Chapeau	44
Trade in goods	45
Technical barriers to trade	48
Transparency	52
Government procurement	54
Cooperation	57
Dispute Settlement	60
Trade facilitation (endorsed in 2005)	62

APEC MODEL MEASURES FOR RTAs/FTAs

CHAPEAU

The following model measures for RTAs/FTAs respond to an instruction by Leaders in 2005 that APEC develop by 2008 model measures for as many commonly accepted RTA/FTA chapters as possible. They build on the Best Practices for RTAs/FTAs adopted by APEC members in 2004.

These model measures are an APEC contribution to the promotion of high-quality and comprehensive free-trade agreements in the Asia-Pacific region and the realisation of the Bogor Goals. They are intended to encourage a coherent and consistent approach to the design and content of such agreements.

The model measures reflect the general APEC principle of voluntarism. They are neither mandatory nor exhaustive. They are not in legal language that might be used in an agreement. The model measures are indicative examples to provide members with useful reference in negotiating RTA/FTA chapters. They are a guide to the kind of provisions that might be included in a free-trade agreement. They will not prejudice the positions of APEC members in any of their current or future trade negotiations. Model measures for the chapters addressed here do not indicate economies will necessarily include all of these chapters in all their RTAs/FTAs.

This chapeau sits above all chapters in this set of model measures.

Note: It is understood that that these model measures will have to be read against any exclusions or exceptions provisions that might form part of an RTA/FTA. Exclusions and exceptions might include general and security exceptions, confidentiality provisions, matters related to the balance of payments and broader macro-economic issues, prudential measures, taxation, etc. Model measures for possible elements of such a chapter remain to be drafted.

TRADE IN GOODS

General considerations relevant to this chapter

Lists broadly the main considerations informing this chapter:

- agreements satisfy the requirements of Article XXIV of the *General Agreements on Tariff and Trade* (GATT), the WTO *Understanding on the Interpretation of Article XXIV of the General Agreement on Tariffs and Trade 1994* and other relevant WTO provisions
- meets the APEC goals and principles relating to RTAs/FTAs, including the *APEC Best Practices for RTAs/FTAs*.

National treatment

Outlines the national treatment obligation

- the parties accord each other national treatment in accordance with Article III of the GATT 1994, including its interpretative notes.

Customs valuation

Sets out the basis for customs valuation

- the value of goods is determined according to the provisions of the WTO Agreement on Customs Valuation (the *Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994*).

Elimination and reduction of customs duties

Sets out approaches to the elimination of customs duties

- applied most-favoured-nation-(MFN) tariff rates are the basis for mechanisms for the elimination and reduction of customs duties
- agreements contain a tariff elimination schedule setting out the applied tariffs at the agreed base date and the timetable for reducing and eliminating these tariffs for each tariff line
- the first round of tariff eliminations usually occurs on entry into force of the agreement
- the parties do not increase existing customs duties or introduce new customs duties on imports from the other parties except as otherwise provided in the agreement.

Accelerated liberalisation and elimination of customs duties

Encourages faster liberalisation and tariff elimination

- a mechanism is established for the accelerated liberalisation and elimination of customs duties where the parties agree to do so
- a party to an agreement may request another party to enter into consultations aimed at accelerating the liberalisation and elimination of customs duties
- a party may accelerate unilaterally the elimination or reduction of customs duties.

Waiver of customs duties

Prohibits waivers of customs duties for certain purposes

- parties do not maintain or adopt new waivers of customs duties in their trade with the other parties if the waivers are based on the fulfilment of an export performance requirement
- parties do not make the continuation of a waiver of customs duties conditional, implicitly or explicitly, on the fulfilment of an export performance requirement.

Classification of goods

Sets out a preferred approach to classification of goods

- goods are classified wherever possible according to the latest version of the ***Harmonised Commodity Description and Coding System*** (the Harmonised System).

Export taxes and export duties

Sets out the conditions under which export taxes and export duties may be applied

- the parties may make commitments not to apply export taxes and export duties on trade between them.

