

# **IMPLEMENTING THE APEC VISION**



**Third Report of the  
Eminent Persons Group  
August 1995**

**Implementing the APEC Vision  
Third Report of the Eminent Persons Group**

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**LETTER OF TRANSMITTAL  
TO THE LEADERS OF THE  
APEC MEMBER ECONOMIES**

The APEC Eminent Persons Group hereby transmits to you our third report. We have once again reached full consensus on our analyses, conclusions and recommendations. All EPG members, though appointed by our respective governments, are of course participating in the Group wholly in our individual capacities rather than as official representatives of APEC member economies.

In this report, we have attempted to fulfill the three mandates that you gave us in the Bogor Declaration of Common Resolve on November 15, 1994:

- In response to your request that we provide you “with assessments of the progress of APEC,” we convey our advice on what steps are needed at this year’s meetings in Osaka, and beyond, to sustain the momentum that you generated at Seattle and Bogor. We also present our first detailed assessment of a specific APEC initiative, the nonbinding investment principles agreed in November 1994.
- In response to your request for “further recommendations for stepping up our cooperation,” we have developed specific proposals for a number of initiatives encompassing trade liberalization, trade facilitation, and development and technical cooperation. We believe that some of these should be adopted at Osaka as part of the “down payment” on achieving the Bogor goals.
- In response to your call to “review the interrelationships between APEC and the existing subregional arrangements,” we include an extended analysis of those issues and conclude with proposals for “open subregionalism.”

At the direction of President Soeharto, last year’s APEC chairman, we worked closely throughout this year with APEC Ministers and Senior Officials and with the Pacific Business Forum (PBF) in elaborating our mandate from Bogor. We consulted especially frequently and extensively with the Senior Officials, particularly though their chair. At President Soeharto’s request, we orally conveyed a preliminary version of our views to the Senior Officials at their meeting in Sapporo in July 1995. We also exchanged views with the PBF to assure an effective division of labor between the efforts of the two advisory bodies.

With the addition of a member from Chile and an observer from Papua New Guinea, the EPG has come to include representatives of all APEC economies. Eight members have participated in the Group through all three years of its existence. It has been a great privilege for the EPG to be asked to prepare these reports, and thereby to be of service to APEC and to the peoples of the Asia Pacific region. We hope this latest effort will prove helpful as you plan for the meetings in Osaka and beyond, and we reaffirm our willingness to provide any assistance that we can to the continued evolution of this vitally important process.

Sincerely,

C. Fred Bergsten, Chairman (United States of America)  
Narongchai Akrasanee (Thailand)  
Jesus P. Estanislao (Republic of the Philippines)  
Victor K. Fung (Hong Kong)  
Lee Tsao Yuan (Singapore)  
John S. MacDonald (Canada)  
Suhadi Mangkusuwondo (Indonesia)  
Timothy Ong (Brunei Darussalam)  
Juan Salazar Sparks (Chile)  
Noordin Sopiee (Malaysia)  
Dryden Spring (New Zealand)  
Roberto Villa Martinez (Mexico)  
Neville Wran (Australia)  
Rong-I Wu (Chinese Taipei)  
Ippei Yamazawa (Japan)  
Jang Hee Yoo (Republic of Korea)  
Zhao Gongda (People’s Republic of China)

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## EXECUTIVE SUMMARY: IMPLEMENTING THE APEC VISION

This third report by the Eminent Persons Group (EPG) seeks to build on the bold initiatives undertaken by APEC Leaders at Seattle and Bogor. At Seattle in November 1993, APEC Leaders envisioned the creation of a community of Asia Pacific economies. At Bogor in November 1994, they adopted a timetable for the achievement of free and open trade and investment in the region that took into account the differing levels of development among the APEC economies. The APEC Leaders have undertaken these initiatives on the basis of their commitment to an open multilateral trading system and the concept of "open regionalism" while explicitly opposing the creation of inward-looking trading blocs.

APEC's present challenge is how to translate the vision embodied in these bold initiatives into a reality which is both meaningful to, and achievable for, its diverse membership. This third report by the EPG addresses this challenge with a strategy for commencing the implementation of the Bogor commitments. In developing this strategy we have been mindful of the need for APEC to proceed, in the words of the Bogor Declaration, "on the basis of equal partnership, shared responsibility, mutual respect, common interest and common benefit..."

The EPG is encouraged by the impressive progress of APEC to date. It played a major role in bringing the Uruguay Round to a successful conclusion in the GATT and thus in creating the World Trade Organization. It has agreed on a code of nonbinding investment principles. Its Economic Leaders meet annually. It has launched extensive work programs on a wide range of highly practical trade facilitation topics. Most importantly, its Bogor Declaration sets a clear objective for the future of the region.

We are deeply concerned, however, by the intensification of economic disputes in the region. The region is experiencing a growing number of rancorous trade conflicts, including several between its largest economies. There is a dangerous tendency to ignore multilateral norms and mechanisms despite a growing pluralism of economic and political capabilities that clearly calls for collective leadership. It is a matter of urgency for APEC to move promptly and decisively to implement the vision embodied in the Seattle and Bogor initiatives.

The Leaders and Ministers will begin this process at their meetings in Osaka in November 1995. They need to agree on the principles, agenda of issues and timetables that will guide the implementation process. They must also make a series of specific decisions on substantive issues that will provide a meaningful "down payment" on the journey toward the community of Asia Pacific economies adopted at Seattle and Bogor.

In doing so, we believe that the Leaders must answer four key questions. First, they have agreed on the goal of achieving a community of free and open trade and investment in the Asia Pacific. What can they do to translate this goal into practical reality? We believe that several steps are ripe for action.

The Bogor Declaration states that "We decided to accelerate the implementation of our Uruguay Round commitments..." The EPG believes APEC member economies should do so, as part of the "down payment" at Osaka, by adopting, wherever possible, a 50 percent rule that would apply to a menu of possible actions.

### The industrialized member economies could choose to:

- cut by half the period to phase in the reductions they have already committed to make in their tariff schedules and/or;
- accelerate the agreed reductions in their agricultural subsidies from six years to three years, and/or;
- increase by 50 percent the volume of imports covered in each of the succeeding stages of phasing out their import quotas on textiles and apparel.

### The developing member economies could choose to:

- cut by half the period to implement the new obligations they have already committed to accept regarding intellectual property rights and/or trade-related investment measures and/or;
- double the speed of implementing their agreed reductions in subsidies, and/or;
- cut in half the gaps between their bound and applied tariff rates.

The Leaders also agreed at Bogor "to undertake work aimed at **deepening and broadening the outcome of the Uruguay Round.**" We recommend several ways that they could do so, some of which **could also be included in the Osaka "down payment"**:

- **APEC should commit itself to address the problems associated with the abuse of antidumping policies.** Member economies should take full account of the interests of consumers and industrial users of imports, as well as import-competing firms and workers, in implementing antidumping policies. They should discourage frivolous antidumping initiatives. They should authorize their competition policy officials to challenge antidumping actions that run counter to the goals of competition policy.
- **APEC should agree to immediate cooperation between member economy authorities in implementing their present competition policies and launch an extensive study of the prospects for limiting unproductive differences between member economy competition policies over time.** Differences in member economy competition policies underlie some of the most important "trade disputes" in the region. These disputes could become even more serious in the future as individual member economies adopt new or more elaborated competition policies.
- **APEC should make an immediate contribution to trade facilitation by adopting a multifaceted program for product standards and testing.** The Leaders should commit their economies to adopt international product standards, ask the relevant business/private industries to develop standards for their sectors, and concentrate governmental efforts on working out Mutual Recognition Agreements (MRAs) on acceptance of test data and product certification in major regulated sectors.

APEC can also move toward implementing the Bogor commitment by **strengthening the nonbinding investment principles (NBIP) agreed in 1994 and applying them in practice.** Both goals can initially be accomplished through unilateral action by individual member economies. APEC as a group should subsequently seek to reach collective agreement on strengthening the principles. It should then convert the arrangement into a voluntary code, which members would accept as binding once they voluntarily agreed to adopt it in their own economies, and perhaps ultimately into an agreement that itself was binding on all members.

The EPG conducted its first comprehensive "assessment of the progress of APEC," as the Bogor Declaration requests it to do, on this investment issue because it is the first on which APEC has taken collective action — quite appropriately, in light of the central role played by investment in the economic dynamics of the region. We concluded that the NBIP represent a useful first step, with five of the ten agreed principles meeting or exceeding international norms. We also concluded that the other NBIP need to be strengthened and that the member economies should then start implementing them in their member economy laws and policies.

**The second question facing APEC Leaders is why, if they are committed to creating a community of Asia Pacific economies, are they involved in so many disputes? What can they do to reduce the incidence of conflict in the region?**

We believe there is a two-fold answer to this question. One part is to **reduce the causes of conflict by removing impediments to trade and investment.** The steps just outlined will help APEC move in this direction.

In addition, **the Leaders should immediately install an APEC Dispute Mediation Service.** Such a facility would provide APEC members with a multilateral means to address economic disputes that are not covered by the World Trade Organization (WTO) or other existing international arrangements. It would offer a technique, mediation, that would supplement the practices of the WTO (which emphasize arbitration). It could thereby help resolve trade conflicts in the region. It could also help counter the tendency to resist multilateral action in favor of unilateral steps.

**A third question facing some APEC Leaders is why, if they seek free and open trade in the region, have they created their own subregional trading arrangements within the region? Why are they expanding the membership of these arrangements or otherwise accelerating their activities?**

The Bogor Declaration called on the EPG "to review the interrelationships between APEC and the existing subregional arrangements (AFTA, ANZCERTA and NAFTA) and to examine possible options to prevent obstacles to each other and to promote consistency in their relations." After conducting that review, we conclude that **further liberalization within the existing subregional trading arrangements (SRTAs), and any linkups between them, would be constructive and supportive of the overall APEC process only if they were pursued within the principles of "open subregionalism."** These principles are identical to those previously recommended by the EPG to implement the concept of "open regionalism" by APEC as a whole toward its nonmembers:

- the maximum possible extent of unilateral liberalization;
- a firm commitment to reduce barriers to APEC economies that are nonmembers of the SRTA as well as within the SRTA itself;
- an offer by each SRTA to extend the benefits of its SRTA liberalization to all other APEC members on a reciprocal basis; and
- recognition that any individual SRTA member can unilaterally extend its SRTA liberalization on an unconditional basis to all other APEC economies (and, under the rules of the WTO, to all other members of the WTO as well), or on a conditional basis to one or several other APEC economies.

The EPG would support, even more strongly, an extension of current SRTA liberalization to other APEC members along these lines. This would represent one technique for implementing the Bogor commitments and should be considered if the alternatives now being explored were to falter. We would oppose, however, any further SRTA initiatives that ignored these principles because they would both increase margins of preference within APEC and risk creating alternative groupings that could deter liberalization in APEC as a whole. We recommend that any new SRTA initiatives within APEC be reviewed by both the WTO and by APEC itself for surveillance of their performance in practice.

A fourth question facing Leaders at Osaka is how can they help each other reach the agreed goals of the group as a whole? Members of a true community assist each other to realize their mutual objectives. We believe there are at least two major areas where APEC can do so, in addition to trade liberalization and facilitation as already discussed.

In the monetary and macroeconomic arena, the EPG believes that APEC must recognize the dual risks that are posed for the region by financial crises of the type that hit Mexico in late 1994 and early 1995. Other individual APEC economies could be similarly affected by rapid reversals of private capital movements. The region as a whole could be destabilized by "contagion effects" like those that radiated out from Mexico, including to a number of other APEC economies.

APEC should thus deepen its cooperation on monetary and macroeconomic issues. The Finance Ministers of the member economies have already begun that process through annual meetings. The EPG believes that the Leaders at Osaka, and subsequently the Finance Ministers, should

**strongly support the several initiatives to deal more effectively with Mexico-type crises in the International Monetary Fund (IMF) that were launched by the Group of Seven industrial countries (G-7) at Halifax in June 1995.** These include more extensive publication of data on individual countries to enable private markets to perform better and thus minimize the risk of new shocks, conveyance of more candid IMF advice to countries that are avoiding necessary adjustment actions, and provision of additional financing to the IMF to support the proposed Emergency Financing Mechanism that could respond to future crises.

**All APEC economies that are members of the IMF should themselves participate in these new programs to the maximum extent that is consistent with their capabilities. Those that provide additional funds to the IMF should participate fully in the decision-making process on using the Emergency Financing Mechanism** (and acquire an increased role on international monetary issues more broadly).

Another vital area of community-building is **development and technical cooperation.** Development and technical cooperation programs are needed in APEC to fill the gaps in technology, management, and planning and administration among its diverse members. However, APEC should depart from the conventional donor-recipient cooperation framework and articulate a new approach, one that stresses empowerment of all the participants in the cooperation process. APEC should play a unique coordinating role in the new cooperation programs. The EPG believes that, **at Osaka, APEC should launch a four-part Action Plan in this area:**

- **adoption of a set of principles to govern APEC development cooperation;**
- **application of those principles through a new APEC technical cooperation initiative** that will include a statement of APEC cooperation priorities, appointment of a technical cooperation task force, formulation of a technical cooperation framework, and establishment of APEC member technical cooperation funds;
- **liberalization of APEC's decision-making on development and technical cooperation; and**
- **immediate implementation of an APEC Infrastructure 2020 Program**, an accelerated action plan designed to support capacity-building and thereby contribute directly to achieving free trade and investment, **along with an APEC-wide infrastructure benchmarking program.**

This report thus offers a series of practical proposals through which APEC can implement, over the coming months and years, the decisions made by the Leaders at Seattle and Bogor. We believe that the procedures now being developed by the member economies can lead to the effective implementation of that program. We believe that major parts of it can, and should, be included in the "down payment" at Osaka. We believe that commencing the realization of the Bogor commitments in this way will place APEC firmly on the path to success and credibility, both in the region and around the world. We believe it will enable Leaders to answer the four crucial questions that they face as they navigate the future course of economic cooperation within the region and as they translate their visions and initiatives into reality.

## THE BOGOR DECLARATION

The Bogor Declaration sets APEC firmly on the path to becoming a community of Asia Pacific economies. It declares the intention of the eighteen member economies *inter alia* to achieve free and open trade and investment in the region. It sets target dates for reaching that goal: no later than 2010 for the industrialized members, which now account for the great bulk of trade in the region, no later than 2020 for the developing economies.

The Bogor Declaration also strongly reaffirms the commitment of APEC to strengthen the global trading system. It called for all members to ratify the Uruguay Round agreement and to help launch the World Trade Organization, both of which were promptly achieved. It committed the membership to accelerate their implementation of the Uruguay Round agreements. It endorsed the continuing process of unilateral liberalization, to which several individual economies have already made substantial further contributions. It reaffirmed that all regional liberalization steps would be fully consistent with the WTO and would in fact aim to provide "powerful impetus" for further multilateral liberalization.

The membership of APEC comprises about half the world economy and more than 40 percent of world trade. Hence its decisions at Bogor potentially represent the most substantial trade agenda of all time. The successive "rounds" in the GATT have been enormously important, but they have never sought to achieve free trade, and they have done little to liberalize investment. APEC has thus positioned itself to make a historic contribution to the world economy while creating a true community in the Asia Pacific.

APEC has completed the first phase of its evolution: establishing and articulating a vision for the economic future of the Asia Pacific. It must now move rapidly and effectively into its second phase: implementation of the Bogor Declaration. This is an enormously challenging enterprise. The Leaders agreed that APEC liberalization would cover goods, services and capital so a wide range of issues is involved. The member economies embrace an extensive spectrum of economic development and cultures. Faithful fulfillment of the Bogor commitments will itself be a historic achievement.

