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THE MANDATE AND OPERATIONAL APPROACH OF THE ASIA–PACIFIC ECONOMIC COOPERATION

ZHOU YONG^a

^a*Belarusian State University, 4 Niezaliezhnasci Avenue, Minsk 220030, Belarus*

Abstract. Established in 1989, the Asia–Pacific Economic Cooperation (APEC) facilitates economic cooperation and integration among its 21 member economies. Unlike other regional international organisations, APEC employs a consensus-driven, non-binding framework. Nevertheless, it effectively advances regional free trade. This paper examines APEC’s mandate and competence, contrasting its voluntary approach with the binding frameworks of organisations like the EU and ASEAN. It argues that APEC’s efficacy derives from its flexibility, reliance on voluntary action plans, and use of soft law instruments, which support regional alignment while respecting national sovereignty. The paper concludes that institutionalising capacity-building initiatives, particularly in domains such as digital trade and environmental sustainability, could strengthen APEC’s ability to respond to contemporary economic challenges without resorting to binding commitments.

Keywords: Asia–Pacific Economic Cooperation; mandate; non-binding framework; international organisation competence.

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Автор:

Чжоу Юн – аспирант кафедры международного права факультета международных отношений. Научный руководитель – кандидат юридических наук, доцент Н. О. Мороз.

Author:

Zhou Yong, postgraduate student at the department of international law, faculty of international relations. 774304512@qq.com

ПОЛНОМОЧИЯ И СПЕЦИФИКА ДЕЯТЕЛЬНОСТИ АЗИАТСКО-ТИХООКЕАНСКОГО ЭКОНОМИЧЕСКОГО СОТРУДНИЧЕСТВА

ЧЖОУ ЮН¹⁾

¹⁾Белорусский государственный университет, пр. Независимости, 4, 220030, г. Минск, Беларусь

Аннотация. Азиатско-Тихоокеанское экономическое сотрудничество (АТЭС) – региональная международная организация, созданная 21 государством в 1989 г. в целях интеграции и развития экономического взаимодействия. В отличие от других региональных международных организаций АТЭС функционирует на основе консенсуса и приглашений, не имеющих обязательной юридической силы, что, однако, не снижает эффективности деятельности организации по развитию свободной торговли в регионе. В данной работе мандат и компетенции АТЭС сравниваются с мандатами и компетенциями таких региональных объединений, как ЕС и АСЕАН, в большей степени основанных или функционирующих на базе юридически обязывающих норм. Показывается, что эффективность работы АТЭС обусловлена гибкостью ее подходов, преимущественным использованием программ действия, реализуемых на добровольных началах, применением инструментов мягкого права, обеспечивающих региональную координацию при сохранении национального суверенитета каждого участника. Делается вывод о том, что институционализация инициатив по наращиванию потенциала (особенно в таких областях, как цифровая торговля и экология) создаст предпосылки для повышения способности АТЭС гибко реагировать на современные экономические вызовы без использования юридически обязывающих механизмов.

Ключевые слова: Азиатско-Тихоокеанское экономическое сотрудничество; мандат; необязательные рамки; компетенция международной организации.

Introduction

The Asia–Pacific Economic Cooperation (APEC), established in 1989, is a regional international organisation dedicated to promoting of economic cooperation and integration across the Asia–Pacific region. Its 21 member economies share a core mandate: to foster free and open trade, enhance economic integration, and encourage sustainable and inclusive growth¹. Unlike many comparable regional international organisations (RIOs), APEC operates on a non-binding, consensus-based model and imposes no legal obligations on its members. This flexible approach accommodates the diverse economic and political contexts of its members, from highly developed economies such as the US and Japan to developing economies including China and Vietnam². While this flexibility is advantageous, introducing minimal enforcement mechanisms could improve member state compliance with organisational decisions, particularly regarding digital trade standards and environmental commitments. R. E. Feinberg, for example, contends such mechanisms could foster greater accountability while preserving flexibility [1, p. 137].