Anti-dumping measures

Sets out the main options available in respect of anti-dumping measures

- the parties agree to adopt one of the following three options for the treatment of goods deemed dumped
 - they rely exclusively on the WTO Anti-Dumping Agreement (the ***Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994***) for any use of anti-dumping measures within the free-trade area; or
 - they enter into commitments on the application of anti-dumping measures on trade between them, but consistent with the rights of other WTO members under the Anti-Dumping Agreement; or
 - they do not use anti-dumping measures against each other on goods traded under the agreement.

Subsidies and countervailing measures

Outlines rights and obligations in respect of subsidies

- the parties confirm their rights and obligations under the WTO ***Agreement on Subsidies and Countervailing Measure***

Agricultural export subsidies

Seeks to avoid all forms of agricultural export subsidies

- the parties do not to adopt or maintain any form of export subsidies on any agricultural good destined for the territory of the other party
 - except when one party considers that a non-party is exporting subsidised agricultural goods to another party and the parties cannot agree on measures to be taken by the importing party to counter the effect of the subsidised imports.

Non-tariff measures

Sets out the approach to non-tariff measures

- the parties do not adopt or maintain any non-tariff restriction on the import of any good of the other parties or on the export or sale for export of any good destined for the other parties except in accordance with applicable WTO provisions or as provided in the agreement
- the parties seek to improve their bilateral business environment by establishing a mechanism to discuss and review matters arising from the use of non-tariff measures and to achieve their progressive reduction.

Temporary admission of goods

Sets out procedures to facilitate the temporary admission of goods trade between the parties

- allows for the temporary duty-free admission of goods to be used by a resident of the other party for in the exercise of business activities
- customs duties and other charges may be levied if the goods are used for a different purpose
- temporarily admitted goods can be exported through a customs port different from the one through which they were imported.

Duty-free entry of commercial samples of negligible value and printed advertising materials

Sets out the approach to the admission of trade promotion materials

- commercial samples of negligible value and printed advertising materials may be imported free of duty from the other parties regardless of their origin.

Goods re-entered after repair or alteration

Outlines the rules for re-admission of goods after repair, etc.

- seeks to facilitate to the greatest possible extent the export and import of goods for the purpose of repair or alteration, regardless of their origin.

Review body

Designates or establishes a review body for matters concerning trade in goods

- the parties designate or establish a review body to monitor compliance and implementation issues with a view to improve the functioning of the agreement.

Definitions

Sets out the definitions applicable to the chapter on trade in goods.

- definitions are expressed in clear language to assist minimisation of misunderstandings.

TECHNICAL BARRIERS TO TRADE

General considerations relevant to this chapter

- the TBT (technical barriers to trade) chapter of an RTA/FTA should establish a framework, which builds on the objectives, disciplines and principles of the WTO ***Agreement on Technical Barriers to Trade*** (TBT Agreement) and agreed procedures
- this approach also provides an opportunity to promote transparency and deepen regulatory understanding and co-ordination among the parties, and establishes mechanisms to require relevant authorities and regulators to co-operate in finding solutions to specific problems as they arise
- given the diversity of regulatory and administrative systems in the APEC region, the TBT model measures set out below provide examples of the kind of provisions that might be included, to the extent the parties deem desirable and necessary, when negotiating RTAs/FTAs.

Objectives

Sets out the objectives of the chapter, for example:

- increase and facilitate trade in goods by ensuring that technical regulations, standards and conformity assessment procedures do not create unnecessary obstacles to international trade
- deepen mutual understanding of each party's technical regulations, standards and conformity assessment procedures
- establish arrangements to enhance transparency, information exchange and dialogue between the bodies of the parties with responsibility for the development and application of standards, technical regulations and conformity assessment procedures
- enhance and strengthen cooperation between the bodies of the parties with responsibility for the development and application of technical regulations, standards and conformity assessment procedures with a view to finding solutions to specific problems.