In this context, the APEC Economic Leaders decided at Bogor to continue the activities of our Eminent Persons Group (along with the Pacific Business Forum). They gave us three assignments: "to provide the Leaders with assessments of the progress of APEC," to give them "further recommendations

for stepping up our cooperation" and "to review the interrelationships between APEC and the existing subregional arrangements." We are pleased that the Leaders found our first two reports to be useful and are honored to be asked to continue to contribute toward the evolution of APEC.

Implementation of Bogor requires development of a strategy through which the Leaders' vision will be translated into action. The EPG believes that this implementation strategy should be comprehensive, include agreed timetables and principles of liberalization, and extend to action on trade impediments such as conflicting standards, complex and confusing country of origin rules and restrictive investment regulations as well as tariffs, quotas and subsidies. In our contacts with officials responsible for developing implementation proposals for the Osaka meetings, we have been impressed by the degree of commitment to these principles.

Such a strategy must of course address the substance of the wide range of issues to be addressed in achieving the agreed liberalization. It is here that the EPG believes it can make its greatest contribution in the future, and we will devote the bulk of this third report to detailed proposals for translating the vision into concrete actions.

We are especially inclined to this approach because **we believe it is essential for the Economic Leaders at Osaka, in addition to agreeing on the process for implementing Bogor, to begin taking significant specific steps along that path.** The momentum of Seattle and Bogor, and the credibility of the entire APEC initiative, will be difficult to sustain if Osaka limits itself to procedural agreements. **A substantial "down payment" of decisive steps on individual components of the "action agenda" should be adopted at Osaka.**

In this report, we will therefore emphasize actions that could make up the "down payment." We offer a number of possibilities, recognizing that not all of them will be adopted but believing strongly that it is essential for a significant proportion to be included if the basic goals of APEC Leaders are to be met.

## THE ASIA PACIFIC IN 1995

Before doing so, however, we wish to review the environment facing APEC as it intensifies its effort to build a community of Asia Pacific economies. In particular, we call attention to those developments that pose serious risks to the region as a whole and to its individual member economies. We believe that these developments underline the importance of rapid and forceful implementation of the Bogor commitments, including a "down payment" at Osaka as just suggested.

### THE INTENSIFICATION OF TRADE DISPUTES

First, we are deeply concerned by the continued prevalence of sizable and intensive trade disputes in the region. The latest and most important example was between the United States and Japan over automobiles and parts, where only a last-minute resolution averted the largest trade war of the postwar period. More disputes between the United States and Japan clearly lie ahead. So do disputes between the United States and other economies in the region, and between others and Japan. But there have been numerous trade clashes in the Asia Pacific involving neither the United States nor Japan, as between Mexico and China.

Some of these disputes are an inherent result of the rapid expansion of trade and investment in the region. The vast bulk of economic exchange in the Asia Pacific proceeds without difficulty. But the volume of transactions is now so great that conflict over a small percentage thereof can produce significant clashes.

These clashes also reflect serious substantive problems, however. Tariffs and other traditional trade barriers still exist in many member economies. "Purely domestic" policies such as government procurement, that have largely eliminated border barriers, now create international problems. The behavior of private companies, and different member economy responses to them, can become an important source of disagreement. "Contingent protection," including the active use of antidumping and countervailing duties, adds to the list.

These trade disputes, whatever their quantitative significance, frequently attract extensive media coverage and public attention. Hence, they can attain high political profiles that hamper resolution and adversely affect overall relations between the economies involved.



We are concerned by this pattern of developments for several reasons. Clashes between APEC members can chill trade between them and dampen their economic growth. When such clashes involve the largest economies in the region, they can in turn weaken growth in the region as a whole and sideswipe other economies. The Mexican crisis of late 1994-early 1995 showed how financial gyrations in one APEC economy can have far-reaching repercussions on "innocent bystanders." Trade conflicts can have similar, or even more powerful, "contagion effects."

Moreover, especially because of their high public profiles, such trade clashes can trigger domestic political reactions within the combatants — including retaliation and protectionism more broadly — that further harm those "innocent bystanders." A continuation, let alone a further acceleration, of trade conflict could jeopardize the progress of APEC itself just as it launches the historic process that carries such enormous promise for the peoples of the region.

Indeed, we know from the history of trade policy that steady progress toward further liberalization is necessary to avoid backsliding into protectionism and international trade conflict. APEC must respond decisively to recent events by moving promptly to implement the Bogor vision of liberalization, and by erecting arrangements that will effectively prevent such conflict in the future and resolve disputes when they do arise.

### THE THREAT TO MULTILATERALISM

Second, we are also concerned by the growing tendency in some parts of the region to ignore the benefits of collective and cooperative responses to economic problems. Instead, we are seeing frequent resort to approaches by economies that conflict with regional and broader international norms. For example, some members resist the opening of their markets to external participation. Some respond to perceived injustices by acting purely on their own.

Such tendencies run directly counter to the economic and political realities of the world as a whole, and to the realities of the Asia Pacific region in particular. The reality is that economic and political power is increasingly diffused across a growing number of economies. More and more economies, especially in the Asia Pacific region, have become major participants in the world economy. Hence, it is essential to forge increasingly multilateral forms of decision-making on international economic issues. Efforts by any one economy to impose its will unilaterally, either by keeping its markets closed or by seeking to force open the markets of others, are increasingly anachronistic.

Such disregard for international norms creates growing frustrations in both the economies that take such actions and those that are its targets. As a result, domestic political tensions rise and further clashes become likely. A negative spiral of offensive conduct, reaction and counter-reaction is unleashed.

The diffusion of economic capabilities among APEC members, along with the growth of interdependence, requires new collective and cooperative arrangements to manage international economic affairs. An important share of such responsibility must of course be borne by the global economic institutions, notably the World Trade Organization but including the International Monetary Fund and others.

But APEC must also play a major role in this multilateralization of economic leadership since the Asia Pacific region is the locus of so much of the increase in economic capabilities. Indeed, the evolution of APEC to date represents a series of initial steps in the acceptance and exercise of such responsibility. The initial Leaders' meeting in Seattle played a central role in bringing the Uruguay Round to a successful conclusion a month later and thereby creating the WTO. The heavy emphasis in the Bogor Declaration on further strengthening the global trading system is a further step in that direction. The Bogor commitment to achieve free and open trade and investment in the region is itself a far-sighted example of collective leadership that, when fully on its way to implementation, will provide a powerful demonstration effect to the world as a whole.

For APEC to play its full role in this regard, all its member economies will have to accept their share of the responsibility for creating and maintaining a stable and equitable economic order in the region. Increased capability carries with it a corresponding duty to help defend one's community from threats to continued progress, and even to accept occasional sacrifice of immediate goals to promote long-term objectives. The tendency of some economies to act without full regard for the broader community can be overcome only if the group as a whole is willing to act effectively in a collective manner to deal with the real impediments to achieving the Bogor commitment of free and open trade and investment. It is clearly in the interest of APEC member economies to accept these responsibilities.

History shows that transition periods are always difficult. Economic and political change are occurring in the Asia Pacific at breathtaking speed. The challenges to the region's stability and prosperity are enormous. A failure of APEC to meet the challenges would have profound consequences. Conversely, APEC has an opportunity to make a historic contribution to peaceful adjustment

of some of the most dramatic alterations in underlying economic and political capabilities that any region in the world has ever experienced.

### THE URGENCY OF ACTION

Third, we believe that decisive APEC action is urgently needed. This view derives directly from our first two concerns. Regional trade disputes are rising in intensity. They could grow even further in the near future, with substantial repercussions on the prosperity and stability of the region, if left unchecked. In addition, deviations from collective action could accelerate from a level that is already uncomfortably high.

APEC must therefore move decisively. The Bogor Declaration sets clear target dates for achieving free trade and investment in the region — 2010 and 2020. We do not recommend advancing those dates at this time.

But the Leaders at Bogor also agreed to move “promptly” to pursue free and open trade in the region, and indicated their determination to “start our concerted liberalization process from the very date of this statement.” We urge the APEC membership to indeed move promptly to begin implementing Bogor, to sustain the momentum of the past two years and to persuade all observers that their political commitments will be fully realized. Any appearance of foot-dragging would, to the contrary, encourage the forces of protectionism and unilateralism that could disrupt the economic progress (and even the political comity) of the region. APEC should rise to the challenge, especially at its meetings in Osaka in November, by pressing forward energetically to implement the far-sighted pledges that it made at Bogor.

The region is fortunate that it has already reached consensus on the Bogor Declaration. That document offers a clear response to the forces that produce trade conflict in the region. It creates a multilateral alternative to the pressures for unilateral action. Its vision provides the foundation for a true community of Asia Pacific economies that will be able to cope with the enormous challenges that they confront, both now and over the longer run. Its prompt and effective implementation will represent a compelling remedy to the threats to continued prosperity and stability in the region.

As noted above, the EPG believes that it can contribute most helpfully to this outcome by suggesting how APEC can translate the Bogor vision into reality on several key substantive issues. We considered a large number of topics that might be included in the program for implementing the Bogor Declaration under each of four main categories of APEC activity: trade

liberalization, trade facilitation, macroeconomic and monetary cooperation, and technical and development cooperation. We decided to focus this report on those that could make the most important contributions to the ultimate success of APEC. In particular, we will stress those that could be included in the “down payment” at Osaka that is so important to the long-term success of the institution.

We will first address four sets of trade issues. The first covers the numerous commitments already undertaken by member economies in the Uruguay Round, whose implementation the Economic Leaders already agreed at Bogor should be accelerated. The second encompasses creation of a Dispute Mediation Service. The third would broaden and deepen the Uruguay Round agreement by taking further steps on antidumping duties, competition policy and industrial standards and testing along with rules of origin. The fourth addresses investment. We will also respond to the specific question assigned to us by the Leaders at Bogor concerning subregional trading arrangements in the Asia Pacific.

## ACCELERATING THE URUGUAY ROUND LIBERALIZATION

A central component of the Bogor vision is "acceleration of the implementation of our Uruguay Round commitments..." Hence one of the first substantive issues facing APEC is how to translate that vision into practice. To do so fully, **it is of course essential that all APEC economies be members of the World Trade Organization and we repeat our earlier recommendation that those who are not members, now should become Contracting Parties as soon as possible.**

Several important benefits derive from this decision by the Economic Leaders. Acceleration will of course bring the benefits of Uruguay Round liberalization into play more quickly. It provides an excellent opportunity for early and meaningful action by APEC. This in turn will enhance the credibility of the organization. It will do so in a way that strengthens the global trading system, a cardinal goal of APEC. It will challenge other economies to do likewise. It should play a central role in the "down payment" at Osaka.

There are two different concepts that could be employed to advance the implementation of Uruguay Round commitments. APEC members could simply adopt a uniform commitment to advance the final date of implementing their agreed tariff reductions. Or they could establish a broader menu of acceptable options, covering many or all of the issues addressed in the Round, from which members could choose.

We prefer the latter approach and believe that a list of possible areas for acceleration should be agreed upon. Individual APEC members would choose one or more in which to accelerate the implementation of their commitments. All would need to be substantive actions. It would be necessary to establish a degree of equivalence between items or groups of items on the menu, although it would obviously not be possible to ensure precise comparability. The accelerated liberalization program should apply to those APEC economies that are not now members of the WTO whenever they become full participants.

APEC members undertook two types of commitments in the Uruguay Round: to liberalize barriers to trade, and to reform the global trading rules and their own trade laws and regulations. In the area of trade liberalization, the bulk of the commitments involved tariffs, textiles and agricultural policies. Economies also accepted new rights and obligations relating to trade-related aspects of intellectual property rights (TRIPS), trade-related investment measures

(TRIMS), trade in services (the new General Agreement on Trade in Services) and subsidies.

**The acceleration of UR commitments should follow two general principles. First, all such acceleration should be implemented on a Most-Favored-Nation basis consistent with GATT Article I. Second, acceleration should be based on a 50 percent rule: wherever practicable, APEC members should reduce by half the transition period for implementing trade liberalization and rule-making reforms that they have already committed to in the Uruguay Round.** The following menu of options for industrialized and developing member economies illustrates how these principles could be implemented in practice.

### INDUSTRIALIZED ECONOMIES

Industrialized member economies of APEC could accelerate their liberalization commitments in three major areas: tariffs, agriculture, and textiles.

With a few exceptions, developed economies agreed to a maximum five-year period to implement **tariff cuts**. These cuts were quite extensive in percentage terms but generally involved only small reductions in absolute tariff levels since existing tariffs applied against most manufactured goods (except textiles) are not very high. For example, average tariffs will be reduced by 2.7 percentage points in the United States, 4.4 percentage points in Japan, and 8.1 percentage points in Australia. The first cuts pursuant to the Uruguay Round commitments were applied on January 1, 1995.

Following the 50 percent rule, industrialized member economies could agree to shorten the remaining transition period from four years to two years so that **tariffs cuts** are fully applied by January 1997 (instead of January 1999). In cases where the commitments involve longer time periods, the transition period could be similarly cut in half. For example, most reductions in U.S. tariffs on textiles and apparel are to be phased in over ten years; some sectors subject to zero-for-zero tariff elimination also have longer transition periods (e.g., eight years for beer).

In like fashion, these economies could also accelerate the implementation of the agreed reductions in **agricultural subsidies** from six years to three years (i.e., by July or October 1998). These commitments include a 36 percent cut in the value of export subsidies and a 21 percent cut in the volume of subsidized shipments. They also encompass a 20 percent reduction in domestic subsidies, based on an aggregate measure of member economy support, and a 36 percent cut in import barriers.



As a practical matter, the WTO-mandated ten-year transition period for the phase-out of **textile quotas** may need to be maintained to avoid disrupting the trade of many developing economies and provoking a strong protectionist backlash in the developed economies. However, developed economies could accelerate the pace of liberalization within the ten-year period since most of it is scheduled to be implemented only at the end of the period. For example, they could increase by 50 percent the volume of imports covered in each of the succeeding stages of MFA reform set out in the WTO accord. Economies have already removed quotas on products that accounted for 16 percent of the total volume of covered imports in 1990. The second stage could remove quotas on an additional 25 percent (instead of 17 percent); the third stage could remove another 27 percent (instead of 18 percent); and the final 32 percent (instead of 49 percent) could then be lifted at the end of the 10-year period.

Instead of accelerating their Uruguay Round commitments in these ways, or in addition to doing so, **industrial economies could of course reduce their tariffs or their remaining nontariff barriers beyond levels that were agreed upon in the Round.** Such steps should "count" as a member economy's contribution to accelerating liberalization in the region.

## DEVELOPING ECONOMIES

To a large extent, trade concessions by developing economies in the Uruguay Round involved the acceptance of new trade rules and the binding of tariffs above applied rates (so-called "ceiling bindings"). Since bindings are generally not subject to phase-in schedules, these economies would need to take other actions if they want to meet their Bogor liberalization commitments in the tariff area.

For example, **developing economies could commit to gradually reduce the gap between their bound tariff rates and their currently applied rates.** Economies could agree to cut in half the gap between these two sets of rates within five years and then establish their bindings at this intermediate level. If a tariff were now set at 10 percent but bound at 30 percent, for example, the new binding would fall to 20 percent. The tariff bindings could subsequently be lowered to the applied rates.

In other areas, the acceleration of the Uruguay Round commitments of developing economies could entail a reduction in the transition periods afforded them to implement their new obligations. Following the 50 percent rule, developing economies could commit to implementing provisions of the TRIPS, TRIMS, and subsidies accords in half the time afforded by these pacts. For example:

- **TRIPS.** Under the Uruguay Round, all economies have accepted national treatment and Most-Favored-Nation obligations by January 1, 1996. Developing countries have an additional four years (until January 1, 2000) to adopt the other obligations (concerning patents, trademarks, copyrights, and administrative and procedural requirements) and an additional nine years (until January 1, 2005) for patent protection for certain agricultural and pharmaceutical products. These transition periods could be cut in half.
- **TRIMS.** The agreement requires that developing economies eliminate prohibited TRIMS (local content, trade-balancing, and foreign-exchange balancing requirements) within five years. These transition periods could be cut in half to two and one-half years.
- **Subsidies.** The new WTO rules require developing economies to progressively phase out export subsidies within eight years on nonagricultural products, and within five years for export subsidies granted contingent on the sourcing of domestic goods. Here again, the 50 percent rule could be applied.

