

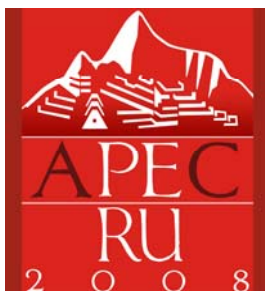


**Asia-Pacific
Economic Cooperation**

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International Law and the Role of APEC in the Governance of Economic Cooperation

Purpose: Information
Submitted by: Canada



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International Law and the Role of APEC in the Governance of Economic Cooperation within the Asia Pacific region

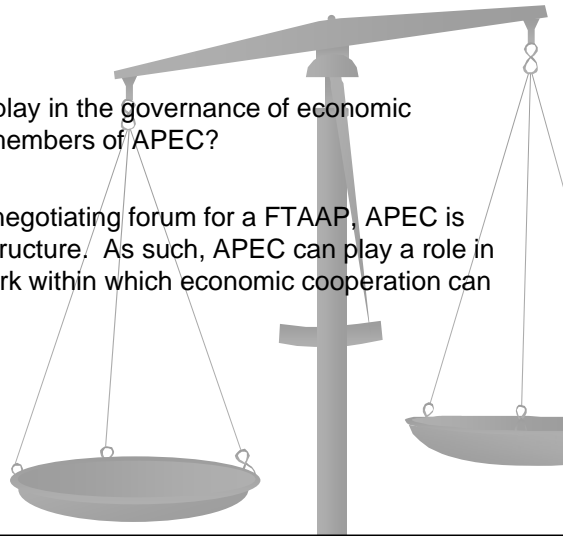
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The role of APEC in the Negotiation and Governance of a FTAAP

- APEC is a non-binding process of cooperation, rather than a forum for the negotiation of binding rules
- No direct role in negotiating and governing an FTAAP
- Governance role similar to that of the WTO in the governance of regional trading arrangements
 - providing a framework within which an RTA may be negotiated

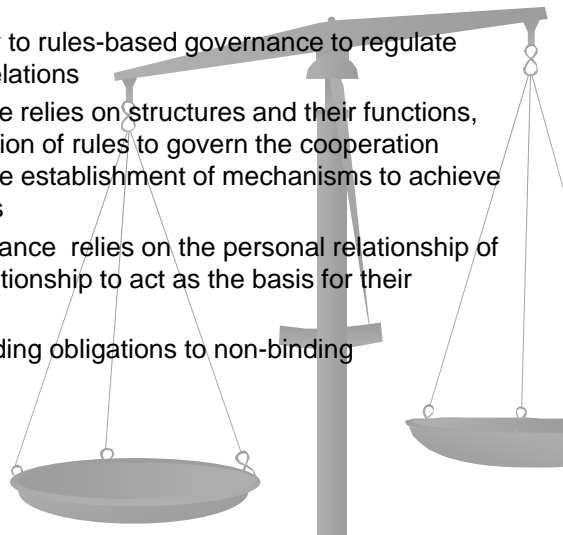
The Role of APEC in the Governance of Economic Cooperation

- What role should APEC play in the governance of economic cooperation among the members of APEC?
- Although APEC is not a negotiating forum for a FTAAP, APEC is part of the governance structure. As such, APEC can play a role in establishing the framework within which economic cooperation can take place.



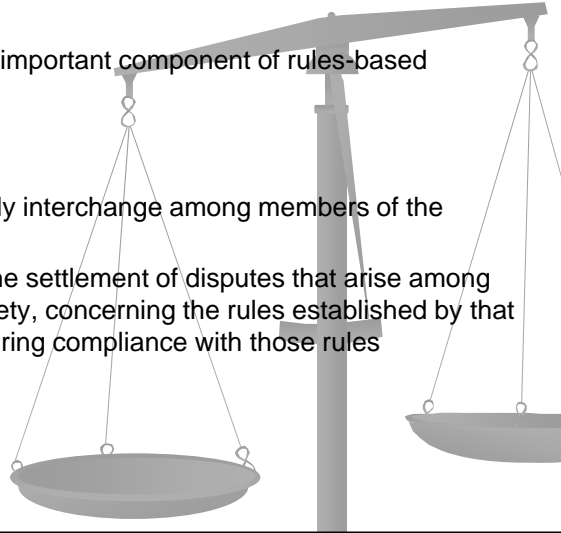
Rules-based Governance

- movement internationally to rules-based governance to regulate international economic relations
- 'Rules-based' governance relies on structures and their functions, and involves the negotiation of rules to govern the cooperation among the actors, and the establishment of mechanisms to achieve compliance with the rules
- 'Relations-based' governance relies on the personal relationship of the parties within the relationship to act as the basis for their cooperation
- Rules may vary from binding obligations to non-binding commitments



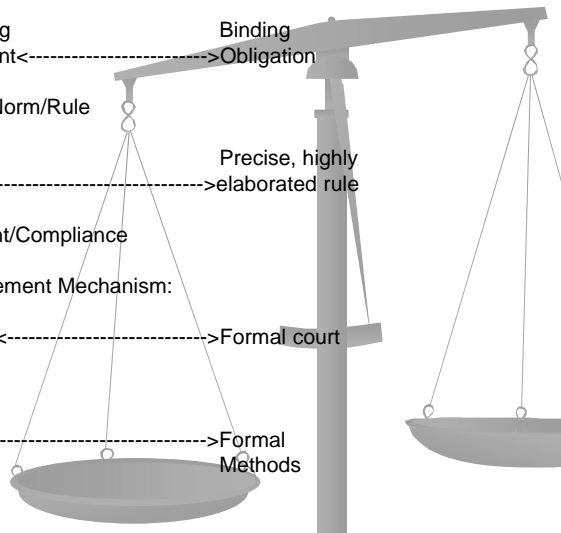
Relation of Rules-Based Governance and the Legal System