Scope

Sets out the application of the chapter, namely technical regulations, standards and conformity assessment procedures that may directly or indirectly affect trade between the parties, along with any applicable exceptions.

WTO Agreement on Technical Barriers to Trade

Sets out the approach to WTO TBT obligations:

- the parties affirm their existing rights and obligations under the WTO TBT agreement, but do not include WTO TBT obligations in the scope of the RTA/FTA, or
- the parties affirm their existing rights and obligations under the WTO TBT agreement and include certain WTO TBT obligations in the scope of the RTA/FTA.

Trade facilitation

Promotes cooperation and strengthens disciplines to ensure that technical regulations, standards and conformity assessment requirements do not create unnecessary obstacles to international trade, for example:

- taking into account the administrative systems of individual economies, promotes positive consideration and appropriate use of a range of possible mechanisms to facilitate the cross border acceptance of conformity assessment results (when required), including but not limited to:
 - mutual recognition agreements for conformity assessment to specific regulations
 - cooperative (voluntary) arrangements between domestic and foreign conformity assessment bodies;
 - the use of accreditation to verify the technical competence of conformity assessment bodies
 - unilateral recognition of results of foreign conformity assessment procedures
 - supplier's declaration of conformity
- provides for regulatory cooperation mechanisms, including regulator to regulator dialogues and working groups.

Transparency, information exchange and technical consultation

Promotes and supports transparency of, as well as information exchange and consultation on, technical regulations, standards and conformity assessment procedures, for example:

- provides for direct exchange among the parties of some or all notifications made under the WTO TBT Agreement (e.g. through the WTO TBT Enquiry Point);
- promotes exchanges of information on:
 - respective regulatory regimes, including technical regulations, standards and conformity assessment procedures; and
 - the accreditation procedures of conformity assessment bodies, including criteria for assessing the technical competence of conformity assessment bodies
- provides for discussions on such matters as the technical competence of relevant conformity assessment bodies and the criteria used to evaluate competence (if these are not in accordance with international standards or guidelines)

- provides for consultation on specific issues relating to technical regulations, standards and conformity assessment procedures and compliance measures, for example how a technical regulation addresses identified objectives, what considerations are factored into its development (e.g. risk assessment, cost benefit analysis, consideration of alternatives etc)
- provides for explanations by a party of its reasons for:
 - not recognising a technical regulation of the other party as equivalent
 - not accepting the results of a conformity assessment procedure performed in the other party's territory.

Mutual understanding, co-operation, technical assistance and capacity building

Sets out a framework to support the parties' mutual understanding of their respective approaches to technical regulations, standards and conformity assessment procedures and to support deeper co-operation and capacity building in this area, including, for example:

- provides for targeted technical assistance, regulatory co-operation and capacity building in areas such as the development and implementation of technical regulations, standards, conformity assessment procedures, regulatory reviews and the development and implementation of risk management principles in line with good regulatory practice
- provides for co-operation and capacity building between standards and conformance bodies, including in the context of their participation in relevant international fora
- provides for joint initiatives between the parties, including co-operation and co-ordination of respective compliance measures;
- provides for the establishment of work programmes to address specific issues;
- establishes an enhanced exchange of information between regulators, such as notification of unsafe products (i.e. hazard alerts).

Cooperation in the development of international standards

Provides for the parties to consult and exchange views on matters under discussion in relevant international or regional bodies that develop standards, guidelines, recommendations, or policies relevant to this chapter.

Contact points/chapter coordinators/joint committee

Sets out the framework for implementation of the chapter:

- establishes contact points/chapter coordinators for each party and/or a joint committee responsible for co-ordinating and monitoring the implementation of activities under the chapter, including for example:
 - exchanging information between the parties on specific standards, technical regulations and conformity assessment procedures, as well as other information on regulatory regimes
 - considering specific issues arising under the chapter (through working groups as required), including any issue that may arise in the development, adoption, application or enforcement of standards, technical regulations or conformity assessment procedures

- co-ordinating participation in, and monitoring the progress of, any agreed work programmes and other joint activities
 - enhancing co-operation in the development and improvement of technical regulations, standards and conformity assessment procedures
 - facilitating sectoral co-operation between governmental and non-governmental bodies
- provides for consultations among the parties on any issue arising under the chapter
 - when a party requests consultations the parties shall make every effort to attain a mutually satisfactory solution within a reasonable time period, which may be agreed between them
 - the parties can specify the relationship between such consultations and the dispute settlement provisions of the agreement.