APEC's economic impact and policy initiatives have received substantial scholarly attention³. P. A. Petri, notably, offers detailed analysis of its influence on regional

investment flows [2]. Scholarship has extensively examined seminal APEC policy instruments like the 1994 Bogor declaration⁴ and the 1995 Osaka action agenda⁵. P. Drysdale and S. Armstrong [3] analyse these documents as defining moments in APEC's development, stressing their function in setting a long-term vision for open regionalism. Complementing this perspective, J. Ravenhill [4] and M. Beeson [5] investigate APEC's institutional architecture, characterising it as a model of «soft regionalism» that advances economic cooperation without supranational legal structures.

Despite this substantive economic and institutional research, APEC's mandate and the consequences of its non-binding framework remain understudied within legal scholarship. While legal-institutional approaches have been rigorously applied to organisations such as the EU and ASEAN (notably by M. Cini and N. P.-S. Borraran [6]), comparable scrutiny of APEC's legal capacity, institutional authority, and normative power is scarce. U. Aimsiranun [7] offers a valuable comparative analysis of APEC's structural flexibility relative to the EU and ASEAN, yet this work does not comprehensively address APEC's internal or external competences from a legal perspective.

¹About APEC [Electronic resource]. URL: <https://www.apec.org/about-us/about-apec> (date of access: 15.10.2024).

²APEC in Charts-2023 [Electronic resource]. URL: <https://www.apec.org/publications/2023/11/apec-in-charts-2023> (date of access: 15.10.2024).

³APEC regional trends analysis [Electronic resource]. URL: <https://www.apec.org/publications/2024/03/apec-regional-trends-analysis-february-2024> (date of access: 15.10.2024).

⁴1994 Leaders' declaration [Electronic resource]. URL: https://www.apec.org/meeting-papers/leaders-declarations/1994/1994_aelm (date of access: 15.10.2024).

⁵Osaka action agenda [Electronic resource]. URL: https://www.apec.org/docs/default-source/publications/1995/12/osaka-action-agenda-1995/95_esc_oaa.pdf?sfvrsn=f2d0cd5b_1 (date of access: 15.10.2024).

Although some aspects of APEC's legal-institutional dimensions have been addressed, a focused legal analysis of its mandate is still lacking in the academic literature.

This research, therefore, undertakes a detailed examination of APEC's mandate. It explores how the organisation's emphasis on voluntary economic integration and cooperative regionalism distinguishes it from other

RIOs. Specifically, the study investigates how APEC's mandate is constituted and how this formation affects the organisation's ability to implement effective policy across its diverse membership. Through this analysis, the paper clarifies APEC's core objectives and its strategic approach to advancing economic growth, trade liberalisation, and regulatory harmonisation within the Asia–Pacific region.

APEC's mandate

APEC's core purpose is to advance free and open trade and investment among its diverse Asia–Pacific member economies⁶. The Bogor goals of 1994 embody this commitment, establishing targets for achieving free trade and investment by 2020 for industrialised economies and by 2040 for developing ones. The Osaka action agenda translates these goals into practice through liberalisation, facilitation, and technical cooperation. These priorities are reinforced annually in APEC leaders' declarations, which outline strategies for deepening economic integration and trade facilitation. Unlike formalised RIOs such as the EU or the ASEAN, APEC functions through non-binding agreements and voluntary participation. While this approach offers flexibility, it differs from the EU's supranational governance model, which imposes uniform policies via legally enforceable obligations [6, p. 99]. ASEAN coordinates regional economic cooperation following the EU model and seeks to establish a fully operational ASEAN Economic Community⁷. Nevertheless, ASEAN remains a conventional RIO, serving as a forum for international cooperation rather than integration.