- A legal system is a very important component of rules-based governance
- A legal system provides
 - 1) rules for the orderly interchange among members of the society, and
 - 2) mechanisms for the settlement of disputes that arise among members of the society, concerning the rules established by that society, and for ensuring compliance with those rules



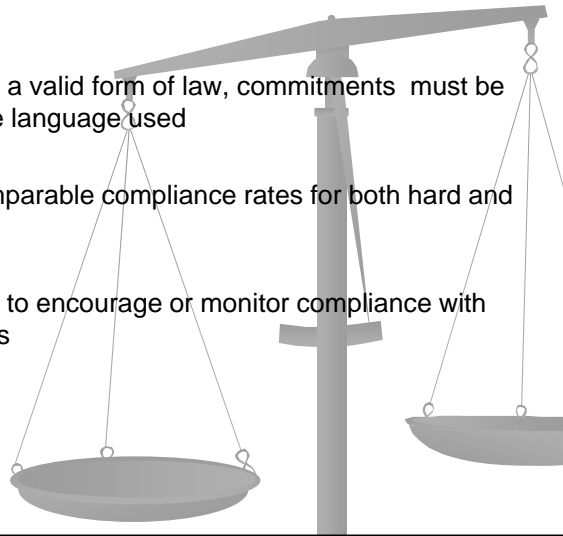
'Hard Law' and 'Soft Law'

- 1. Rule generation:
 - Type of Norm/Rule:
 - Non-binding Commitment <-----> Binding Obligation
 - Precision of Norm/Rule
 - Vague Principle <-----> Precise, highly elaborated rule
- 2. Dispute Settlement/Compliance
 - Dispute Settlement Mechanism:
 - Diplomacy <-----> Formal court
 - Compliance
 - Informal Methods <-----> Formal Methods



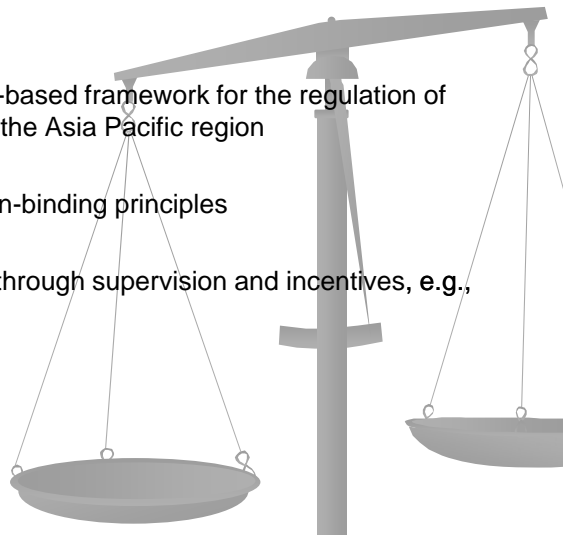
Compliance

- In order to be considered a valid form of law, commitments must be complied with despite the language used
- The evidence shows comparable compliance rates for both hard and soft law
- Managerial approaches - to encourage or monitor compliance with non-binding commitments



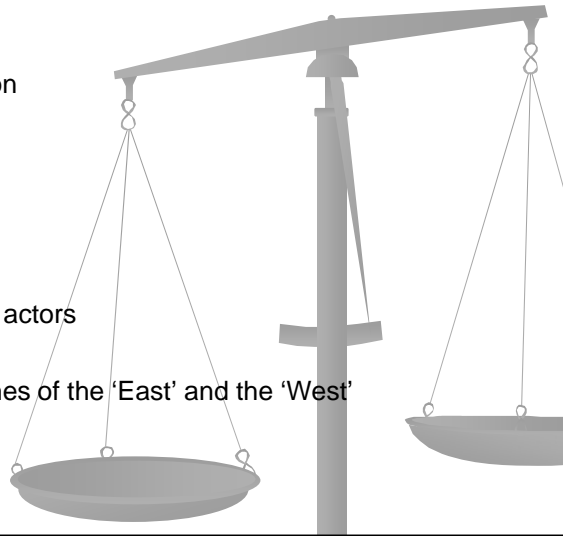
APEC's Role

- APEC is part of the rules-based framework for the regulation of economic cooperation in the Asia Pacific region
- Formulates voluntary, non-binding principles
- Managing commitments through supervision and incentives, e.g., peer review



Advantages of 'Soft Law' Approach to Governance

- flexibility and diversity
- possibility of differentiation
- sovereignty issues
- more progressive norms
- participation of non-state actors
- reconciling the approaches of the 'East' and the 'West'



Conclusion

- APEC should remain focused on what it can do, rather than what it has not been designed to do
- In order for states to converge in economic cooperation, it is necessary to have a system of rules to guide their conduct
- Although regionalism requires a strong international legal framework, this framework should not be restricted to 'hard' law, but should utilize 'soft' law where appropriate or necessary
- The voluntary, non-binding approach constitutes APEC's unique strength, and comparative advantage, and APEC should focus its efforts where its comparative advantage lies