Sectoral annexes and implementing arrangements

Sets out additional mechanisms as required for implementation of the chapter, for example:

- provides for the conclusion of sectoral annexes within the chapter, setting up concrete initiatives to further ease technical barriers in identified key sectors
- provides for the conclusion of implementing arrangements which set out the details for the implementation of the sectoral annexes, where appropriate.

TRANSPARENCY

General considerations relevant to this chapter

- the purpose of a transparency chapter is to facilitate the administration and smooth operation of a free trade agreement (FTA) through designating contact points in each of the parties to the agreement to facilitate communication on matters arising under the FTA and by reiterating the parties' commitment to transparency and due process regarding matters covered by the FTA
- these elements may be supplemented by other more specific provisions in individual chapters
- this chapter, similar to other chapters of a general or institutional nature, must be read in light of the whole agreement, given that other provisions (e.g., general or chapter-specific exceptions) may apply to specific provisions of this chapter.

Contact points

Establishes contact points to facilitate communications

- the parties designate, within a specified period of time of the FTA coming into force, a contact point to facilitate communications on any matter covered by the agreement
- on the request of another party the contact point identifies the offices or officials responsible for the matter covered by the agreement and assists, as necessary, in facilitating the communication between these offices or officials and the requesting party.

Publication*

Describes the range of instruments to be made available publicly

- the parties publish promptly or otherwise make available laws, regulations, procedures, and administrative rulings of general application** respecting any matter covered by the agreement in such a manner as to enable interested persons and the other party (or parties) to become acquainted with them
- to the extent possible, the parties publish any such measures being proposed in advance and provide a reasonable opportunity for interested persons and the other party (or parties) to comment on such proposed measures

*Examples of a publication could be an official government gazette of publication or an appropriate official government website.

**Administrative ruling of general application means an administrative ruling or interpretation that applies to all persons and situations falling generally within its ambit, and that establishes a norm of conduct. It does not include a ruling that applies to a particular person, good or service of the other Party in a specific case or a ruling that adjudicates with respect to a particular act or practice.

Notification and provision of information

Facilitates the exchange of information on measures affecting the agreement

- the parties notify each other to the maximum extent possible of any actual or proposed measure that may materially affect the operation of the agreement or otherwise substantially affect another party's interests under the agreement
- upon request from a party, the other party promptly provides information and responds to

questions concerning any actual or proposed measures whether or not the other party has been previously notified of the measure

- notification or information provided under this section can be considered without prejudice to the question of whether any proposed measure is inconsistent with the agreement
- any notification, request, or information provided under this section should be conveyed to the other party through their contact point.

Administrative proceedings

Sets out the approaches to administrative procedures

- the parties strive to administer in a consistent, impartial, and reasonable manner all measures of general application affecting matters covered by the agreement
- in administrative proceedings applying measures referred to in the section on publication to persons, goods, or services of another party to the agreement, each party, wherever possible, provides reasonable notice to persons affected by such a proceeding when that proceeding is initiated and affords such persons a reasonable opportunity to present their case before any final administrative action
- when a proceeding is initiated, reasonable notice includes a description of the nature of the proceeding, a statement of the legal authority of the proceeding, and a general description of any issues of controversy
- proceedings follow procedures in accordance with domestic laws.