APEC's primary objective, articulated in the Bogor goals, is to advance trade and investment liberalisation. Developed member economies targeted free trade and investment by 2010, with aiming for 2020 developing counterparts⁸. This commitment focuses on dismantling trade barriers, reducing tariffs, and improving market access to create a more integrated regional economy⁹. The EU, conversely, mandates binding commitments under the Treaty on the functioning of the European Union, ensuring policy uniformity¹⁰. Conse-

quently, the EU's single market achieves greater integration than APEC's framework, where members retain sovereign control over trade policy. Similarly, ASEAN's Economic Community seeks a single market and production base¹¹, but implementation hurdles persist, partly due to significant disparities in economic development among members.

A key element of APEC's work involves simplifying trade regulations and strengthening regulatory coherence. Part one, section C of the Osaka action agenda specifically advocates harmonising customs procedures and documentation to facilitate smoother trade flows. Part one, section D of this document also stresses enhancing trade policy transparency, providing businesses with greater certainty for cross-border operations. The EU typically accomplishes such harmonisation through binding regulations and directives¹². APEC, lacking equivalent enforcement powers, relies instead on peer influence and voluntary compliance with agreed standards. ASEAN has advanced in regulatory alignment but supplements this, unlike APEC, with legal instruments such as the ASEAN Trade in goods agreement to underpin implementation¹³.

Business facilitation is fundamental to APEC's mandate. Initiatives such as the APEC business travel card streamline visa procedures for business travellers, fostering deeper economic integration¹⁴. Complementing this, APEC advances regulatory coherence, working to align standards and regulations across member economies. This reduces compliance burdens and trade barriers, commitments reinforced by the 2011 APEC Leaders' declaration¹⁵. The APEC regulatory cooperation

⁶About APEC [Electronic resource]. URL: <https://www.apec.org/about-us/about-apec> (date of access: 16.10.2024).

⁷Significance of the ASEAN Charter [Electronic resource]. URL: <https://asean.org/asean-charter/> (date of access: 16.10.2024).

⁸1994 Leaders' declaration. Paras 6–8 [Electronic resource]. URL: https://www.apec.org/meeting-papers/leaders-declarations/1994/1994_aelm (date of access: 15.10.2024).

⁹Ibid. Paras 9–11.

¹⁰Treaty on the functioning of the European Union. Art. 288 [Electronic resource]. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12016ME/TXT&from=EN> (date of access: 16.10.2024).

¹¹About AEC [Electronic resource]. URL: <https://investasean.asean.org/asean-economic-community/view/670/newsid/755/about-aec.html> (date of access: 16.10.2024).

¹²Implementing EU law [Electronic resource]. URL: https://commission.europa.eu/law/application-eu-law/implementing-eu-law_en (date of access: 16.10.2024).

¹³ASEAN Trade in goods agreement [Electronic resource]. URL: <https://asean.org/wp-content/uploads/2020/12/ASEAN-Trade-in-Goods-Agreement.pdf> (date of access: 16.10.2024).

¹⁴APEC business travel card. Section 2 [Electronic resource]. URL: <https://www.apec.org/groups/committee-on-trade-and-investment/business-mobility-group/abtcc> (date of access: 16.10.2024).

¹⁵2011 Leaders' declaration [Electronic resource]. URL: https://www.apec.org/meeting-papers/leaders-declarations/2011/2011_aelm (date of access: 16.10.2024).

advancement mechanism, established in 2011, specifically targets these objectives¹⁶. Analysis within the APEC economic policy report of 2013 examines regulatory practices and identifies governance improvements¹⁷, while the APEC Business Advisory Council report of 2015 advocates for regulatory alignment and capacity-building¹⁸ to strengthen the business climate. These activities build upon the foundational framework provided by the Osaka action agenda. Further embedding this approach, the APEC Services competitiveness roadmap (2016–2025) commits members to coherent regulation, underpinning a supportive business environment¹⁹. Dedicated dialogues and capacity-building initiatives continuously improve regulatory implementation among members.

While economic cooperation and trade facilitation are APEC's principal concerns, the organisation also addresses financial stability. The APEC finance ministers' process promotes collaboration between finance ministries and central banks, strengthening financial oversight and market resilience²⁰. Emphasising inclusive and sustainable systems as vital for economic security²¹, the APEC Strategy for strengthening quality growth (2015–2020) is complemented by the APEC Framework for strengthening economic and financial resilience of 2017. This framework offers guidance to help eco-

nomies withstand both global and domestic financial shocks²².