## A DISPUTE MEDIATION SERVICE

The Bogor Declaration declares that "trade and other economic disputes among APEC economies have negative implications for the implementation of agreed cooperative arrangements as well as the spirit of cooperation. To assist in resolving such disputes and in avoiding its (sic) recurrence, we agree to examine the possibility of a voluntary consultative dispute mediation service to supplement the WTO dispute settlement mechanism, which should continue to be the primary channel for resolving disputes."

In our second report a year ago, the EPG recommended the creation of such a voluntary APEC Dispute Mediation Service (DMS). In light of the increased intensity of trade disputes in the region and the urgent need to devise effective multilateral means to deal with such conflicts, we believe that the case for such action is now even more compelling. **Creation of a Dispute Mediation Service should be part of the "down payment" on APEC cooperation to be agreed at Osaka.**

### THE NEED FOR MEDIATION

As indicated by the Leaders at Bogor, any new APEC dispute settlement mechanism should avoid duplicating or competing with the arrangements already in place at the WTO. We endorse the use of WTO dispute settlement procedures to resolve disputes that fall within the ambit of WTO rules and would not want an APEC DMS to frustrate or delay member economies' recourse to those procedures.

Our proposal for APEC, however, differs in two important aspects from the agreed global devices. First, the WTO procedures can address only issues that are covered by the WTO itself. Despite the increased coverage afforded by the Uruguay Round, the rules of the WTO still exclude a number of trade problems (including those related to competition policy and environmental policy, most aspects of investment policy and government procurement for the numerous economies that have not signed the relevant WTO Code). Some of the issues that underlie recent disputes in the region, including between the United States and Japan, continue to lie outside the scope of the WTO.

Second, the dispute settlement mechanism of the WTO relies heavily on procedures that are highly legalistic. The WTO rules do provide a mediation option. But that option has been used infrequently, given the tendency of a rules-based regime to move immediately toward definitive procedures to resolve

conflicts. This tendency will probably be even more pronounced with the successful effort of the Uruguay Round to improve the prospect that WTO procedures will resolve such conflicts effectively, most notably by eliminating the previous right of any member to veto a finding that ran against it.

Hence, APEC should focus on mediation rather than arbitration. This approach would be in keeping with the growing sense of community in the region. It would offer an intermediate channel between bilateral negotiation and the "win or lose" confrontations of the WTO.

We detect a growing interest in this initiative, fueled by the prevalence of disputes in the region and the unsatisfactory means by which they are often addressed. There has been a dearth of specific proposals, however, that governments could consider in deciding whether to proceed with the idea. Hence we will spell out how a Dispute Mediation Service could be structured and implemented in the hope that doing so will facilitate its adoption at Osaka.

### THE MEDIATION PROCESS

The distinguishing feature of mediation is that all of the interested parties to a dispute come together voluntarily, preferably in one place at one time, with an outside mediator to act as a catalyst for settlement. Instead of the parties presenting their viewpoints face-to-face, the mediator acts as a buffer by allowing each to make his initial proposals to the mediator in confidence. In this way, each party is given the opportunity to make a presentation that allows all of the important issues to be fully emphasized.

The role of the mediator is quite different from that of an arbitrator. The arbitrator is typically viewed as an independent, unbiased decision-maker with binding authority over a dispute brought by the parties. The arbitrator remains uncommitted to any point of view of the dispute until all evidence has been submitted, and then decides the matter based upon the evidence and the merits of the case. In many economies, the decision of the arbitrator is enforceable by a court as previously agreed by the parties to a contract or other agreement.

The meanings of mediation and conciliation are sometimes interchangeable. A conciliator will evaluate a dispute and reach his or her own view as to a just resolution. The conciliator then will advise the parties of that view and propose terms of settlement. By contrast, the mediator will ensure that each side eventually understands the other's position and try to bring the parties together to arrive at their own settlement of the dispute. Our proposal embraces both concepts and uses the terms interchangeably.

The most advantageous feature of mediation is that it allows each side to test a settlement proposal by conveying it in confidence to the mediator in a private setting. Unless authorized to do so by that party, the mediator will not communicate the proposal to the other party. Because the mediator knows the confidential proposals of both sides, however, he or she is in a position to determine whether or not settlement is feasible.

It must be emphasized that, for the mediation to be effective, the mediator is required not to disclose to the other party information revealed in confidence during a private meeting or "caucus" between the party and the mediator. To encourage the type of productive discussion that leads to settlement, it is essential that the parties understand that all communications during a caucus with the mediator will remain confidential unless disclosure is authorized. Details of the mediation process are outlined in Annex 1.

Mediation is frequently used in the resolution of private commercial disputes within several economies in the Asia Pacific region. Its success may be due to the ability of the parties to "save face" through such a mechanism, which allows for resolution by consensus rather than by confrontation. It may also be due to the stature of the mediator. In the case of the proposed DMS, the mediator should likewise be a highly respected member of the international community who is from an APEC economy.

APEC member economies who have trade or other economic disputes would be the participants in such mediation. The Pacific Business Forum (PBF) contemplated that private parties should also benefit from any dispute settlement mechanisms established by APEC. In its report of October 15, 1994 to the APEC Economic Leaders, the PBF recommended that "APEC Economic Leaders agree to establish separate regional mechanisms for the settlement through mediation, arbitration, etc., of commercial disputes between businesses in APEC economies, where the present procedures are unclear." We recommend that the APEC DMS not be used for disputes between private parties, however, since they have a number of other available bodies to help resolve their disputes, and our goal is to provide better means to address the intergovernmental clashes that increasingly plague the region. Nonetheless, the APEC Secretariat could recommend qualified individual mediators to help resolve private disputes outside the auspices of APEC.

Finally, the APEC mechanism could include a second stage. Should the parties to a dispute fail to reach an agreement through mediation, they could present their dispute to a special review panel organized by the DMS. In contrast to the mediation process, the function of the DMS panel would be to

make an objective assessment of the dispute based upon the covered bilateral or multilateral trade agreement.

If the DMS panel arrives at an objective assessment of the parties' dispute, it would be up to the parties to voluntarily follow such an assessment of their own accord. However, if one or more of the parties refused to follow such an assessment within a reasonable time period set forth in the assessment, the DMS panel would have the right to release its assessment to all of the APEC members and to the general public. If the parties do follow the assessment, all of the information relating to the dispute which was presented to the DMS panel, and the assessment itself, would remain confidential.

Any parties to a dispute which moves to this second stage DMS panel must have entered into DMS mediation and failed to arrive at an agreement. Parties should request a DMS panel within sixty (60) days of the end of the DMS mediation. A DMS panel should be assembled and prepared to hear the dispute within thirty (30) days of the request for the panel.

Prior to the DMS panel concluding on an objective assessment of the dispute, the panelists should continue to consult with each of the parties to assist them in reaching an agreement. Based upon the number of issues under dispute between the parties, the panelists would set forth a timetable that should be no longer in duration than ninety (90) days. The panelists and the parties should sign or otherwise agree to keep confidential all information related to the proceedings.



## BROADENING AND DEEPENING THE URUGUAY ROUND AGREEMENTS

We believe that there are a number of ways in which APEC can take **important initiatives to broaden and deepen the outcome of the Uruguay Round as called for by the Bogor Declaration.** Some of these **seem ripe for immediate decision at Osaka to constitute part of its “down payment” on APEC liberalization and facilitation.** We recommend that APEC:

- recognize the abuses of **antidumping** policies and launch a series of actions to respond to them;
- immediately institute a process of cooperation between member economy authorities in the implementation of existing **competition policies** while also launching an intensive study of the prospects for productive harmonization of members' competition policies over the long run; and
- institute a multifaceted program on **product and process standards.**

APEC should also recognize the problems that arise over the complexity and variable application of country of origin rules. We do not address this problem in detail but we recommend that APEC press new region-wide initiatives to simplify these rules and speed their harmonization, where possible moving beyond the harmonization program to which they already gave their support in the Uruguay Round agreement.

Taken in combination with installation of a Dispute Mediation Service and accelerated implementation of the Uruguay Round, via the menu offered in the first section of this report, an impressive “action agenda” for Osaka clearly seems possible. We urge Leaders and Ministers to move in this direction.

### ANTIDUMPING DUTIES

The principle of antidumping policy is sound: predatory or discriminatory pricing by a potential monopolist can reduce or eliminate competition in a given market and put consumers at risk of subsequent price gouging. The problem is that the policy, in practice, is frequently implemented in ways that ignore or distort the basic principle and penalize normal commercial practices.

The result is periodic abuse of the antidumping instrument in ways that

threaten to close some of the markets that APEC is striving to open. As tariffs and other barriers to trade and investment are liberalized, increasing use of the antidumping tool can offset some of the resulting stimulus to international transactions and thus to economic growth. In addition to the actual application of antidumping measures in an abusive manner, cases are often withdrawn in return for trade-detering, out-of-court settlements and even the threat of their usage can have a chilling impact on trade expansion.

APEC has a special responsibility to address this issue. Almost 75 percent of all antidumping actions notified to the WTO involve APEC members. Three of the four principal users of antidumping actions are in APEC.

In addition, the time for APEC action is becoming ripe — and even more urgent — because of the proliferation of economies that are applying antidumping duties. Until recently, only a few of the largest economies (including the United States, the European Union, Canada and Australia) were active users of this tool. Now, however, countries throughout the world — including throughout APEC — are adopting it. Hence even the traditional users are becoming concerned about its adverse impact on their own exports. The possibilities for effective counteraction would seem to have risen correspondingly.

At the same time, we recognize the pragmatic difficulties in reforming antidumping practices. The Uruguay Round failed to improve the situation despite a substantial effort to do so. Powerful vested efforts seek to preserve, indeed “strengthen,” antidumping practices in many APEC economies. As overt barriers to trade fall, efforts to deploy such measures in reaction have been stepped up.

The most promising route to rationalization of antidumping policy in the longer run is thus to consider it within the broader context of competition policy. As described in the next section, the intersection of trade and competition policy is extensive and a number of issue-areas are covered under both. In principle, antidumping covers the same ground as the antipredation component of antimonopoly laws. The practice to be regulated in both sets of law is low pricing which might be used as a means of driving competitors out of business so as to create a monopoly or near-monopoly position in the relevant market.

Examination of the two sets of laws, however, reveals enormous inconsistencies in most economies that have both. In the United States, for example, predatory pricing can be proven under current doctrine only if strong evidence can be brought to bear that the firm accused of this practice (i) intended to monopolize some relevant market, (ii) had realistic expectations of succeeding

in doing so and (iii) would benefit from the success (i.e., the costs of the predation would not dominate future increased profits from the monopoly). Legal scholars note that, as a practical matter, it is almost impossible to prove all three of these to the complete satisfaction of a jury.

Under antidumping law in the United States, by contrast, a plaintiff can be successful if it can show simply that sales occurred at import prices that were below prices in the home market (or, absent that test, below the average cost of production) and that "material injury" occurred to domestic producers of substitutable products or services. Both determinations are made administratively by civil servants, who often see their task as protecting domestic constituents from foreign competition, rather than in a court of law. These civil servants operate under regulations that many scholars would argue are biased in favor of plaintiffs (the domestic complainants) and against defendants (the importers and foreign exporters).

As a consequence of substantive and procedural differences in the two sets of laws, it is thus far easier in the United States to establish illegal "dumping" than "predation." Similar differences can be observed in other APEC economies.

Our concerns about antidumping thus redouble our support for the ambitious effort to address competition policy that will be outlined below. The most far-reaching option in this area would be the complete replacement of trade policy instruments with the related competition policy instruments. In the context of a free trade environment, the Australia-New Zealand CER (and the European Union) have essentially achieved this outcome by eliminating their antidumping practices in favor of an integrated competition policy. Any such efforts would of course take some time to work out.

In the meanwhile, we **recommend that the APEC Economic Leaders at Osaka launch an effort to address the abusive aspects of antidumping policy by:**

- **Enunciating a strong political commitment to address the problem**, as an integral part of any wider effort on competition policy or on its own if not;
- **Calling for antidumping policies and procedures to take account of the interests of all parties affected by an action**, embracing not only import-competing firms and workers but also consumer interests and those of industrial users of imported components and materials, when considering whether injury has been done. Member governments should ensure that consumer interests and industrial users can express their views on

antidumping actions as the cases are being considered. Firms adversely affected by antidumping actions should have equal access to domestic authorities for purposes of seeking redress;

- **Authorizing competition policy officials to challenge antidumping orders** if competition in the domestic market would be significantly reduced by them and to monitor whether antidumping orders lead to cartel formation or cartel-like activity like price fixing; and
- **Discouraging frivolous antidumping actions** through a requirement for complainants to post a bond related to the size of the alleged injury that would be forfeited if the case were determined to be unfounded.

## COMPETITION POLICY

The second issue through which the EPG believes that APEC should broaden the outcome of the Uruguay Round is competition policy. This is both an important policy area and one where, despite the complexity of the issues themselves, new APEC initiatives should be quite feasible. Some of those initiatives can be adopted immediately and should be included in the "down payment" for Osaka whereas others will take longer to formulate and implement.

There is no consensus among specialists with respect to exactly what falls under the rubric of "competition policy". However, it is generally agreed that the term includes all issues that are subsumed under "antitrust" in the United States and "antimonopoly" and the related issue of "control of monopolistic practices" in most other nations. Subdomains include:

- horizontal industry structure including monopoly *per se* and dominant firm position, regulation and control of horizontal mergers that might lead to monopoly or dominant firm position, and regulation and control of industries where there exists "natural monopoly";
- firm conduct, e.g., formation of cartels to fix prices or limit output, "abuse of dominant firm position," predatory pricing and other practices that might lead to monopolization, and price discrimination; and
- issues related to vertical structure including vertical integration, vertical foreclosure, resale price maintenance, exclusive dealing and tie-in arrangements, and regulation and control of vertical mergers.

Competition policy also typically embraces policies toward restrictive or abusive business practices that are somewhat out of the domain of antitrust or

antimonopoly policy. These include truth in advertising and other consumer protection policies, and policies pertaining to the use and abuse of intellectual property (including patents, trademarks, and copyrights). In Europe, competition policy also is considered to include regulation of state aid to firms (including state-owned firms), industries and regions. It can also encompass industrial policies more broadly, including government regulations that have the effect of distorting competition.

Competition policy is of high salience to APEC because a growing number of the most important trade disputes in the region derive from concerns about the behavior of private firms, and the absence of governmental responses to them, rather than from concerns about government policies themselves as in the past. This tendency is most notable with respect to disputes between the United States and Japan. The American complaint, in major cases such as auto parts and photographic film, is that private Japanese companies behave in collusive ways that deny market access to outsiders. Other exporting economies have raised similar concerns about Japan, and similar concerns have been raised about markets in other economies in the region.

These difficulties have in turn contributed importantly to the acceleration of unilateral trade actions because the alleged practices are not covered by the rules of the WTO or other multilateral institutions. The complaining economy, most aggressively the United States, has thus felt that it must either move on its own or let the issue fester. There have been an increasing number of sectors where the United States has concluded that the stakes are too high to ignore.

Two important consequences have resulted. First, **trade** actions have been taken to deal with **competition** problems. Second, **unilateral** actions have been taken in the absence of **multilateral** agreements. Hence, a new multilateral approach to competition policy has the potential to reduce the volume of trade conflicts in the region and to restrain, or even reverse, the increase in unilateral actions. These are of course the two major concerns that we cited above as posing threats to the region and to APEC. A successful APEC initiative on competition policy could thus be of considerable value to all of the member economies and to the region as a whole.