Review and appeal

Defines the conditions required for prompt review and correction of final administrative actions

- the parties establish or maintain judicial, quasi-judicial or administrative tribunals or procedures for the purpose of the prompt review and, where warranted, correction of final administrative actions regarding matters covered by the agreement
- tribunals are impartial and independent of the office or authority entrusted with administrative enforcement and do not have any substantive interest in the outcome of the matter
- the parties to the agreement ensure that in any such tribunals or procedures, the parties to the proceeding are provided the right to a reasonable opportunity to support or defend their respective positions
- the parties ensure that the parties to the proceedings are given a decision based on the evidence and submissions of record or, where required by domestic law, the record compiled by the administrative authority
- the parties ensure that such decisions are implemented by, and shall govern the practice of, the office or authority with respect to the administrative action at issue, subject to appeal or further review as provided in their domestic laws.

GOVERNMENT PROCUREMENT

These model measures build on the APEC Non-Binding Principles on Government Procurement and Transparency Standards on Government Procurement.

Application of Agreement

Defines the extent to which government purchases are covered by the agreement

- clearly specifies coverage of government procurement obligations through the use of value thresholds, positive lists of entities, positive or negative lists of goods and services.

Exceptions

Outlines exceptions to the chapter

- text includes any national security, public interest, and health and environmental protection exceptions.
- measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between the parties where the same conditions prevail or a disguised restriction on trade between the parties

National treatment and non-discrimination

Establishes the requirement for non-discrimination

- with respect to any measure covered by this chapter each party provides to the other party's goods, services and suppliers of such goods and services treatment no less favourable than the treatment it provides to its domestic goods, services and suppliers.
- also extends to prohibit or limit indirect forms of discrimination.

Procurement methods

Establishes the procurement procedures to be followed

- procure by means of open tendering
- allows for the use of other tendering methods under specified circumstances.

Time periods

Sets agreed time periods for the tendering process

- provides suppliers with sufficient time to prepare and submit responsive tenders or applications to participate in a procurement.

Treatment of tenders and contract awards

Ensures the tender process is impartial and transparent

- guarantee fairness, impartiality and confidentiality
- award contracts on the basis of requirements and evaluation criteria specified in the tender documentation.

Technical specifications

Describes the requirements for technical specifications

- do not adopt technical specifications that create unnecessary obstacles to international trade
- where appropriate specify technical specifications in terms of performance and function, rather than design or descriptive characteristics, and base them on recognized international standards, where these are available, otherwise national standards.

Conditions for participation

Identifies conditions required for a supplier to participate

- limits conditions to those that are essential to ensure that a supplier has the legal, technical and financial abilities to undertake the procurement
- judges supplier capacity on basis of its activities in the territory of the party of the supplier as well as its global activities.

Publication of procurement information

Describes the type of information made publicly available

- makes publicly available all laws, regulations, and policies and procedures of general application relating to government procurement.

Publication of notices

Sets out the requirement to publish notices

- publish notices of intended and planned procurements.

Information on intended procurements

Describes the information required to be supplied to interested suppliers

- provide sufficient information to enable suppliers to submit responsive tenders or applications to participate in a procurement
- make tender documentation available promptly to all interested suppliers or to all suppliers who have qualified to participate in a procurement.

Transparency of contract awards

Establishes the requirement for transparency

- promptly publish contract award notices, giving brief details of the procurement and supplier.

Disclosure of information

Describes the ambit of information to be made available

- provides information necessary to determine whether a procurement was conducted fairly, impartially and in accordance with the agreement

- makes debriefing of individual unsuccessful suppliers available on request
- does not disclose information that might prejudice fair competition or would otherwise be contrary to the public interest.

Records

Describes the requirement for maintaining records

- maintain and make available for purposes of review records documenting procurement process and decisions.

Domestic review procedures for supplier challenges

Sets out the framework of review procedures available to challenge procurement decisions

- provide a timely, effective, transparent and non-discriminatory administrative or judicial review procedure through which a supplier may challenge procurement decisions.

Ensuring integrity in procurement practices

Sets out the framework that ensures the integrity of the procurement process

- provides for criminal or administrative penalties to address corruption in government procurement
- has in place procedures to address and avoid conflict of interest on the part of those engaged in or having influence over a procurement
- provides for the exclusion of a supplier engaged in fraudulent or illegal actions from participating in procurement.