APEC prioritises economic and technical cooperation (ECOTECH) to drive integration and development. ECOTECH programmes cover multiple sectors, promoting sustainable expansion and narrowing economic disparities. A central focus is empowering small and medium-sized enterprises, particularly by improving their access to finance, markets, and technology²³. APEC fosters entrepreneurship and enhances business management capabilities. This enables medium-sized enterprises to participate more effectively in global supply chains, contributing significantly to broad-based economic growth. To address contemporary global challenges more effectively, APEC could expand its ECOTECH agenda to encompass critical areas such as sustainability and digital transformation. This strategic development would strengthen APEC's capacity to foster regional resilience and technological adaptation.

In summary, APEC advances free trade and investment through a flexible framework anchored by the Bogor goals and Osaka action agenda. Its non-binding structure fosters voluntary participation whilst enhancing regulatory coherence and transparency that are crucial elements for managing diverse economic development levels across member economies.

Internal competence

APEC employs a distinctive consensus-based decision-making process, producing non-binding outcomes. The EU, by contrast, exercises supranational authority: its institutions issue binding decisions on member states, and regulations apply directly without requiring national implementing legislation²⁴. Similarly, while ASEAN has established binding agreements in specific domains like trade, it lacks supranational authority.

APEC's distinctive approach facilitates adaptable responses to economic challenges and opportunities.

The APEC environmental goods list demonstrates this flexibility: members voluntarily committed to reducing tariffs on environmentally beneficial products, achieving substantial reductions despite the absence of legal compulsion²⁵. As F. M. A. Quimba and M. A. A. Barral [8, p. 61] note, this structure allows members to pursue initiatives that align with national priorities without mandatory compliance. Unlike organisations such as the AU, EU, or ECOWAS, however, APEC lacks defined legal consequences for non-adherence to its agreements.

¹⁶APEC regulatory cooperation advancement mechanism for trade-related standards and technical regulations [Electronic resource]. URL: <https://www.apec.org/docs/default-source/Publications/2010/11/2010-CTI-Annual-Report-to-Ministers/TOC/Appendix-4APEC-Regulatory-Cooperation-Process-Mechanism-on-TradeRelated.pdf> (date of access: 16.10.2024).

¹⁷APEC economic policy report [Electronic resource]. URL: https://www.apec.org/docs/default-source/publications/2013/10/2013-apec-economic-policy-report/2013_ec_aepr_fullrpt.pdf?sfvrsn=d63e1d22_1 (date of access: 16.10.2024).

¹⁸APEC Business Advisory Council report [Electronic resource]. URL: <https://en.rspp.ru/activity/cooperation/apec-business-advisory-council-abac/> (date of access: 16.10.2024).

¹⁹Annex B: APEC Services competitiveness roadmap (2016–2025) [Electronic resource]. URL: https://www.apec.org/meeting-papers/leaders-declarations/2016/2016_aelm/2016_annex-b (date of access: 16.11.2024).

²⁰Finance ministers' process [Electronic resource]. URL: <https://www.apec.org/groups/other-groups/finance-ministers-process> (date of access: 16.10.2024).

²¹APEC Strategy for strengthening quality growth [Electronic resource]. URL: https://www.apec.org/docs/default-source/publications/2020/11/apec-strategy-for-strengthening-quality-growth---final-assessment/220_psu_assqg-final-assessment-report.pdf?sfvrsn=ffb67418_1 (date of access: 16.10.2024).

²²Framework for strengthening economic cooperation and development [Electronic resource]. URL: https://www.apec.org/meeting-papers/annual-ministerial-meetings/1996/1996_amm/frameworkr_secd (date of access: 16.10.2024).