In addition, preservation of competition among private firms is a necessary component of achieving truly "free trade and investment" as called for in the Bogor Declaration. A failure to do so could frustrate this basic objective of the APEC Economic Leaders. Action on competition policy is thus a necessary component of implementing Bogor. Effective exercise of competition policy will also greatly improve the competitive prospects of small and medium enterprises (SMEs) and thus help achieve one of the key industrial organization

goals of most APEC member economies.

Moreover, productive harmonization of competition policy among the APEC economies would substantially reduce the potential inconsistencies and conflicts faced by private firms as they do business in different locales throughout the region. It would thus provide an important element of trade facilitation. It would also reduce the risks of intergovernmental conflicts in the future.

Finally, effective international cooperation on competition policy is needed to counter the increasingly asymmetrical capabilities of firms and governments. Companies have become increasingly global in scope. By contrast, most activities of governments are limited by the borders within which they operate. Hence it is increasingly essential for governments to cooperate if they are to effectively respond to competition problems created by companies. This is a central reason why the WTO, the Organization for Economic Cooperation and Development (OECD) and other international institutions have placed the issue at the top of their agendas for post-Uruguay Round action. APEC can play an important role in that process. Indeed, APEC initiatives on competition policy could make a major contribution to future global efforts on the topic.

It must also be noted, however, that small economies sometimes seek to **increase** the size of their firms on the grounds that doing so can enable them to compete on a more equal footing in the global economy. These are legitimate objectives and must be taken into account in fashioning policies in this area.

There are three goals that APEC should strive for in this issue-area. First, procedures should be developed promptly by which disputes regarding market access can be resolved via cooperative implementation of member economy competition policies rather than through unilateral trade policies. Second, there should be an effort in the long run to reduce differences in competition policy across APEC economies, especially the several economies that are just now developing their competition policies. Third, as part of that long run effort, competition policy should be productively harmonized with trade policy where the two sets of policies have parallel provisions—for example, control of predatory pricing and antidumping as addressed in the previous section.

A first step in the direction of APEC cooperation in the application of member economy competition policies could be the "positive comity" approach. Officials in one economy would bring to the attention of competition officials in another economy arrangements which allegedly act to foreclose entry by foreign firms into the latter's market. These latter officials, in turn, would be expected to take into account the alleged foreclosure in deciding whether to



take action in the sector and, if so, what type of measures they would pursue.

A more advanced form of such cooperation would be joint antitrust enforcement, e.g., a joint investigation by the American and Japanese antitrust authorities of alleged vertical foreclosure of foreign parts supplies by Japanese auto companies simultaneously in the Japanese and American markets. The availability of this option would have provided an attractive alternative to attempt to resolve the U.S.-Japan auto dispute. An "APEC umbrella" could provide a framework within which the two economies would be more willing to undertake such cooperation.

In light of the topicality of the issue, we believe that **the APEC Leaders should call for immediate cooperative implementation of member economy competition policies as part of the "down payment" at Osaka. We would then urge the United States and Japan, and any other pairs of economies where the issue arises, to take early advantage of the approach.**

Second, **APEC economies should seek over the longer run to reduce unproductive differences in their competition policies.** Since many APEC economies are still at an early stage in the evolution of their policies, such convergence might be feasible. It would of course be unnecessary to achieve total conformity across the economies but productive consistency could be sought in basic philosophies, administrative machinery and procedural requirements.

There exists no consensus even among experts (or within the EPG) on the standards toward which competition policy should converge. Very different views and philosophies exist on the topic in different APEC economies. Hence, it would be premature to achieve extensive convergence among member economy competition policies at this early date.

On the other hand, the task is far from hopeless. Some experts who have examined the competition law and policy of the APEC economies have concluded that, by and large, the substantive differences — though they clearly do exist — are not as great as the procedural differences.<sup>1</sup> Many of the procedural differences are based on culture, e.g., in the East Asian economies competition enforcement agencies are much more likely to use "moral suasion" to achieve desired ends than legal procedure, whereas in the western economies legal proceedings are relatively common.

<sup>1</sup> On this, see Carl Green and Douglas Rosenthal, editors, *Competition Regulation within the APEC Region: Commonality and Divergence* (Oceana Press, forthcoming).

Some differences in member economy competition policies also result from the economic context in which those policies have been formulated. In Korea and Japan, for example, competition policy objectives have historically been subordinated to industrial policy objectives. In both economies, however, in principle at least, this subordination is a thing of the past. Moreover, signs of convergence can be detected in the approaches to competition policy of even the seemingly most disparate of economies such as the United States and Japan.

**As a basis for further and more extensive cooperation on competition policy, we therefore recommend that the APEC economies launch a major study aimed at identifying the differences in law and policy among them and why these differences occur.** The study would need to take into account the desire by small economies to develop enterprises which have sufficient size to be internationally competitive. Terms of reference for the study are proposed in Annex 2.

We thus believe that the Economic Leaders at Osaka should commit their economies to immediate cooperation in the implementation of existing competition policies and launch an intensive study of the prospects for reducing differences in their competition policies over the longer term. They would thereby address some of the most immediate and most serious problems in the region, pave the way for future cooperation that would both facilitate business and avoid future conflicts, and provide leadership to global efforts to deal with one of the most significant and difficult issues on the international economic agenda. Competition policy should be a high priority of APEC, starting at Osaka and continuing well into the 21st century.

## PRODUCT STANDARDS AND TESTING

A third area where APEC can extend the outcome of the Uruguay Round relates to product standards and testing. Standards are frequently used as a protectionist device. Moreover, this is an extremely important aspect of trade facilitation. We believe that the Economic Leaders at Osaka should launch several initiatives on standards that will generate a substantial "down payment" of great value to firms throughout the region.

The APEC standards agenda should center on **regulated** products. The most serious barriers to trade in these goods are not the standards that the products must meet. They center on government regulations which mandate how a product **meets** national standards.

The development and adoption of the standards themselves should be driven by industry in most cases. **APEC should support private sector**

### leadership in development of standards in the Asia Pacific.

APEC should concentrate its governmental efforts on streamlining product testing and certification requirements in the region. These regulations are under the direct control of member governments in many sectors. The initial focus should be on building the basis for reform in testing, certification, and laboratory accreditation in regulated sectors.

**The guiding principle of the action plan should be “tested once, accepted everywhere in APEC.”** A unilateral approach by members to realizing this goal is not workable. Collective action must involve all members in region-wide work programs.

**APEC should adopt a central goal of achieving APEC-wide Mutual Recognition Agreements (MRAs) on acceptance of test data and product certification in major regulated sectors.** The current focus on toys and food is too modest. MRA negotiations could be launched immediately in a number of regulated sectors including electrical and electronic equipment, automotive and transportation equipment, medical devices, construction (building) materials and chemicals. These sectors exhibit the characteristics necessary for success in an MRA negotiation: (1) strong industry support for the “once tested, accepted everywhere” principle; (2) large and expanding markets in the APEC region, including rapidly expanding **import** needs of member economies; and (3) existing networks of bilateral agreements between developed member economies which can be expanded.

To enable all APEC members to participate effectively in the proposed MRAs, the modernization of testing laboratories and facilities, where tools are calibrated and experts are trained in new standards techniques, is required. A new commitment by government is necessary to finance standards infrastructure. At Osaka, therefore, **APEC should announce the creation of an Asia Pacific Technology Fund (APTF).** The Fund could be administered by the Asian Development Bank, just as the Bank manages other special funds such as the Technical Assistance Special Fund (TASF) and the Japan Special Fund.

The mission of the new APTF would be to assure the creation of modern laboratories for basic metrology, calibration, and testing services in all member economies. The APTF would make loans, loan guarantees and grants to public and private standards organizations in the region. This would include projects to promote joint technical programs, such as those operated by the Asia Pacific Metrology Program (APMP). The APTF could be launched at Osaka through a modest endowment, perhaps on the order of \$25 million over the next five to ten years.

As part of its broader pledge to accelerate implementation of the Uruguay Round, **APEC should also commit at Osaka to accelerate implementation of the Technical Barriers to Trade (TBT) Agreement.** The TBT Agreement creates multilateral obligations for government in setting mandatory product, process and production standards. It provides for transparency in standards development by embodying the principles of national treatment and nondiscrimination. It includes an innovative “Code of Good Practice” that encourages sub-national and private sector compliance with these principles. At Osaka, APEC should advocate formal adoption of the “Code of Good Practice” by all parties involved in standards setting in the region. This part of the TBT Agreement is nonbinding and an APEC decision to abide by its provisions holds great promise as a way to ensure greater transparency in member economies standards systems.

**Finally, APEC should agree that all new regulatory standards developed by members will be based on existing international standards.** This would promote transparency in standards development in APEC as well as multilateral liberalization. It would also greatly enhance the prospects for achieving mutual recognition of product certification. We note the progress being made in APEC toward harmonization of standards, based on existing international standards, and recommend that APEC issue a public report annually which includes a catalogue of regulations created the previous year which are **not** based on international standards as part of the overall mechanism for reviewing the progress of APEC liberalization.

**APEC should establish a Standards Experts Group to help implement this program.** Industry and government representatives would study and report on the elimination of technical barriers to trade in the region. The Experts Group would augment the work of the WTO, acting as a mechanism to bridge public and private sector interests in the region. The Group could also be charged by APEC to report on new standards developments in the Asia Pacific as they relate to trade. This could include the implications for the Asia Pacific of such developments as the new International Standards Organization (ISO) 14000 environmental management standard, and other environmental standards such as those under consideration for semiconductors. The Group could advise APEC on implementation of the APTF and plans to modernize testing facilities in the region.

This ambitious but practical program in the area of standards and testing would have several major benefits for APEC. It would provide pragmatic progress in an area of keen interest to business, strengthening the credibility of the entire APEC process and solidifying business support for it. Its reliance on the private sector for setting standards would engage the business community in a



highly operational manner, adding further to its likely support for APEC. The corollary focus of APEC governments on testing and certification of regulated products would recognize that their own comparative advantage was limited to a clearly defined set of responsibilities. Its provision of technical and financial assistance to member economies that needed such help, to be able to participate fully in the proposed MRAs, would embody APEC's desire to link the technical cooperation and trade liberalization/facilitation parts of its agenda.

In addition, the proposed acceleration of implementation of the standards component of the Uruguay Round would provide positive interaction between two central elements of the Osaka "down payment." The deepening of the Uruguay Round via the proposed "WTO-plus" steps would represent another APEC initiative that could then be globalized and contribute to the "ratcheting up" of trade liberalization. In sum, the standards program would advance APEC's global goals as well as expanding regional cooperation and further enhancing the environment for achievement of the Bogor commitments. It should be part of the "down payment" at Osaka.

## PRIVATE INVESTMENT

The Bogor Declaration states that APEC will achieve "free trade **and investment** in the region" by 2010/2020. Even before that, however, the Leaders had addressed the investment issue at Seattle and APEC took its first explicit "collective action" in the investment area via the "nonbinding investment principles" (NBIP) that were agreed in 1994. The Bogor Declaration "asks our ministers and officials to submit proposals on APEC...investment principles," indicating that APEC wants to continue work in this area beyond what was agreed last year. These are apt recognitions of the central role that international investment, and the private sector more broadly, play in the region.

The EPG has a responsibility, under its mandate from Bogor, "to provide the APEC Economic Leaders with assessments of the progress of APEC." The agreement on the NBIP is the first (and, to date, only) case where such an assessment is appropriate. We have therefore conducted an initial appraisal of the effort, deriving suggestions for further steps by APEC on the investment issue. We recommend that some of those steps be undertaken at Osaka and be included in the "down payment" to be agreed there by the Economic Leaders. Our full assessment is included in Annex 3.

Our assessment of the ten specific principles included in the NBIP leads us to conclude that five of them are at (or even above) international standards. However, five fall short of meeting the need to provide an adequate investment environment: those relating to transfers of funds, capital movements, national treatment and right of establishment, performance requirements and investment incentives. Based on this assessment, **we recommend that APEC members make a major effort to (1) strengthen the NBIP and (2) progressively apply them both individually and collectively.**

**Individual APEC economies can strengthen the investment principles unilaterally by embodying such strengthened principles in their domestic legal and institutional frameworks. We would strongly encourage them to do so** as part of their plans for fulfilling their Bogor commitments. Some member economies, including Indonesia and Malaysia, have already begun the process. In fact, we suspect that decisions by a few APEC members to take such steps would encourage other members to do so as well, to avoid the competitive disadvantage that they would otherwise suffer within the region. Specific suggestions for strengthening each NBIP that falls short of desired standards are included in our assessment in Annex 3.

Once this process of "competitive liberalization" is underway, it should become relatively simple to **strengthen the NBIP themselves. The full membership should take collective action to do so at the earliest possible date.**

At that point, with strengthened principles, we also believe it would be highly desirable to **convert the NBIP into a "voluntary code."** Such a code would initially be agreed by APEC members as a group. It would then be up to each APEC member economy to decide voluntarily when or whether to adopt the code and thereby agree to follow, and be bound by, it. **The code should perhaps ultimately become a binding agreement.**

Economic progress in the Asia Pacific has been largely driven by private investment. Its future prosperity and stability require even greater flows of such investment. Our assessment found that the NBIP on the first three issues cited above — capital movements, national treatment and right of establishment, and performance requirements — fall considerably short of the standards already agreed in other international fora. This leaves APEC member economies at a competitive disadvantage if they go no further, especially if the OECD succeeds in developing the Multilateral Agreement on Investment on which it is now working. **We firmly believe that APEC is able to adopt world-class investment principles and that it needs to do so to assure its future success.**

We applaud the progress that has already been made on this issue. As noted, the NBIP are the first specific action on a substantive policy topic undertaken by APEC. Hence they will inevitably proceed in a somewhat cautious manner. This is all the more natural as private foreign investment is a difficult and contentious issue in all international fora, as indicated by the absence of any comprehensive international arrangements to govern it as have long existed with regard to trade and international monetary affairs.

Moreover, half the specific principles included in the NBIP meet or even exceed existing international standards. The member economies have made an excellent beginning. The Leaders agreed at Bogor on the basic goal — "free and open investment in the region." We hope that our assessment and recommendations will prove helpful in further efforts on the issue.

## TOWARD OPEN SUBREGIONALISM

The Bogor Declaration directed the EPG "to review the interrelationships between APEC and the existing subregional arrangements (AFTA, ANZCERTA and NAFTA) and to examine possible options to prevent obstruction to each other and to promote consistency in their relations." This topic relates directly to some of those already discussed, concerning trade liberalization and facilitation, and follows directly from the previous sections of our report.

There are now in fact four subregional trading arrangements (SRTAs) within APEC:

- the ASEAN Free Trade Agreement (AFTA), comprising the seven ASEAN countries (Vietnam, a new ASEAN member, is negotiating with its ASEAN partners on the implementation of the AFTA tariff reduction program);<sup>2</sup>
- the Australia-New Zealand Closer Economic Relations Trade Agreement (ANZCERTA), comprising Australia and New Zealand;
- the North American Free Trade Agreement (NAFTA), comprising Canada, Mexico and the United States; and
- the Chile-Mexico free trade arrangement, which will be subsumed within NAFTA if Chile becomes a member within the next year or so as now is anticipated.

Twelve of the eighteen APEC economies are thus members of SRTAs. The following table estimates the relative economic weights within APEC of the individual SRTAs and the nonmembers (in shares of total APEC output in 1991-92):

<sup>2</sup> Cooperation among the ASEAN countries of course extends far beyond AFTA. This discussion, however, relates solely to their SRTA.

	At <b>market</b> exchange rates	At <b>purchasing power</b> <b>parity</b> exchange rates
NAFTA	57.7	49.8
Chile/Mexico	3.2	5.3
AFTA	3.1	8.8
ANZCERTA	3.0	2.4
Nonmembers	35.7	38.2
	100.0*	100.0*

\* Individual SRTAs add to more than 100 percent because Mexico is a member of two SRTAs.