Use of electronic communications

Encourages parties to establish or maintain an electronic system for information and communications on their procurement process and tendering opportunities

- make best efforts to establish or maintain an electronic system to provide access to notices of intended procurement, tender documentation, and procurement information.

COOPERATION

General considerations relevant to this chapter

- a cooperation chapter, although optional in an RTA/FTA, can help add value to such an agreement by enhancing the “partnership” aspect of the agreement.
- such a chapter may prove beneficial in cases of RTAs/FTAs between parties with different levels of development
- the following outline of a possible cooperation chapter is not exhaustive.

Structure

- the cooperation chapter may comprise a framework section and annex/es or it may be addressed in a two-tier structure consisting of a basic agreement and an implementing one
- the framework section or the basic agreement could set out fields for potential cooperation and rules of general application for cooperation in all fields, while the annexes or the implementing agreement describe details in each field of cooperation such as scopes, forms, mechanisms and specific activities
- this structure should not prevent the possibility of including in individual chapters cooperation provisions that are relevant to their implementation.

Basic principles and objectives

Sets out basic principles and objectives of the chapter

- examples of basic principles include mutual benefit and equal partnership
- examples of objectives include:
 - facilitation and expansion of trade and investment
 - promotion of sustainable economic development
 - participation of the private sector
 - enhancement of the livelihood of the peoples of the parties and their respective regions
 - building on existing cooperative relationships
 - deepening partnerships and cooperation between the parties, and
 - contributing to the objectives of the agreement.

Fields of cooperation

Outlines fields of cooperation as may be agreed upon by the parties for future consideration of specific activities

- examples of the fields of cooperation include:
 - agriculture, forestry and fisheries

- education and human resources development
 - enhancement of business environment
 - financial services
 - information and communications technology (ICT)
 - intellectual property rights protection and enforcement
 - science, technology, and energy
 - small and medium enterprises
 - tourism
 - trade and investment promotion
 - environment
 - labour
- the parties may agree to consider including new fields of cooperation in the future.

Areas and forms of cooperation

Outlines possible areas and forms of cooperation in each field of cooperation

- areas and forms of cooperation depend on specificities of each field of cooperation
- examples of areas of cooperation include
- human resources development
 - capacity-building or improvement of relevant standards or institutions
 - development, promotion or transfer of technologies
 - promotion of marketing and joint investment
- examples of forms of cooperation include
- exchange of views and information
 - exchange of personnel and experts
 - organizing seminars, workshops, meetings, training courses, internships
 - conducting joint activities, studies, research
 - development of networks among organizations and institutions
 - encouraging and facilitating cooperation between public and/or private bodies
- areas and forms of cooperation may be addressed in the annexes to the cooperation chapter or in a separate implementing agreement.

Implementation of cooperation

Sets out a general framework for implementation of the chapter

- cooperation is conducted in accordance with the laws and regulations of the parties
- cooperation is subject to availability of respective resources, and the parties may indicate their understanding as regards resources to be committed for implementation
- cooperation is conducted in a transparent manner that includes, as appropriate, participation of the public in implementing and developing cooperation activities.

Mechanisms

Sets up mechanisms to implement the chapter

- implementation of the chapter may be assigned to the joint body administering the agreement or to subsidiary committees, working groups and/or contact points, for all or each field of cooperation
- the functions and composition of any subsidiary bodies may be outlined, together with their relationship to other arrangements for administering the agreement
- the composition of a sub-committee includes descriptions on the sub-committee's co-chairs (by specifying the agencies and, where applicable, the level of the co-chairs) and representatives of other agencies concerned of the parties
- conditions are described for participation in meetings of a sub-committee by representatives of other entities with necessary expertise on or relevance to particular fields of cooperation, including the private sector
- functions of a sub-committee could include
 - reviewing and discussing issues concerning the effective implementation of cooperation
 - identifying and prioritizing areas and forms of cooperation
 - exchanging views and information on promotion and development of cooperation in the field concerned
 - identifying and recommending ways for further cooperation
 - reporting findings and making recommendations on issues related to the implementation and operation of the chapter
 - discussion other issues relating to the field of cooperation
 - carrying out other functions which may be delegated to it
- cooperation mechanisms may be addressed in the annexes to the cooperation chapter or in a separate implementing agreement.