²³Small and medium enterprises working group strategic plan 2021–2024 [Electronic resource]. URL: https://www.apec.org/docs/default-source/Groups/SMEWG/20_smeWG50_030_r.pdf?la=en&hash=C68CF6917E54734C055F9CA8891173558669AC36 (date of access: 16.10.2024).

²⁴The international law of regional organizations: final report [Electronic resource]. URL: <https://www.ila-hq.org/en/documents/ila-study-group-regional-organisations-final-report-may-24> (date of access: 16.01.2024).

²⁵Consensus framework resource guide [Electronic resource]. URL: https://www.apec.org/docs/default-source/publications/2024/3/224_sme_consensus-framework-guide.pdf?sfvrsn=8bbcdecc_2 (date of access: 16.10.2024).

Non-binding declarations, including the APEC Economic leaders' declaration, establish collective priorities and strategic directions. The 2023 declaration, for example, emphasised commitments on the digital economy, sustainable growth, and inclusive development, urging members to harmonise national policies with these shared objectives²⁶. Although not legally enforceable, such declarations carry considerable political weight and foster a sense of collective responsibility.

APEC implements its objectives through individual action plans and collective action plans. Individual action plans involve self-assessment reports where member economies detail progress towards trade and investment liberalisation targets, enhancing transparency through voluntary disclosure. Collective action plans involve collaborative initiatives among multiple member economies, focusing on areas such as regional supply chain connectivity while retaining flexibility in implementation²⁷.

APEC further develops regional guidelines and best practices through instruments like the APEC privacy framework, providing non-binding recommendations to harmonise privacy standards²⁸. Rather than imposing formal legal sanctions, the organisation employs peer review, mutual assistance, and capacity development to ensure accountability and establish a cooperative compliance system²⁹. Member economies voluntarily align policies with APEC guidelines, with progress monitored via regular assessment.

Mutual support is integral to APEC's operational model. Economies engage in technical assistance projects to help one another meet shared commitments, thereby enhancing the effectiveness of APEC's initiatives and reinforcing collective responsibility. By prioritising voluntary compliance and mutual support, APEC respects member diversity and sovereignty. The forum emphasises positive reinforcement, technical assistance, and capacity-building rather than penalising non-compliance.

APEC could strengthen these efforts by institutionalising capacity-building programmes, particularly for regulatory alignment, digital trade, and environmental standards. Formalised support structures would better address members' diverse needs and enhance the forum's impact.

APEC's soft law instruments and voluntary mechanisms thus balance national sovereignty with economic integration in the Asia–Pacific region. Focusing capacity development on digital and environmental domains leverages the forum's comparative strengths: it accommodates differentiated implementation paces, facilitates knowledge exchange, and aids domestic transitions without compromising sovereignty. Unlike transport or investment, often governed by bilateral treaties or broader frameworks like the WTO, digital trade and environmental governance are spheres where soft law and technical cooperation can achieve significant results absent binding commitments.

External competence

APEC's external competence encompasses aspects of international institutional law, including treaty-making capacity, organisational liaisons, and the handling of responsibility issues.

Unlike universal bodies, which address a wide range of global issues (UN), APEC concentrates exclusively on economic matters within the Asia–Pacific region. While APEC does not hold UN observer status, it has three official observers: the ASEAN Secretariat, the Pacific Economic Cooperation Council, and the Pacific Islands forum Secretariat³⁰. These bodies participate in APEC meetings and facilitate targeted initiatives that respond to member economies' specific requirements³¹.

APEC engages external partners primarily through cooperative projects and dialogues, avoiding formal treat-

ties. This approach enables swift adaptation to evolving economic conditions. Although this flexibility shares some similarities with informal collaborations such as those of the World Economic Forum, APEC remains distinct due to its regional scope and reliance on consensus-based decisions [7, p. 3].