The EPG has addressed the issue of SRTAs in its first two reports. In those analyses, we rejected the alternative of constructing a free trade arrangement in the area through offering NAFTA membership to additional APEC members, and cited the risks that subregional proliferation would create new trade discrimination within the region and new vested interests that would resist broader liberalization. We also noted, however, that regional groupings could be building blocks for global accords and act as a stimulus toward free trade in APEC as a whole. We concluded that all SRTAs in the area must themselves be outward-looking. Hence, we welcome the opportunity afforded by the Bogor Declaration to extend our consideration of SRTAs and to examine policy options for them.

### THE IMPLICATIONS OF THE BOGOR DECLARATION

The Bogor Declaration clarifies the issue of existing SRTAs considerably. Indeed, its commitment to achieve free and open trade and investment in the region by 2010/2020 resolves the issue for the longer term.

By definition, free trade in the region as a whole will eliminate all margins of preference that now exist in individual SRTAs. This will eliminate the need for the SRTAs to maintain preferential rules of origin. The existing SRTAs will become part of the broader APEC as their member economies implement their Bogor commitments. The members of existing SRTAs within APEC have implicitly indicated a willingness to generalize their current margins of preference throughout the region.

This does not solve all problems regarding existing SRTAs, however. As APEC members decide how to implement their Bogor commitments, two transitional issues arise:

- should the SRTAs accelerate their own liberalization programs?
- should the individual SRTAs link up?

Both steps represent possible means through which the Bogor commitment to achieve free trade could be pursued. On the other hand, both could divert member economies from achieving APEC-wide free trade by offering an alternative that some might view as more comfortable and even as more desirable.

Both issues are very practical. For example, AFTA has recently accelerated its liberalization in several ways: reducing by five years its target date for tariff reduction (from 2008 to 2003 and possibly now to 2000); phasing out its exclusions over five years; and including previously excluded sectors such as agriculture. Regarding linkage, NAFTA and Chile-Mexico plan to merge and proposals have been made for AFTA-ANZCERTA and AFTA-NAFTA tie-ups.

Both issues pose two sets of key questions for APEC as a whole. First, would they be trade-creating or trade-diverting? Both SRTA acceleration and SRTA linkage would produce the usual conflicting effects on trade flows. On the one hand, they would increase margins of preferences between members and nonmembers. Some trade would be diverted from nonmembers to members as a result. On the other hand, further integration could be expected to increase economic growth among the members and thus create additional trade opportunities for nonmembers.

It is extremely difficult to analyze, *ex post* let alone *ex ante*, whether any particular regional trade grouping is, on balance, trade creating or trade diverting. Most studies have concluded that most existing arrangements, notably the European Union, have created more trade for the rest of the world as a whole than they have diverted. Hence such arrangements have been accepted, albeit sometimes grudgingly, by the rest of the world.

The GATT rules are of little help on this issue. They include only four requirements that a regional arrangement must meet to qualify for exception from the Most-Favored-Nation norm of Article 1:

- coverage of “substantially all” trade (in goods);
- “substantial sectoral coverage” of services that results in “the absence or elimination of substantially all discrimination in those sectors” (per the new General Agreement on Trade in Services, or GATS);
- announcement of a terminal date for completing the arrangement; and



— no increase in barriers toward outsiders.

Even with these very loose requirements, very few FTAs have been either explicitly approved or disapproved by the GATT. None of the SRTAs within APEC have been accepted or rejected. (Neither has the EU.) This is why, in our first report, the EPG recommended that the next major global trade negotiation “substantially tighten the rules that govern regional arrangements and institute an annual review process for all such arrangements.”

The Uruguay Round made very modest progress in improving the tests of Article 24, achieving only a clearer definition of “substantially all” (trade in goods) and directing that the transition periods normally not exceed ten years. It is quite possible for the WTO to use its Trade Policy Review Mechanism (TPRM) to conduct meaningful annual reviews of the major SRTAs, however, just as it conducts annual reviews of all the main individual trading countries (and of the EU as a group). We reiterate our recommendation that APEC invite the TPRM to do so, and that APEC conduct such reviews itself.

The second set of issues, common to acceleration of SRTA liberalization and linkage among SRTAs, addresses their impact on the dynamics of trade policy. As noted in our earlier reports, SRTAs again have conflicting effects. On the one hand, their members may view them as alternatives to broader liberalization and they can therefore deter such efforts.

On the other hand, SRTAs can promote broader liberalization in at least three ways. They can familiarize individual economies with the benefits and procedures of reducing trade barriers, thus enabling and even inducing them to look for similar opportunities on a broader scale. For example, the AFTA process reportedly helped to convince Indonesia of the benefits of freer trade and thus helped position it to take the major leadership role that it has assumed in APEC. Such “national demonstration effects” can be very important.

In addition, liberalization by one SRTA (or a broader regional agreement) can induce similar activities elsewhere. Some observers believe, for example, that the recent accelerations of AFTA liberalization have been motivated partly by its desire to achieve free trade more quickly than the broader APEC body. It is clear that the Bogor Declaration played a major role in convincing the economies of the Western Hemisphere to agree to create a Free Trade Area of the Americas (FTAA) at their subsequent Miami summit. This “competitive liberalization,” as different groups seek to improve their economic performance and attract internationally mobile investment, can be a powerful force for reductions of trade and investment barriers.

Moreover, SRTAs can develop techniques of liberalization and trade facilitation that provide useful precedents for broader groupings. The Canada-United States FTA and the ANZCERTA reached agreements in the services sector that set precedents for the global accords that were later adopted in the Uruguay Round. We have already pointed to the ANZCERTA’s agreement on competition policy, and related elimination of antidumping duties, as a possible precedent for APEC and/or other wider groupings. AFTA and ANZCERTA are working on harmonizing their customs arrangements. These “international demonstration effects” can also be extremely important.

There is thus no *a priori* basis on which to judge whether acceleration of SRTA liberalization and/or SRTA linkages would contribute to, or detract from, implementation of the Bogor commitment to achieve free and open trade and investment in the Asia Pacific region. Such steps could either promote or deter the process. The cardinal issue is **how** any such initiatives are pursued.

The most important consideration is whether any new SRTA initiatives occur within the context of full and faithful implementation of the Bogor commitments. If APEC as a whole is moving decisively toward achieving free trade and investment in the region as a whole, new liberalization steps by SRTAs would almost surely be, and be seen as, contributing positively to the process. Our recommendations seek to help assure that positive interaction by utilizing “open subregionalism” as an element in helping APEC move to free trade by 2010/2020.

## ACHIEVING OPEN SUBREGIONALISM

The Bogor Declaration clearly indicated that, in moving to free and open trade and investment in the region, “We wish to emphasize our strong opposition to the creation of an inward-looking trading bloc that would divert from the pursuit of global free trade.” The EPG has stressed in both its previous reports that all liberalization within APEC must proceed on a nondiscriminatory basis and that APEC as a group must faithfully embody the principle of open regionalism. We believe that the same principles must apply to all SRTA activity within the region.

A minimum requirement is of course that **any SRTA acceleration or linkage must be fully consistent with the WTO**. It must therefore cover “substantially all” trade among the economies involved, include “substantial sectoral coverage” of services, set a target date for completing the process (normally within ten years), and avoid the creation of any new barriers to nonmembers.

**We recommend that any new SRTA initiatives within APEC be promptly submitted to the WTO for confirmation that they meet these tests and for surveillance of their performance in practice.** Both APEC itself and the WTO, through its new Trade Policy Review Mechanism, should be asked to monitor the SRTA initiatives to verify their conformity with the broader global and regional commitments that the member economies have undertaken.

**We also recommend that any SRTA acceleration or linkage be extended to other APEC economies under the nonmutually exclusive four-part formula already proposed by the EPG for the extension of APEC liberalization itself to nonmembers of the broader grouping:**

- SRTA members should implement their acceleration or linkage via unilateral (and hence MFN) liberalization to the maximum possible extent.
- each SRTA acceleration or linkage should be accompanied by a clear policy statement by the member economies that they intend to continue reducing their trade barriers to other APEC members as well as to other members of their SRTA. This would go well beyond the requirement of Article 24 of the GATT and embody the APEC-wide commitment to open regionalism. It would also reaffirm the commitments of each SRTA member in the Bogor Declaration both to achieve free trade in the region and to continue pushing for global trade liberalization.
- each SRTA acceleration or linkage should be accompanied by the respective group's indication of a willingness to extend its new liberalization to other APEC members on a reciprocal basis. This would provide an equal opportunity for all APEC economies that are not members of the particular SRTA, or SRTAs that are linking up, to participate fully in the benefits of SRTA liberalization initiatives.
- any individual SRTA member can unilaterally extend its SRTA acceleration or linkage to other APEC economies on a conditional or unconditional basis. It would have to do so to all non-APEC economies as well if it were to proceed on an unconditional basis, however, because the WTO does not permit selective extension of preferences to nonmembers of an SRTA.

An even more ambitious effort to link SRTAs to the overall APEC process would be for each SRTA to apply the four-part formula to its **existing** liberalization. This would mean that AFTA, ANZCERTA and NAFTA would offer to generalize their current margins of preference, and those they will be phasing in over future years, to other APEC economies, as a group on a reciprocal basis (per above paragraph 3) and/or unilaterally on a conditional or unconditional basis (per paragraph 4, noting again that any unconditional extension would have to apply to all WTO members outside as well as inside APEC). Indonesia has recently taken the latter step: its "deregulation" package of May 22, 1995 unilaterally extends most of its (recently accelerated) AFTA liberalization to all other economies, outside as well as inside APEC, on an unconditional MFN basis.<sup>3</sup>

Proposals to link existing SRTAs represent a practical step in this direction: generalization of existing SRTA benefits to **some** other APEC members. It is in this sense that such linkages could become one of the modalities for implementing the Bogor vision of free trade and investment in the region as a whole.

There are two potential risks to any such developments, however. One is that, given the far greater economic weight of NAFTA than the other SRTAs, involvement of NAFTA in the process via linkups with AFTA or ANZCERTA could be viewed in some quarters as a revival of the "NAFTA extension" option that the EPG believes, and has argued in both its first and second reports, could retard rather than promote APEC cohesion. The other problem is that the SRTA approach could create new discrimination within the region if, for example, AFTA benefits were extended to Korea but not to Japan.

On the other hand, SRTA acceleration or linkage would be fully consistent with the commitments already adopted by APEC if they were governed by the principles recommended above — consistency with the WTO, submission to both the WTO and APEC itself for approval and surveillance, and application of the EPG's four-part formula to their relationships with the rest of APEC. It would be even better if the SRTAs would agree to generalize their existing liberalization. Such steps could become useful instruments for implementing the Bogor commitments, with members of the different SRTAs acting together

<sup>3</sup> A less ambitious variant of this option is for the present SRTAs to at least harmonize their current rules of origin (ROO) and any other relevant regulations that adversely affect the other SRTAs in the region. The main potential problem is the ROO on textiles and apparel in NAFTA (the "triple transformation test"). Achievement of such an agreement would, while leaving current margins of preference intact, eliminate an important source of difficulty within the broader APEC region.

outside any APEC-wide negotiation or decision.<sup>4</sup> Following Indonesia's unilateral initiative, for example, AFTA or NAFTA could decide to take initial steps toward meeting their Bogor commitments by generalizing their current SRTA liberalization to all of APEC.

**We therefore conclude that SRTAs within APEC should accelerate their liberalization and forge linkages among themselves only on the basis of the principles developed and recommended here.** If there proves to be difficulty in implementing the Bogor vision through more conventional means, these SRTA steps could provide an attractive alternative.

#### APEC AND THE FREE TRADE AREA OF THE AMERICAS (FTAA)

A final "subregional" issue is the relationship between APEC and the Free Trade Area of the Americas (FTAA). The issue inherently arises because three economies (and perhaps soon a fourth, Chile) are members of both groupings. More generally, these arrangements are seeking broadly similar goals and could be major drivers of world trade policy over the next decade or two.

As noted above, the Bogor Declaration was instrumental in persuading the 34 countries at the Miami summit to commit themselves to work out a free trade agreement in the Western Hemisphere by a date certain (2005). "Competitive liberalization" was again at work. However, new trade discrimination (as well as trade creation) between the two areas will inherently ensue. The same basic issues arise as with relations among the existing SRTAs within APEC. Indeed, the FTAA can be viewed as an extension of NAFTA and thus quite similar to the role of NAFTA within APEC as already analyzed—except that the FTAA will presumably include non-APEC as well as APEC member economies.

We therefore recommend that both APEC and FTAA members, especially countries that are members of both:

- assure that their arrangements fully meet the requirements of Article 24 of the GATT and Article V of the GATS;

<sup>4</sup> *Negotiation between an SRTA and nonmembers of that SRTA in APEC would of course occur when an SRTA offered to generalize its acceleration or linkage to other APEC economies on a reciprocal basis.*

- go beyond Article 24 by endorsing and faithfully implementing the concept of "open regionalism" as defined by the four-part formula proposed by the EPG;
- avoid adopting any provisions, such as restrictive rules of origin, that would create new difficulties for trade between the regions;
- work, perhaps together, toward further global trade liberalization in the WTO *inter alia* to reduce the newly created margins of preference against each other; and
- over time, contemplate elimination of those margins of preference between the two arrangements — preferably through the achievement of global free trade but through other means if necessary.

It should be noted that linkages between existing subregional arrangements will probably be a major avenue for achieving the FTAA. Six SRTAs now exist within the Western Hemisphere. The most important are NAFTA and Mercosur (Argentina, Brazil, Paraguay, Uruguay), which is currently seeking to negotiate association arrangements with the rest of South America (Chile and the Andean Pact countries). The eventual FTAA will probably be largely negotiated between NAFTA (led by the United States) and Mercosur (led by Brazil). Special arrangements will likely be worked out with the two SRTAs of smaller countries, the Caribbean Common Market (CARICOM) and the Central American Common Market (CACM). As a result, existing margins of preference and rules of origin within the Americas would be eliminated. Depending on the status of APEC progress at the time, these steps could revive interest in linkages among SRTAs in the Asia Pacific.



## MONETARY AND MACROECONOMIC COOPERATION

In their Economic Vision Statement in Seattle, the APEC Economic Leaders envisioned a community of Asia Pacific economies in which "goods, services, *capital and investment* (italics added) flow freely among our economies." They agreed to convene a meeting of APEC Finance Ministers "to consult on broad economic issues including macroeconomics and *capital flows* (italics added)." The Bogor Declaration called for the adoption of "the long-term goal of free and open trade *and investment* (italics added) in Asia Pacific" no later than 2010/2020.

The APEC vision thus clearly includes liberalization of investment and capital movements. Increases in such flows will contribute to economic progress in the region, and the program recognizes the central role played by the private sector in the Asia Pacific integration process.

The Mexican crisis of late 1994 - early 1995, however, produces a stark reminder that these flows can create substantial problems of at least two types. Large inflows can mask the onset of serious imbalances that require a country to make important policy changes, and such inflows can quickly reverse into outflows that produce severe financial problems and even crisis conditions for that country.

The Mexican crisis also reveals that the onset of such situations, given the globalization of financial markets, can have significant effects on other countries. Market psychology can produce "contagion effects" through which many innocent bystanders are seriously affected. Hence, all countries must be concerned about the issue, even if their own economic situations and policies are unlikely to create problems directly.

Indeed, several APEC economies were hit severely by the fallout from Mexico. Interbank call interest rates in Thailand were temporarily quoted at 100 percent at the peak of the liquidity and currency crisis. Stock markets plummeted in Hong Kong, Singapore, Tokyo and other Asia Pacific economies. Several APEC member economies met promptly to discuss the situation and how they might respond.