DISPUTE SETTLEMENT

General considerations relevant to this chapter

Lists broadly some main considerations informing this chapter

- wherever possible the parties seek to resolve differences arising under the chapter through consultations
- dispute settlement procedures should be effective, efficient and transparent.

Scope and coverage

Describes the applicability of the chapter to the agreement

- the provisions of the dispute settlement chapter apply to disputes regarding the interpretation or application of the agreement, except as otherwise provided in the agreement
- the provisions of the dispute settlement chapter may address disputes regarding non-violation nullification or impairment
- the agreement describes clearly the different stages of a dispute settlement case and the timeframes for each.

Choice of forum

Sets out the options available to the parties for the selection of forum

- allows for a decision whether the dispute is to be addressed under the provisions outlined in the agreement or in some other forum, as long as both parties to the dispute are members of that forum.

Good offices, conciliation or mediation

Sets out methods of dispute resolution including good offices, conciliation and mediation between the parties to the agreement

- good offices, conciliation and mediation are procedures that are undertaken voluntarily if the parties involved so agree
- such procedures may begin at any time and be terminated at any time
- proceedings involving good offices, conciliation and mediation are confidential and without prejudice to the parties' rights in any other proceedings
- such proceedings may continue while the dispute goes to an arbitral tribunal established
- under the chapter, if the parties involved so agree.

Consultations

Sets out the framework for consultations under the agreement

- the parties agree to resolve differences wherever possible through consultations
- the chapter sets out procedures that encourage a consultative approach.

Arbitration Proceedings

Specifies the methods to be used for arbitration proceedings

- the chapter specifies when and how a party may request the appointment of an arbitrator or a panel of arbitrators
- the chapter details procedures for the appointment of arbitrators, including their qualifications and independence
- arbitration is conducted either under procedures outlined in the chapter or under the procedures established by a competent organisation
- the arbitration proceedings result in a report to the parties addressing the legal and factual issues raised in the dispute
- arbitration proceedings may be suspended or terminated at any time under the conditions outlined in the chapter.

Implementation

Sets out the framework for implementation of arbitral outcomes

- the parties implement the arbitral outcomes according to procedures outlined in the chapter, including possible consultations on the best way to do this
- the chapter specifies the actions open to the parties in cases where a party does not fully implement arbitral outcomes within a reasonable time or the parties are unable to reach a mutually satisfactory solution.

Expenses

Outlines the options for meeting the expenses of arbitral proceedings

- the chapter outlines the options for meeting the expenses available to the parties participating in arbitral proceedings, e.g. sharing equally or some other formula.

TRADE FACILITATION*

APEC Ministers Responsible for Trade at their meeting in Jeju on 2 and 3 June 2005 instructed Senior Officials to develop possible model measures on trade facilitation for RTAs/FTAs. Ministers agreed that transparency, consistency, release of goods, modernisation and paperless trading, risk management, cooperation, fees and charges, confidentiality, express shipments, review and appeal, penalties, and advance rulings should be core elements of the trade facilitation chapters of RTAs/FTAs in the region.

The following model measures respond to the instruction of Ministers. They build on the ***Best Practices for RTAs/FTAs*** adopted by APEC members in 2004. They are not exhaustive, but they are designed to help members give effect to the Best Practices and to contribute to the Bogor Goals by identifying RTA/FTA provisions that can facilitate trade and reduce transaction costs for business, bearing in mind the general APEC principle of voluntarism.

These model measures are not mandatory, but they are indicative examples to provide members with useful reference in negotiating RTAs/FTAs. They are a guide to the kind of provisions that might be included in the free-trade agreement, where appropriate. They will not prejudice the positions of members in their future negotiations either in the FTAs/RTAs or WTO.