The Vienna Convention on the Law of Treaties between States and International Organizations governs treaty-making for international organisations. APEC, however, chiefly employs non-binding commitments and declarations, reflecting its informal operational model that prioritises consensus and voluntary cooperation³². The diverse economic interests and priorities among APEC members make negotiating and implementing binding agreements challenging. Consequently, while

²⁶2023 Leaders' declaration [Electronic resource]. URL: <https://apec.sitefinity.cloud/meeting-papers/leaders-declarations/2023/2023-leaders-declaration> (date of access: 13.10.2024).

²⁷2018 APEC economic policy report [Electronic resource]. URL: <https://www.apec.org/publications/2018/11/2018-apec-economic-policy-report> (date of access: 13.10.2024).

²⁸APEC privacy framework [Electronic resource]. URL: [https://www.apec.org/publications/2017/08/apec-privacy-framework-\(2015\)](https://www.apec.org/publications/2017/08/apec-privacy-framework-(2015)) (date of access: 13.12.2024).

²⁹How APEC operates [Electronic resource]. URL: <https://www.apec.org/about-us/how-apec-operates> (date of access: 13.10.2024).

³⁰APEC observers [Electronic resource]. URL: <https://www.apec.org/about-us/how-apec-operates/apec-observers> (date of access: 13.10.2024).

³¹Intergovernmental and other organizations [Electronic resource]. URL: <https://www.un.org/en/about-us/intergovernmental-and-other-organizations> (date of access: 13.09.2024).

³²Vienna convention on the law of treaties between states and international organizations or between international organizations [Electronic resource]. URL: https://legal.un.org/ilc/texts/instruments/english/conventions/1_2_1986.pdf (date of access: 25.12.2024).

APEC shapes international economic policy discussions, it does not produce legally enforceable treaties [9, p. 171].

APEC membership criteria emphasise geographic location and a demonstrable commitment to regional economic cooperation, with admission requiring unanimous agreement among existing members [10]. Its interactions with both universal organisations (for example, the WTO) and regional bodies (for example, ASEAN)

centre on trade facilitation and infrastructure development. These collaborations aim to deepen economic integration and promote sustainable growth.

Responsibility for adhering to APEC initiatives lies with individual member economies. As an organisation possessing legal personality, APEC itself could theoretically face accountability under international law for violations, such as breaches of the UN Charter.

Conclusions

APEC's mandate is characterised by a voluntary, consensus-driven approach. Strategic initiatives such as the Bogor goals and the Osaka action agenda exemplify this framework, articulating APEC's objectives for trade and investment liberalisation, regulatory alignment, and sustainable development.

APEC's non-binding structure promotes inclusivity and adaptability, yet constrains the enforceability of collective agreements.

This article contends that institutionalising capacity-building programmes in digital and environmental fields offers a more effective approach for APEC than conventional treaty-based methods when addressing 21st-century challenges. APEC's structural flexibility and its members' political diversity render binding agreements both difficult to negotiate and challenging to implement.

Capacity-building in digital and environmental spheres exploits APEC's distinctive strengths: it accommodates differentiated implementation, facilitates knowledge exchange, and aids domestic transitions while respecting national sovereignty. Unlike sectors such as transport or investment typically governed by bilateral treaties or multilateral frameworks like the WTO digital trade and environmental governance benefit

significantly from soft-law approaches and technical cooperation. These methods can achieve substantial impact without requiring legally enforceable obligations.

Expanding the ECOTECH agenda to encompass digital transformation and sustainability would establish APEC as a regional innovator responsive to global priorities. Institutionalising these efforts requires dedicated funding, clearer performance metrics, and enhanced working group coordination. These measures would strengthen the predictability and efficacy of APEC's support and thus boost resilience and reduce capability disparities among members.

Finally, the analysis of APEC's external competence demonstrates that, despite lacking traditional treaty-making authority or binding external agreements, the organisation exercises significant normative influence. Its soft-law instruments, partnerships, and observer engagements shape regional economic governance without formal legal integration. These mechanisms allow APEC to contribute meaningfully to international economic cooperation. Rather than relying on legal authority, the organisation shapes norms, coordinates initiatives, and encourages voluntary convergence amongst economies with diverse legal and political systems.

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