The potential onset of this sequence of events can be intensified by programs of trade liberalization. Liberalization of imports can lead to increases in trade deficits, at least temporarily, which in turn can produce financial pressures unless corresponding changes are made in exchange-rate and other

macroeconomic policies. Mexico's unilateral trade liberalization and subsequent NAFTA implementation, in the absence of adequate changes of this type, clearly played a role in the development of its currency overvaluation, large external deficit and financial crisis.

The events of the past year thus provide a strong reminder that the APEC member economies need a financial dimension to their program to achieve free trade and investment in the region. Such a dimension would have two purposes. It would first seek to identify shortcomings in macroeconomic and financial policies in an individual member economy that could create difficulties for the region as a whole, and to promote the adoption of policy changes to prevent the onset of such difficulties. In addition, it would provide access to financial resources on a sufficient scale to encourage such preventative actions and, since crises could still occur, to respond in a timely manner to limit their impact.

The most efficient way to meet these needs would be to augment the capabilities of the International Monetary Fund. There are three reasons for this preference. First, international financial problems of the type addressed here can be global in nature: APEC economies can be adversely affected by developments originating outside the region, and countries outside the region can be impacted by events originating in APEC. Second, the IMF has institutional capabilities that enable it to meet both needs outlined above: its staff can help anticipate economic imbalances as they develop and the IMF has well established procedures for disbursing financial assistance. Third, APEC seeks to promote global economic progress: just as its regional trade initiatives seek to promote global trade liberalization, its interests in financial stability range well beyond the region.

We therefore applaud the decision of the Group of Seven industrial countries (G-7), at their Halifax summit in June 1995, to pursue the creation at the IMF of both a more effective early warning system, to enable the international community to do a better job of preventing future crises *a la* Mexico, and an Emergency Financing Mechanism to provide the means for responding to any such crisis that carries systemic implications. The APEC economies have a strong interest in the successful implementation of these initiatives. Three APEC members (Canada, Japan and the United States) are of course members of the G-7 that developed the plan. In addition, as noted, a number of other APEC members were significantly affected by the spillover effects of the Mexican crisis.

**We recommend that the Economic Leaders at Osaka endorse the proposed new program at the IMF and that the APEC Finance Ministers strongly support it.** The program has three main elements:

- full and timely reporting by all IMF members of standard sets of data to be developed by the Fund, and establishment of benchmarks for their timely publication to increase transparency and thereby enable the private financial markets to perform more effectively, thus reducing the risk of new financial shocks;
- the conveying of sharper and franker IMF advice to countries that appear to be avoiding necessary adjustment actions, to limit the risk of deteriorating conditions that can lead to crises; and
- financial contributions, by countries with the requisite capability, to enable the General Arrangements to Borrow (GAB) to double the resources it can make available to the IMF to fund the new Emergency Financing Mechanism.

**APEC economies should themselves submit the data sets that the Fund will seek from its members and adhere to the agreed standards for their publication.** This will both reduce the risks that any of them will suffer Mexico-type shocks, and help persuade countries in other parts of the world to do so as well. APEC economies that fail to publish adequate data would inevitably suffer negative reactions in the financial markets that would retard their ability to attract capital and thus their development.

In addition, **a number of APEC economies that are members of the IMF are in a good position to make financial contributions to the new IMF mechanism and should do so.** These economies should of course participate fully in the decision-making process on use of the funds — and be provided with a corresponding increase in their participation on international monetary issues more broadly. The rapid increase in the economic and financial capability of numerous APEC economies needs to be reflected more fully in the international institutional framework than has been the case to date, and this new reform of IMF procedures provides an excellent opportunity for such a realignment.

We see an important parallel between these financial issues and the trade issues which have commanded much more time and attention in APEC during its history to date. In both areas, all APEC economies have a very strong interest in the strength and effectiveness of the global arrangements and institutions — centered on the WTO in trade and on the IMF in finance. In both areas, regional initiatives by APEC can help strengthen the global infrastructure — just as the first Leaders' meeting in Seattle promoted a successful conclusion of the Uruguay Round and the creation of the WTO. In both areas, APEC member economies have experienced substantial increases in

their global capabilities that have not yet been accommodated by provision of parallel increases in their global responsibilities.

We believe that the occasion of creating the new Emergency Financing Mechanism and its funding should be utilized to pursue this latter objective in the IMF, just as the creation of the WTO offers the possibility for similar evolution of the global trading system. We therefore urge the APEC economies to provide full support for the new IMF initiatives. We simultaneously urge the entire membership of the Fund, especially those countries that are members of the GAB, to encourage such increases in participation by providing the new contributors with roles in the relevant institutions that fully and fairly reflect their contributions.

If by any chance these IMF initiatives were to founder, it might be necessary for APEC to address the issues itself. The risks revealed by the Mexican crisis, both for individual APEC economies and for the region as a whole, are too great to ignore. New mechanisms are clearly needed both to help prevent such events and to respond to them if they recur. The APEC Finance Ministers, in addition to providing strong support for the new efforts of the IMF and GAB, should keep these questions under close review and be prepared to move in a regional perspective if that were, unfortunately, to become necessary.



## DEVELOPMENT AND TECHNICAL COOPERATION

The Bogor Declaration directs APEC to strengthen the multilateral trading system, liberalize the region's trade and investment regimes, and intensify Asia Pacific development cooperation so that members can "attain sustainable growth and equitable development, while reducing economic disparities among them." It is clear from the way the Declaration sets out and expands these imperatives that it takes all three to be compatible, interlinked and reinforcing. The EPG agrees. Development cooperation creates the enabling environment for, and is a vital building block in, APEC's agenda for complete trade and investment liberalization by 2020. It is a vital strategy.

In our previous two reports, we cited APEC's Working Groups on Infrastructure, Human Resources Development and groups working on Small and Medium Enterprises and recommended that they be given "high priority." While these are substantial functional areas, they still form only the thin end of the wedge of possible cooperative endeavors. Speaking to APEC participants around the region, we have been impressed by the wish to see cooperation proceed along a broad front. From gritty poverty eradication to surreal information super-highways, the very number and diversity of proposed projects — some feasible, others not — convince us that development and technical cooperation could well flourish into the next century. Failure of it to do so would, it seems, be more an indictment of the approach taken to such cooperation rather than its content. The Group has therefore focused on the necessary conditions to mold a conducive climate for development and technical cooperation.<sup>5</sup>

Development cooperation programs are, to be sure, needed in APEC to fill the gaps in technology, management, planning and administration among its diverse members. Bilateral and multilateral development cooperation programs have been implemented to correct these deficiencies and they should continue

<sup>5</sup> *The Group makes the strongest plea possible to all members to not allow the vital issue of approach to be reduced to a shallow semantic debate. Whether the term "development" or "economic and technical" cooperation is used, the concept is hollow and meaningless without the full support of, and empowerment by, the members themselves. To us, technical cooperation is only one specific subset of development cooperation. We have deliberately chosen, however, to use the terms either jointly or interchangeably to demonstrate that it is much less important to agree which of these terms should be used as it is to find real areas of consensus where cooperation can take place.*

to do so. New concepts, however, have evolved; new issues have emerged; and new methods of implementation have been formulated. Cooperation among developing economies, for instance, has opened up a previously unexplored dimension of development cooperation. Another is the harnessing of the energies of APEC's private, state and local government sectors. APEC should depart from the conventional donor-recipient development cooperation framework and articulate a new approach, one that stresses empowerment of all the participants in the development cooperation process.

Our deliberations on approach have been underscored by one common theme: markets must be made to matter and private initiative must not be stifled by the heavy hand of governments. There are two practical aspects to this. First, while economic development of APEC members has had, and will probably continue to have, various degrees of government involvement, only a market-oriented approach will be acceptable to all members as the basis for this organization's economic cooperation. Second, the most productive cooperation is, simply, also the most highly incentivized. Development and technical cooperation driven by a strong market logic is more sustainable and beneficial than if it were not. On both counts, the EPG believes that there is, and can be, no true alternative approach to productive cooperation other than a liberal, voluntary one.

A reliance on markets does not imply passivism. On the contrary, to implement the spirit and letter to the Bogor Declaration, the EPG recommends the strongest activism by *all members*, but activism in a real facilitative sense.<sup>6</sup> Incipient markets need encouragement and developing markets need strengthening. This fact has already been accepted by APEC as is evident by the programs and projects undertaken these past five years. If there is one criticism the Group has, however, it is that member governments have been too robust as gatekeepers and not robust enough as *provocateurs*. We understand that one reason for this may be the wish to keep APEC's agenda compact and tightly focused on trade and investment. The third imperative given by economic leaders in Bogor, however, now paves the way for an evolution in this direction. **APEC should play a unique coordinating role in the new cooperation programs by:**

<sup>6</sup> *There has, again, been much time spent on arguing whether APEC should engage in "facilitative" or "cooperative" programs even though it is clear that neither are mutually exclusive or inconsistent. The reason why this issue arises at all is that some members are not prepared to go much beyond exchange of information while others most definitely are. The debate is unlikely to be resolved by merely recasting terminology and is therefore pointless.*

- allowing members to identify their own development and technical cooperation priorities;
- enabling parties with common interests, needs and resources to work actively with one another for their mutual benefit;
- facilitating involvement of all relevant sectors and levels (e.g. private companies, nongovernmental organizations, local governments, etc.); and
- mobilizing funding from diverse sources and not just from governments.

**The Group suggests a four-point Action Plan in the Osaka “down payment” to kick off the process of development and technical cooperation:**

- I. Adopt a set of Governing Principles of APEC Development Cooperation;
- II. Apply the Principles to, and embark on, an APEC Technical Cooperation Initiative;
- III. Liberalize APEC’s development and technical cooperation decision-making; and
- IV. Place an APEC Infrastructure 2020 (INFRA 2020) Program on priority status and immediately undertake an APEC-wide Benchmarking Program.

#### **GOVERNING PRINCIPLES OF APEC DEVELOPMENT COOPERATION**

No APEC member can feel reasonably secure or committed to increased development and technical cooperation unless certain ground rules are first established to ensure consistency with APEC’s overall goals, objectives and, perhaps most importantly, norms. At the same time, we have said that most productive cooperation occurs in a liberal environment, one where governments are just one of the possible players. Too strict a set of rules can cause valuable projects to be stillborn, while too lax a set obviously makes their safeguard function meaningless. To balance the two competing demands and still move forward, the Group proposes that APEC adopt a simple list of seven “Governing Principles of Development Cooperation.” This step may seem innocuous, but we strongly believe that it is a vital step, made necessary by both political and organizational needs of members.

*Principle #1.* All development cooperation must value-add, not detract or duplicate. Efficiency requires that all efforts recognize, build upon and follow through past and present multilateral, regional and bilateral cooperation. Member economies cannot afford to write-off good work that has gone before or that is already being carried out. Where “projects” have not advanced beyond mere information exchange and there is a case for concrete actions, “duplication” (in a superficial sense) would be justified and productive.<sup>7</sup>

*Principle #2.* Participation in development and technical cooperation must be pluralistic and inclusive. Governments tend to occupy most of the front seats in regional cooperative endeavors and, if at all, subnational government, nongovernment and private sector organizations are relegated to the back benches. There is, however, a wealth of leadership, experience and expertise in these organizations that can and should be tapped.

*Principle #3.* Development cooperation projects must attempt integration, not mere participation, of the private sector. APEC already accepts and regularly articulates the principle of private sector participation, and the Bogor Declaration specifically incorporates it in the area of economic development. In our view, integration means more than participation. It includes opening up the possibility of full partnership rights from agenda-setting through to project implementation.

*Principle #4.* Technical cooperation projects should be “market-friendly.” Members should be strong proponents of projects that support competitive pricing and resource allocation processes. Projects that lead to any member economy/economies gaining unfair advantage over others are inimical to efficient markets and should be avoided. Priority should be given to projects with direct linkages to APEC’s overall goals of trade and investment liberalization and also to deregulation, which is a major determinant in the restructuring of many capital-intensive industries such as telecommunications and transport.

*Principle #5.* Development cooperation must not lead to a sharp dichotomous donor-recipient relationship within APEC. To achieve “balanced and equitable economic growth,” projects must be aimed squarely at providing opportunities for developing members to participate more fully in the regional and global economy and not to equalize outcomes.<sup>8</sup>

<sup>7</sup> *Implementing the APEC Bogor Declaration: Draft PECC Statement to the APEC, Eighth Trade Policy Forum, Taipei, April 1995.*

<sup>8</sup> *Some members have stressed that APEC is not an aid organization and therefore should not be involved in promoting development. Even if not formed for that purpose, it is still not reasonable to preclude outright voluntary initiatives to provide assistance, whether between and among developing members, or between and among developed and developing members. If anything, these should be respected and encouraged.*

*Principle #6.* Technical cooperation should be voluntary, firmly based on mutual interest and devoid of compulsion and involuntarism. The Bogor Declaration allows APEC economies that are ready to start and implement a cooperative arrangement to do so, while those not yet ready or unprepared to commit to it "may do so at a later date." This important and pragmatic dictum must permeate the entire development and technical cooperation process.

*Principle #7.* All APEC programs of development cooperation must follow the highest standards of ethical behavior. Corruption must be resisted in all its manifestations. Transparency in awarding contracts, and in all other parts of this initiative, can be instrumental in promoting such results.

### APEC TECHNICAL COOPERATION INITIATIVE

The second logical step to move development cooperation forward is to embark on a Technical Cooperation Initiative (TCI) that is consistent with the Governing Principles outlined. **The Group recommends that four basic activities be undertaken:**

- generate Statements of APEC Member Development Cooperation Priorities;
- appoint a Technical Cooperation Task Force;
- formulate a Technical Cooperation Framework; and
- establish voluntary APEC Member Technical Cooperation Funds.

### STATEMENT OF APEC MEMBER DEVELOPMENT COOPERATION PRIORITIES

One of APEC's most important and useful contributions is its ability to promote understanding of one another's economies and, through dialogue, transform this understanding into region-wide consensus for collective action. It is, above all, a "learning organization." The TCI's first order of business is to produce the basis for such a consensus. Each APEC member should be asked to generate statements of its development and technical cooperation priorities. It is important that these priorities be in terms of both offers and requests, categorized by specific sector, subsector or functional area, and also by the institutions capable of participating in the projects, i.e., government, nongovernment, academic centers and private companies, etc.<sup>9</sup>

<sup>9</sup> One can imagine that, based on the 18 members, hundreds of project bids and offers could easily be put on the table for possible future action. At least some of these proposals would have similar, if not identical, themes or objectives and the members involved would form a natural group to examine implementation of proposals.

### Task Force on Technical Cooperation

After submissions are received and collated, we suggest that an APEC Task Force comprising Senior Officials and relevant business sector representatives be asked to draft a report for Economic Leaders to consider. This report, to be called the "APEC Technical Cooperation Framework," incorporates the Statement of Priorities but goes further to outline areas for collective regional action, policies, implementing strategies, and organizational processes. An important aspect of the Task Force's work would be to articulate the Governing Principles and ensure they are observed. To see that APEC does not unproductively implement projects better handled by other organizations (e.g., other APEC Working Groups, the World Bank or the United Nations Development Program (UNDP), for example), it could flag these areas to their ministers who could then jointly urge the relevant bodies to undertake them.

### Technical Cooperation Framework

The APEC Technical Cooperation Framework's primary value lies in its information content. It makes transparent each member's legitimate interests and participating capabilities, both as donor and recipient, and it sets out the organization and procedures for interested parties to access these needs and/or capabilities. We emphasize that the Framework is not a Plan. There are no targets that must be achieved. There is no compulsion to implement projects if there are no interested parties to do so. What the Framework does from the start is to state the overarching policies of members (e.g., regulatory, legal and administrative regimes) and then place before members a menu of development cooperation possibilities. This greatly increases the chances of their taking place. In practice, and in the best tradition of the market place, what members will do is "sell" these projects to one another and to assemble interested groups.<sup>10</sup>

### APEC Member Technical Cooperation Funds

Any form of region-wide pooling of resources for technical cooperation will be extremely difficult to implement. In our first report, the Group argued that there was no clear case for a new financial initiative to support technical cooperation, a conclusion we continue to maintain. There is nothing to stop member economies, however, from voluntarily establishing their own funds for technical cooperation purposes. We suggest that they be actively encouraged. A measure of APEC's success in spurring development cooperation could be

<sup>10</sup> It goes without saying that APEC Working Groups should be fully involved with TCI activities relevant to their spheres of activities.

the amounts of seed money that it can attract from member governments, the private sector and bilateral sources. With the funds administered by each member, the objections posed in regional resource pooling efforts should all but disappear.

