
Negotiating free-trade agreements: a guide



Australian Government

Department of Foreign Affairs and Trade

2. The APEC best-practice principles

Aiming to produce the best possible agreement

The APEC best-practice principles for RTAs/FTAs are not binding on economies. But they will assist any economy seeking to negotiate an ambitious, outward-looking agreement consistent with the WTO rules and disciplines and the APEC goals and principles.

APEC Economic Leaders adopted a set of best-practice principles for free-trade and regional trade agreements at their meeting in Santiago on 20 and 21 November 2004.

These principles are meant to help APEC economies negotiate high-quality free-trade agreements designed to promote regional economic integration. The principles are not binding. Neither are they guidelines for economies for the content of a prospective agreement.

The purpose of the best-practice principles is to remind economies that if they intend to include certain provisions in an agreement, APEC best practice suggests that this could be done in a preferred manner.

The full text of the set of principles is:

Best Practice for RTAs/FTAs in APEC¹

RTAs/FTAs involving APEC economies can best support the achievement of the APEC Bogor Goals by having the following characteristics:

Consistency with APEC Principles and Goals

- They address the relevant areas in Part I (Liberalisation and Facilitation) of the Osaka Action Agenda (OAA), and they are consistent with its General Principles. In this way they help to ensure that APEC accomplishes the free trade and investment goals set out in the 1994 Bogor Leaders Declaration.
- They build upon work being undertaken by APEC.
- Consistent with APEC goals, they promote structural reform among the parties through the implementation of transparent, open and non-discriminatory regulatory frameworks and decision-making processes.

Consistency with the WTO

- They are fully consistent with the disciplines of the WTO, especially those contained in Article XXIV of the GATT and

¹ Regional Trade Arrangements (RTAs), Free Trade Agreements (FTAs, and other Preferential Arrangements

Article V of GATS.

- When they involve developing economies to whom the Enabling Clause applies, they are, whenever possible, consistent with Article XXIV of the GATT and Article V of the GATS.

Go beyond WTO commitments

- In areas that are covered by the WTO, they build upon existing WTO obligations. They also explore commitments related to trade and investment in areas not covered, or only partly covered, by the WTO. By doing so, APEC economies are in a better position to provide leadership in any future WTO negotiations on these issues.

Comprehensiveness

- They deliver the maximum economic benefits to the parties by being comprehensive in scope and providing for liberalisation in all sectors. They therefore eliminate barriers to trade and investment between the parties, including tariffs and non-tariff measures, and barriers to trade in services.
- Phase-out periods for tariffs and quotas in sensitive sectors are kept to a minimum, and take into account the different levels of development among the parties. Thus, they are seen as an opportunity to undertake liberalisation in all sectors as a first step towards multilateral liberalisation at a later stage.

Transparency

- By making the texts of RTAs/FTAs, including any annexes or schedules, readily available, the parties ensure that business is in the best position to understand and take advantage of liberalised trade conditions. Once they have been signed, agreements are made public, in English wherever possible, through official websites as well as through the APEC Secretariat website.
- Member economies notify and report their new and existing agreements in line with WTO obligations and procedures.

Trade facilitation

- Recognising that regulatory and administrative requirements and processes can constitute significant barriers to trade, they include practical measures and cooperative efforts to facilitate trade and reduce transaction costs for business consistent with relevant WTO provisions and APEC principles.

Mechanisms for consultation and dispute settlement

- Recognising that disputes over implementation of RTAs/FTAs can be costly and can raise uncertainty for business, they include proper mechanisms to prevent and resolve disagreements in an expeditious manner, such as through consultation, mediation or arbitration, avoiding duplication with the WTO dispute settlement mechanism where appropriate.

Simple rules of origin that facilitate trade

- To avoid the possibility of high compliance costs for business, rules of origin (ROOs) are easy to understand and to comply with. Wherever possible, an economy's ROOs are consistent across all of its FTAs and RTAs.
- They recognise the increasingly globalised nature of production and the achievements of APEC in promoting regional economic integration by adopting ROOs that maximise trade creation and minimise trade distortion.

Cooperation

- They include commitments on economic and technical cooperation in the relevant areas reflected in Part II of the OAA by providing scope for the parties to exchange views and develop common understandings in which future interaction will help ensure these agreements have maximum utility and benefit to all parties.

Sustainable development

- Reflecting the inter-dependent and mutually supportive linkages between the three pillars of sustainable development – economic development, social development and environmental protection – of which trade is an integral component, they reinforce the objectives of sustainable development.

Accession of third parties

- Consistent with APEC's philosophy of open regionalism and as a way to contribute to the momentum for liberalisation throughout the APEC region, they are open to the possibility for accession of third parties on negotiated terms and conditions.

Provision for periodic review

- They allow for periodic review to ensure full implementation of the terms of the agreement and to ensure the terms continue to provide the maximum possible economic benefit to the parties in the face of changing economic circumstances and trade and investment flows. Periodic reviews help to maintain the momentum for domestic reform and further liberalisation by addressing areas that may not have been considered during the original negotiations, promoting deeper liberalisation and introducing more sophisticated mechanisms for cooperation as the economies of the parties become more integrated.