Transparency

Regulates the accessibility of trade laws and regulations.

- publish trade-related laws, regulations and procedures and general administrative procedures in at least one accessible media or on the Internet
- publish in advance any regulations of general application governing customs matters that a party proposes to adopt, and give interested persons the opportunity to comment before their adoption
- provide contact points to address inquiries by interested persons concerning customs matters.

Impartial administration, consistency and predictability

Sets out the approaches to administration procedures.

- provide for impartial administration and enforcement of trade procedures
- rules and procedures relating to trade provide clear and precise procedural guidance and are applied in a consistent, predictable and uniform manner
- minimise the incidence and complexity of import and export formalities and simplify import and export documentation requirements
- relevant laws, regulations and policies seek to eliminate arbitrary or unnecessary procedural obstacles to international trade
- agencies responsible for import and export procedures coordinate their activities to minimise costs to business.

Release of goods

Sets out rules applying to release of goods.

* This chapter of the model measures was adopted in 2005. It is included here for ease of reference.

- goods are released at a location and within a time no longer than required to ensure compliance with the trade-related laws of each economy
- procedures are available to release goods upon payment of security where this is required to ensure that obligations are met
- simplified procedures for low-value or low-risk goods.

Modernisation and paperless trading

Usually at least an undertaking to rely as much as possible on modernisation and paperless trading.

- create a climate conducive to the modernisation of business procedures and adoption of new technologies
- use automated systems and electronic documentation based on international standard formats, where available and practicable
- consultation mechanisms for promoting greater exchange of electronic information are available.
- align procedures, documentation and data requirements related to the release of goods with international standards and recommended practices to the extent permitted by domestic laws and policies
- work towards establishing a “single window” mechanism for submission of required data.

Risk management

Usually an undertaking that the parties will rely on risk management to improve clearance times.

- encourage risk management systems (i) to concentrate on inspection of high-risk goods and facilitate the movement of low-risk goods and (ii) to provide for verification of origin.

Cooperation

Sets out the framework for cooperation between the authorities.

- advise the other party of significant changes to laws and policies related to the admission of goods and exchange other relevant information
- cooperate in eliminating unlawful activities in trade falling under the agreement
- provide technical assistance for activities covered by the model measures.

Fees and charges

Explains how the parties deal with administrative fees and charges.

- fees and charges connected with import and export of goods are limited to the approximate cost of the services rendered
- publish details of fees and charges connected with importation and exportation and post such information on the Internet
- periodically review and consolidate and reduce the number and diversity of fees and charges.

Confidentiality

Sets out rules on confidential information protection.

- protect confidential information and provide certainty regarding conditions for the dissemination and exchange of such information.

Express shipments

Sets out rules applying to express shipments.

- adopt express shipment procedures that will expedite clearance.

Review and appeal

Defines the conditions under which an exporter or importer may appeal against any decision by authorities against goods traded under the agreement.

- establish a framework for expeditious resolution of disagreements over decisions related to the import and export of goods
- provide for periodic review of their procedures related to the import and export of goods with a view to their further simplification and the development of further mutually beneficial arrangements to facilitate trade.

Penalties

Sets out rules on penalties for violation.

- measures are available for the imposition of civil or administrative penalties and criminal penalties, where appropriate, for violations of laws and regulations that relate to the import and export of goods.

Advance rulings

Permits exporters and importers to seek advice on classification and preferential treatment of a good to be traded.

- written advance rulings concerning tariff classification, country of origin, valuation, and advice on qualification as an originating good are available to importers, exporters and producers
- procedures for obtaining advance rulings are specified
- time limits for issuing advance rulings are specified, on the assumption that all the necessary information is submitted and correct
- advance rulings may be modified or revoked if they are based on errors in the information supplied or application of the law, or where there is a change in law consistent with the agreement, a change in a material fact, or a change in the circumstances on which the ruling is based
- authorities may decline to issue a ruling in specified circumstances.