### APEC DEVELOPMENT COOPERATION DECISION-MAKING

Real cooperation is voluntary. We strongly advise against a statist approach, one that sets targets and then proceeds to undertake them regardless of changing conditions and timetables. Instead, we advocate "cooperative voluntarism." We urge that each member be allowed to place any number of APEC proposals on the table and then allow the "market" to allocate time and resources to them. Participants, whether governments or the private sector, will be either driven (or not driven, as the case may be) by the benefits of cooperation and they will be the final arbiters of the process.

The Group therefore asks members simply to recognize and give their full support to a liberal decision-making process. First, all projects submitted by members are legitimate and therefore deserve consideration at the highest levels of APEC. This creates an automatic preapproved list for interested parties to act on if they so wish. Second, all projects are open to all members at all times even though not all may want to be involved. Members should always have the choice to buy in to projects and must never be shut out or excluded. Third, members may express and/or register specific reservations about a project at any time should they feel the need. These can be discussed through the different layers of dialogue mechanism and, if no consensus or compromise can be reached, will ultimately result in APEC's sanction being withdrawn. The project could then continue as a cooperative endeavor on the part of the economies concerned.

### APEC INFRA 2020 PROGRAM

The Group agrees with the PECC's Trade Policy Forum recommendation that "visible achievement" should be an important near- to medium-term goal of APEC cooperation.<sup>11</sup> Demonstrable results, at this stage, would do a great deal to generate fresh enthusiasm for regional cooperation of the type envisaged in the Bogor Declaration, and we suggest the following:

- place an APEC Infrastructure 2020 ("INFRA 2020") Program on priority status; and
- undertake an APEC-wide Infrastructure Benchmarking Program.

<sup>11</sup> *Implementing the APEC Bogor Declaration. op. cit.*

### Priority Status

The Sixth APEC Ministerial Meeting in Jakarta endorsed proposals to enhance technical cooperation in infrastructure and, given the strong support, is a highly suitable launching point for "visible achievement." Indonesia has already done APEC a great service by identifying areas where this might occur, for example:

- private sector participation (and funding) in infrastructure provision;
- joint-venture/regionalization of facilities;
- cross-border alignment of regulations and policies;
- adoption, adaptation and transfer of technologies; and
- management and skills training in infrastructure.

We would recommend, however, that the concept of infrastructure be widened to include all essential ancillary components such as institutional, legal, scientific, technological and human resource development.

APEC members should launch "INFRA 2020," an accelerated program of action designed to support capacity building, and, in so doing, directly contribute to the goal of free trade and investment in the region. Granting of priority status would simply operationalize relevant concepts outlined in this chapter, including the soliciting of individual members' priorities and delegating all decisions relating to participation to the members concerned. The relevant APEC Working Groups concerned will monitor progress and issue status reports to the Senior Officials Meetings.

### Infrastructure Benchmarking Program

Benchmarking involves systematically documenting "best practice" methods and technologies and more accurately measuring the differences between and among members. This business practice, most commonly used as an analytical tool, has special relevance to APEC in the area of infrastructure, especially telecommunications, transportation and energy. The normal course of consultations and exchange of information communicates parts of the necessary information, but not necessarily in an objective or systematic manner capable of being used to influence development strategies. According to this suggestion, members would voluntarily document indicators of their own industries and then make the results available to the "pool." In a very practical

sense, and with the private sector actively involved, the APEC Infrastructure Benchmarking Program can, in and of itself, stimulate significant trade and investment flows.

### OTHER AREAS

The Group stated at the onset of this section that the clamor for development cooperation projects across the region is a loud and diverse one. Apart from cooperation in infrastructure, human resources and small- and medium-scale enterprises, two other areas of cooperation have been identified that would make a discernible, visible impact. As they are being actively discussed, we do no more than enumerate them, namely:

- cooperation directly aimed at promoting trade and investment
  - training of customs, quarantine and immigration officials;
  - transfer of quarantine and standards testing technology;
  - development of appropriate administrative procedures; and
  - institutionalization of legal frameworks for the protection of intellectual property rights.
- cooperation aimed at promoting economic growth and sustainable development
  - energy security and efficient use;
  - protection against region-wide environmental pollution; and
  - improved technology in food and fibers.

The Seoul Declaration has, in fact, clearly identified many of these cooperative projects and a number have been proposed to APEC Working Groups. The projects go no further than information exchange and consultation. They need urgently to be upgraded to action programs.

### PROMOTING TECHNOLOGY TRANSFER

The EPG has noted the importance of the unrestricted flow of technology among member economies in the Asia Pacific region. Technology plays a

fundamental role in socio-economic development and, while we expect market forces to operate in respect of technology of a proprietary nature, there should be no legislative or other official restrictions on its flow. Unrestricted flow of new and high technology will accelerate economic development and enhance scientific and technological capabilities, promote trade and investment liberalization, and reduce disparities in levels of economic development. **The Group therefore recommends that APEC give impetus to the unrestricted flow of technology among member economies and work out nonbinding principles to this effect.** Among the principles could be the following:

- that member economies will take practical and effective measures to remove or mitigate restrictions on the flow of technology;
- that member economies will encourage the use of technology in production, trade, environment, telecommunications, and so forth;
- that member economies will attempt to encourage technology transfer, whenever possible, by adopting concessionary or preferential terms to developing members;
- that member economies will promote safeguards against the transfer of unsafe and risky technology; and
- that member economies will protect intellectual property rights and safeguard owners' interests.



## CONCLUSION

The Eminent Persons Group believes that APEC has successfully completed the first phase of its development: establishing and articulating a clear vision for the economic future of the Asia Pacific. At Seattle, the Leaders called for the creation of a true community of Asia Pacific economies. Bogor set the target of achieving free and open trade and investment in the region by 2010 and 2020. APEC has thus charted a bold and promising economic course for the Asia Pacific, raising the bright prospect of further progress and prosperity for over 40 percent of the world's people and one half the world's economy.

APEC must now move rapidly and effectively into its second phase: implementation of the Bogor promise. This task promises to be even more challenging than the creation and enunciation of the initial vision. A wide range of issues must be confronted and resolved. Accommodations must be found for the very different levels of development and cultural approaches within the membership. Consistency must be maintained between the regional effort and the overriding interest of all member economies in the progress and success of the world economy as a whole, and of the global institutions that help sustain it.

This process will of course take several years to complete. We thus welcome the prospect of maintaining the momentum of Seattle and Bogor by continuing, at least for the foreseeable future, the annual meetings of Economic Leaders. We believe that the history of APEC itself, and of many other important international initiatives, demonstrates that sustained attention by top political leadership is essential in translating bold concepts into operational realities.

It is also essential that APEC make steady progress toward tangible realization of its ambitious goals. There are skeptics in the region, and elsewhere in the world, who remain to be convinced that APEC has become a pragmatic source of improvement in the economic environment and a useful instrument for effective cooperation. Seattle and Bogor commenced the process but Osaka must now begin to translate promise into practicality.

Hence we have stressed throughout this report that the Leaders and Ministers must agree at Osaka on a convincing "down payment" on implementation of the Bogor pledges. We believe that a number of issues are ripe for inclusion in such a package:

- accelerated implementation of several aspects of the Uruguay Round agreement;

- immediate installation of an APEC Dispute Mediation Service;
- an attack on abusive antidumping policies;
- immediate steps to foster cooperation between the competition policy authorities of the member economies;
- an extensive initiative on standards and testing that will greatly facilitate trade and investment in the region;
- further progress in developing and applying APEC-wide principles to promote and protect investment;
- strong support for improving the capacity of the international monetary system to prevent future crises *a la* Mexico and respond to such crises when they recur; and
- launching of a far-reaching program of development and technical cooperation.

An action program of this type, combined with firm agreement on a process to achieve free and open trade and investment in the region by 2010/2020, would mark the decisive transition of APEC from its initial stage of conceptualization to its successor stage of implementation. APEC could thereby simultaneously begin to deliver on its promises to the peoples of its own region and to the world as a whole.

Prompt and successful conclusion of this pivotal phase of APEC's evolution is strategically critical. We have argued at some length that the intensification of trade and other economic disputes in the region, and the worrisome tendencies to diverge from multilateral approaches despite the growing pluralism of member economy capabilities and thus the imperative of collective leadership, pose unprecedented challenges requiring urgent and effective responses. APEC would have to be invented if it did not already exist.

We conclude that the peoples of the region are enormously fortunate that Seattle and Bogor have begun a process whose realization will assure their prosperity, and their peace, for the twenty-first century. The task at Osaka and beyond is to carry through the implementation process with the same vigor and decisiveness that characterized the creation of the vision itself. The record demonstrates that APEC is fully capable of doing so. We urge the Leaders, in the spirit of Seattle and Bogor, to launch the process decisively at Osaka.

## SUMMARY OF RECOMMENDATIONS

### IMPLEMENTING THE BOGOR DECLARATION

- A substantial “down payment” of decisive steps on individual components of the “action agenda” should be adopted at Osaka in November 1995. The momentum of Seattle and Bogor, and the credibility of the entire APEC initiative, will be difficult to sustain if Osaka limits itself to procedural agreements.

### ACCELERATING THE URUGUAY ROUND LIBERALIZATION

The Bogor Declaration “decide(d) to accelerate the implementation of our Uruguay Round commitments...” We recommend that APEC member economies do so by:

- Agreeing on a list of possible areas for acceleration from which individual APEC members would choose one or more (the “menu”);
- Implementing all such acceleration on a Most-Favored-Nation basis;
- Reducing by half, wherever practicable, the transition periods for implementing trade liberalization and rule-making reforms that they have already committed to in the Uruguay Round (the “50 percent rule”);
- Industrialized economies should choose to:
  - shorten the remaining transition period for most of their tariff cuts from four years to two; and/or
  - accelerate implementation of their agreed reduction in agricultural subsidies from six years to three; and/or
  - increase by 50 percent the volume of imports covered in each of the succeeding stages of reform of the Multi-Fiber Arrangement; and/or
  - reduce their tariffs or their remaining nontariff barriers beyond levels that were agreed upon in the Uruguay Round.
- Developing economies should choose to:

— cut in half over five years the gap between their bound and currently applied tariff rates, with the bindings then lowered to the applied rates after ten years; and/or

— cut in half the transition periods for most of the new intellectual property disciplines (from four years to two) and for patent protection for certain agricultural and pharmaceutical products (from nine years to four and one-half); and/or

— cut in half the transition periods to eliminate prohibited trade-related investment measures (local content, trade-balancing and foreign exchange-balancing requirements) from five to two and one-half years; and/or

— cut in half the phaseouts on export subsidies, from eight to five years on nonagricultural products and from five to two and one-half years for export subsidies granted contingent on sourcing of domestic goods.

Those APEC economies that are not now members of the World Trade Organization should become Contracting Parties as soon as possible.

### A DISPUTE MEDIATION SERVICE

We recommend the immediate creation of a voluntary APEC Dispute Mediation Service (DMS). It should:

- Apply to all issues, thus ranging far beyond the dispute settlement mechanism in the World Trade Organization;
- Emphasize mediation and conciliation rather than arbitration, in which the mediator tries to bring the parties together to arrive at their own settlement of the dispute or, failing that, offers his or her own proposals for a settlement;
- Feature “shuttle diplomacy” by a mediator moving between the two sides in an effort to reconcile their differences and foster a settlement between them;
- Be implemented by individual mediators chosen voluntarily by the APEC member economies that are parties to a dispute from a list originally nominated by each economy and maintained by the APEC Secretariat;
- Enable third parties to make their views known at the outset of the process; and

- Encompass a second stage through which, if mediation and conciliation fail, a special review panel would make an objective assessment of the dispute that would be released publicly if one or more of the parties failed to accept its proposals.

## BROADENING AND DEEPENING THE URUGUAY ROUND AGREEMENTS

We recommend that APEC initiate a multifaceted approach to deal with abusive implementation of member economy **antidumping** policies by:

- Enunciating a strong political commitment to address the problem;
- Calling for antidumping policies to take account of the interests of all parties affected by an antidumping action, including consumers and industrial users of imports as well as import-competing firms;
- Authorizing competition policy officials to challenge antidumping orders that seem likely to significantly reduce competition in their domestic market;
- Discouraging frivolous antidumping actions by requiring complainants to post a forfeitable bond, related to the size of the alleged injury; and
- Consideration in the study recommended below of whether reformed competition policy might provide a mechanism for pursuing the legitimate goals of antidumping policy while avoiding its potential abuses.

We recommend that APEC undertake several initiatives to address the critical issue of **competition policy** through:

- Immediate cooperation in the application of existing member economy competition policies, at a minimum through "positive comity" (whereby competition officials in one economy take into account the concerns of foreign competition officials over possible anticompetitive behavior in their economy) and preferably through joint antitrust enforcement;
- Seeking to reduce unproductive differences in the competition policies of member economies over the longer run; and
- Launching a major study aimed at identifying differences in competition law and policy among the member economies and why these differences exist, in an effort to provide a foundation for such a harmonization effort.

We recommend that APEC implement a multifaceted program to facilitate trade through wider **product standards and testing** procedures, aimed at enhancement of the principle "tested once, accepted everywhere in APEC":

- Assignment to private business/industry of primary responsibility for standards harmonization where they believe such harmonization is necessary;
- Achieving APEC-wide Mutual Recognition Agreements (MRAs) on acceptance of test data and product certification in major regulated sectors;
- Creation of an Asia Pacific Technology Fund to enable all APEC members to participate effectively in the MRAs via modernization of testing laboratories and training of standards experts;
- Acceleration of the implementation of the Technical Barriers to Trade Agreement from the Uruguay Round;
- Alignment of all new APEC regulatory standards with international standards; and
- Establishment of a Standards Expert Group to study and report on the elimination of technical barriers to trade in the region.

## PRIVATE INVESTMENT

We recommend that APEC strengthen and apply the nonbinding investment principles (NBIP) agreed in 1994:

- The principles relating to transfer of funds, capital movements, national treatment (including right of establishment), performance requirements and investment incentives need to be strengthened;
- This should be done initially by unilateral actions by individual member economies, strengthening the principles and applying them in their economies;
- The NBIP themselves should then be improved at the earliest possible date; and
- The NBIP should then be converted into a "voluntary code," where adoption of the entire code remains voluntary, but the principles are binding once a member economy decides to adopt it, and ultimately into a binding agreement.



## TOWARD OPEN SUBREGIONALISM

We recommend that subregional trading arrangements (SRTAs) within APEC should accelerate their liberalization and forge linkages among themselves only on the basis of the following principles:

- Full consistency of their plans with the WTO, i.e., including “substantially all” trade in goods and “substantial sectoral coverage” of services, setting a target date for completing the process, and avoiding any new barriers to nonmembers;
- Prompt submission of these plans to the WTO for approval, and for monitoring, by both the Trade Policy Review Mechanism of the WTO and by APEC itself;
- Extension of their liberalization to other APEC members on the same nonmutually exclusive, four-part formula previously proposed by the EPG for the extension of APEC liberalization itself to nonmembers of the broader grouping:
  - implementation via unilateral (and hence MFN) liberalization to the maximum possible extent;
  - declaration of the SRTA members’ intention to continue reducing barriers to other APEC members as well as to their SRTA partners;
  - an offer to extend their new liberalization to other APEC members on a reciprocal basis; and
  - recognition that any individual SRTA member could extend its SRTA liberalization, on a unilateral basis, conditionally to other APEC members or unconditionally to all members of the WTO (including other APEC economies).
- APEC economies should refrain from new SRTA actions if they are unable to proceed on the basis of these principles.
- Members of APEC and of the Free Trade Area of the Americas (FTAA), especially economies that are members of both, should also:
  - avoid adopting any provisions, such as restrictive rules of origin, that could create new difficulties for trade between the regions;

- work, perhaps together, toward further global trade liberalization in the WTO *inter alia* to reduce the newly created margins of preference against each other; and
- over time, contemplate elimination of those margins of preference — preferably through the achievement of global free trade but through other means if necessary.

## MONETARY AND MACROECONOMIC COOPERATION

We recommend that APEC endorse the new programs proposed at the International Monetary Fund to help prevent, and when necessary respond to, financial crises of the type that hit Mexico in late 1994 - early 1995:

- Full and timely reporting by all IMF members of standard sets of data, to increase transparency and thereby enable the private financial markets to perform more effectively;
- Conveyance of sharper and franker IMF advice to economies that appear to be avoiding necessary adjustment actions; and
- Financial contributions by economies with the requisite capability to enable the General Arrangements to Borrow to fund the new Emergency Financing Mechanism at the IMF.

In addition, APEC economies themselves should submit the data sets that the IMF will seek from its members. Moreover, those APEC economies that are in a position to do so should make contributions to the new Emergency Financing Mechanism, and be provided with a corresponding increase in their participation in the decision-making process on use of the funds and on international monetary issues more broadly.

## DEVELOPMENT AND TECHNICAL COOPERATION

We recommend that APEC launch a four-point Action Plan in the Osaka “down payment” to kick off the process of development and technical cooperation:

- Adoption of a set of Governing Principles of APEC Development Cooperation;
- Application of the Principles to, and embarkation upon, an APEC Technical

Cooperation Initiative that formulates a Technical Cooperation Framework and establishes voluntary APEC Member Technical Cooperation Funds;

- Liberalization of APEC's development and technical cooperation decision-making; and
- Placing an APEC Infrastructure 2020 (INFRA 2020) Program on priority status and immediately undertaking an APEC-wide infrastructure benchmarking program.

We also recommend that APEC give impetus to the unrestricted flow of technology economies and work out nonbinding principles to that effect.

## DETAILS OF THE MEDIATION PROCESS

From the mediator's perspective, there are three stages of the mediation process: (1) information gathering; (2) probing or analyzing strengths and weaknesses of each party's contentions; and (3) strategizing and negotiating. The mediator's role is set forth in the following description of the proposed mediation process.

Since the APEC Dispute Mediation Service (DMS) would be an entirely voluntary and nonbinding procedure, and would be a supplement to the WTO dispute settlement mechanism, APEC members submitting their disputes to the DMS must be willing participants with a belief that it can help lead to an agreement. The DMS would convene a mediation session promptly after the mutual request of the parties to the DMS administrator. The location would be agreed upon by the parties, with a default location being the site of the APEC Secretariat in Singapore. Expenses for the mediation would be born equally by the parties, subject to a settlement which otherwise allocates such expenses. Expenses for third parties wishing to participate in the mediation process would be borne by themselves and not by the principals to the dispute.

The mediation process should begin with a joint session attended by all interested parties (we assume hereinafter that there are two parties to the dispute), including third party states who may be materially affected by the outcome of the settlement. At this meeting, the mediator first explains the format of the session and discusses the nature of the procedures. The parties are informed that the mediator's function is to assist them in finding common points upon which to base a settlement, and that the mediator will not be judging them or directing them to take any particular action.

After these introductory remarks, the mediator will ask each party to make a brief presentation of its case to put the major issues on the table and identify areas of dispute. At this time, third parties will also make presentations to clarify their interest in the dispute. The presentations should provide each party with a clear outline of the issues which are regarded as being important by the other party, and they should also provide the mediator with a broad overview of the case.

Once the parties complete their presentations, the mediator shifts the mediation to the private caucus sessions and the parties move to separate locales. The mediator meets privately with each party, at which time he informs them

that these private sessions are confidential and that nothing will be disclosed to the other party without the express consent of that party. If additional information is required by one party after the closing of the joint session, then the mediator must request such information from the other party since there will not be another joint session.

During the private caucus sessions, the mediator should ask each side to analyze the respective strengths and weaknesses of its own case, and the projected outcome, given the information it received during presentations in the joint session. At the close of each caucus, the mediator and the party should discuss what specific information may be disclosed to the other party and identify what information should remain confidential.

From this point on, the mediator moves back and forth between the parties, listening to their points and relaying information and arguments for the other party. After the parties agree with the mediator that all of their points have been effectively communicated to the other party, the mediator may privately ask each party for its "bottom line" or least acceptable solution. It is then largely up to the skill of the mediator to move each party towards a mutually acceptable settlement.

Once a settlement is reached, the mediator should ensure that it is captured in written form. The final language should be prepared and signed at the time of the mediation.

We propose that a list of DMS mediators be maintained by the APEC Secretariat. From that list, one to three mediators would be selected upon agreement of the parties to the dispute to guide the parties through the mediation process. Such selection would be completed within ten days after a request for mediation, subject to passage of a 30-day period of direct prior consultations between the parties to the dispute.

The qualifications of DMS mediators should be similar to those of WTO panelists. The list could include individuals who have previously served as a representative of a member of APEC, taught or published on international law or policy, served as a senior trade policy official of a member of APEC, or come from the business/private sector. DMS mediators should be selected to ensure their independence of judgment from any APEC government, their diverse background, and a wide spectrum of experience.

Potential DMS mediators from member economies whose governments are parties to a dispute shall not serve as a mediator to that dispute unless the

parties to that dispute agree otherwise. Neither shall mediators serve who are from economies that are members of the same SRTA as a party to the dispute. DMS mediators shall serve in their individual capacities and not as representatives of governments nor of any other organization. APEC member economies will not seek to influence the mediators.

## TERMS OF REFERENCE FOR THE PROPOSED STUDY OF COMPETITION POLICY

1. The social, cultural, and economic context in which competition policy is implemented in each APEC economy and the objectives that this policy is intended to achieve.
  - a. changes in this context over the years and the corresponding changes in the policy;
  - b. for example, many APEC member economies have moved toward more market-oriented policies in recent years; what has been the role of competition policy in this transition and the impact of the transition on thinking about competition policy?
2. The specific substantive provisions of each economy's competition law including (but not necessarily limited to) those related to:
  - a. horizontal restraints including monopoly, oligopoly, and cartels;
  - b. vertical restraints including exclusive dealing or sourcing, tie-ins and resale price maintenance;
  - c. restrictive business practices including predation, coercion, refusal to sell and price discrimination;
  - d. mergers regulation including horizontal, vertical, and conglomerate mergers;
  - e. exceptions to prohibitions; and
  - f. the legal framework, e.g., are violations *per se* illegal or subject to rule of reason?; are violations considered criminal or civil offenses?
3. Enforcement and procedural issues:
  - a. does a specialized enforcement agency (or agencies) exist?; where is it located in the governmental organization?;
  - b. what is the dominant *modus operandi* of the enforcement agency?; to bring cases to court?; to exercise moral suasion?; does the agency have independent enforcement powers, including the ability to impose fines or other penalties?
  - c. what are the penalties for violations?; who can impose them and under what circumstances?; what is the recent record?; and
  - d. who has standing to bring cases, i.e., is there private right of action?;
4. Relationships among competition law/policy and other relevant policy domains, especially industrial and trade policies; and
5. An assessment of the areas in which harmonization or convergence among APEC nations is:
  - a. desirable; and
  - b. possible.

## THE NONBINDING INVESTMENT PRINCIPLES: AN INITIAL ASSESSMENT

The EPG was asked in the Bogor Declaration "to provide the APEC Economic Leaders with assessments of the progress of APEC." The agreement of November 1994 on the nonbinding investment principles (NBIP) is the first (and, to date, only) case where such an assessment is appropriate. We have therefore conducted an initial assessment of the NBIP, deriving suggestions for further efforts by APEC on the investment issue.

A central question in such assessments is the standard against which to judge the decisions made by APEC member economies. The preferred standard would of course be decisions by Leaders themselves. These are definitive and provide a clear point of reference.

Where decisions by Leaders are not available, we compare APEC actions with widely recognized international standards. One possibility is the rules of other international economic institutions such as the International Monetary Fund and, particularly, the WTO. The WTO may provide an especially relevant standard in some cases because of APEC's interest in reaching "WTO-plus" agreements. Another possible standard is the rules of other regional or subregional organizations, including those within APEC itself such as AFTA or NAFTA. New standards on investment may be developed in the near future through the Multilateral Agreement on Investment which the OECD economies are now considering. Where necessary, we also compare the agreed NBIP against the investment recommendations included in the first two reports of our Eminent Persons Group.

Our assessment of the ten specific principles included in the NBIP leads us to conclude that five are at (or even above) other international standards. Five of the NBIP fall short of those standards. We will address each in turn.

### PRINCIPLES THAT MEET INTERNATIONAL STANDARDS

#### 1. Transparency

NBIP Wording: Member economies will make all laws, regulations, administrative guidelines, and policies pertaining to investment in their economies publicly available in a prompt, transparent and readily accessible manner.

Assessment: The wording on transparency is excellent. It remains only for all member economies to adopt this standard for APEC to assume leadership on this central issue.

#### 2. Nondiscrimination (Most-Favored-Nation Treatment)

NBIP Wording: Member economies will extend to investors from any economy treatment — in relation to the establishment, expansion, and operation of their investments — that is no less favorable than that accorded to investors from any other economy in like situations, without prejudice to relevant international obligations and principles.

Assessment: The NBIP wording on nondiscrimination is solid. The only question relates to its final phrase ("without prejudice..."). Does it imply an exception from Most-Favored-Nation treatment within regional arrangements, such as NAFTA? The phrase is ambiguous and should be clarified or deleted.

#### 3. Expropriation

NBIP Wording: Member economies will not expropriate foreign investments or take measures that have a similar effect, except for a public purpose and on a nondiscriminatory basis, in accordance with the laws of each economy and principles of international law, and against the prompt payment of adequate and effective compensation.

Assessment: The language on expropriation meets the standards of other international investment instruments.

#### 4. Settlement of Investment Disputes

NBIP Wording: Member economies accept that disputes arising in connection with a foreign investment will be settled promptly through consultations and negotiations between the parties to the dispute or, failing this, through procedures for arbitration in accordance with members' international commitments or through other arbitration procedures acceptable to both parties.

Assessment: The language on dispute settlement fully meets international standards. It is in many ways similar to the language establishing procedures for settlement of investment disputes under NAFTA.



## 5. Tax Measures

**NBIP Wording:** Member economies will endeavor to avoid double taxation related to foreign investment.

**Assessment:** Double taxation can result from governments' arbitrarily assigning transfer prices to imports and exports associated with direct investments. The NBIP language represents a useful start in dealing with the transfer price issue.

## PRINCIPLES THAT FALL SHORT

Four of the NBIP principles fall well short of standards that have been set in other international agreements: those pertaining to transfer of funds, capital movements, national treatment (which includes right of establishment) and performance requirements. A fifth, regarding investment incentives, fails to meet the tests for breaking new ground in this difficult but very important field.

## 6. Transfer of Funds

**NBIP Wording:** Member economies will further liberalize toward the goal of the free and prompt transfer of funds related to foreign investment, such as profits, dividends, royalties, loan payments, and liquidations in freely convertible currencies.

**Assessment:** The NBIP wording fails to provide assurances about the free transfer of funds, calling merely for further liberalization without specifying the ultimate goal. It thus falls short of standards established in other international agreements, such as in the OECD Code on the Liberalization of Capital Movements and the NAFTA. Both call for avoiding restrictions on repatriation and convertibility except for those consistent with the IMF Articles of Agreement and GATT Article XII, which allow for trade actions in the event of a balance of payments crisis.

## 7. Capital Movements

**NBIP Wording:** Member Economies accept that regulatory and institutional barriers to the outflow of capital will be minimized.

**Assessment:** The NBIP use of the term "minimized" poses problems because there are no criteria against which to determine when the relevant barriers

are in fact minimized. The current language would allow almost any such barrier to be unchallenged. It thus falls short of the standards in other international agreements.

## 8. National Treatment (including Right of Establishment)

**NBIP Wording:** With exceptions provided for in domestic laws, regulations, and policies, member economies will accord to foreign investors — in relation to the establishment, expansion, operation, and protection of their investments — treatment no less favorable than that accorded in like situations to domestic investors.

**Assessment:** The NBIP language on national treatment falls well short of comparable international standards. Any new departure from member economy or Most-Favored-Nation treatment of foreign investors that was passed into law, embodied in a new regulation, or simply incorporated in a statement of policy would be consistent with the NBIP language and thus "excepted" from its principles. A first step in strengthening the language would be to include a date establishing a standstill on such exceptions (e.g., "With exceptions as provided for in domestic laws, regulations, and policies that were in effect on 1 January 1995...").

## 9. Performance Requirements

**NBIP Wording:** Member economies will minimize the use of performance requirements that distort or limit expansion of trade or investment.

**Assessment:** Since there is no objective way to determine when the use of performance requirements is "minimized," the NBIP wording provides no meaningful guidance. The language is in fact inconsistent with the new WTO obligations on local content and trade balancing requirements, which are banned under the Agreement on Trade Related Investment Measures (TRIMs) that was reached in the Uruguay Round, even though the NBIP preamble states that its principles have been adopted "...recognizing the importance of fully implementing the Uruguay Round TRIMs Agreement..."

The TRIMs Agreement required an immediate standstill and subsequent rollback of these performance requirements. WTO members were to notify the WTO by April 1, 1995, of all such measures. Developed economies then have two years to phase them out while developing economies have five years to do so. In the earlier section of this report on acceleration of implementation of the Uruguay Round, we in fact recommend that APEC

members should consider cutting these transition periods in half as part of their contributions to the Osaka "down payment."

#### 10. Investment Incentives

**NBIP Wording:** Member economies will not relax health, safety and environmental regulations as an incentive to encourage foreign investment.

**Assessment:** A commitment not to relax health, safety, or environmental standards as an investment incentive would be a welcome step. However, the NBIP do not go far enough toward liberalizing tax and subsidy incentives. APEC governments should make available information on any tax or subsidy incentives to foreign investment, impose no new investment incentives and seek to roll back such distortions.

Investment incentives have proven difficult to deal with in all international fora. For example, the effort to address them in the Uruguay Round largely failed although its Agreement on Subsidies and Countervailing Measures does ban subsidies linked to export performance and local content requirements. Investment incentives are not addressed in the NAFTA. APEC thus has an opportunity to break new ground in this area and it could be a fertile opportunity for the development of WTO-plus arrangements.

### ABBREVIATIONS AND ACRONYMS

ADR	Alternative Dispute Resolution
AFTA	ASEAN Free Trade Area
ANZCERTA	Australia-New Zealand Closer Economic Relationship Trade Agreement
APEC	Asia-Pacific Economic Cooperation
APIC	Asia-Pacific Investment Code
APMP	Asia-Pacific Metrology Programme
APTF	Asia-Pacific Technology Fund
ASEAN	Association of South East Asian Nations
Blake Island	Location of the first APEC Economic Leaders Meeting, 20 November 1993. Blake Island is near Seattle, Washington state, USA.
Bogor	Location of the second APEC Economic Leaders Meeting, 15 November 1994 Bogor is near Jakarta, Indonesia.
CER	Closer Economic Relationship (See ANZCERTA)
CTI	APEC Committee on Trade and Investment
DMS	APEC Dispute Mediation Service
EPG	APEC Eminent Persons Group
FDI	Foreign Direct Investment
FTAA	Free Trade Area of the Americas
G-7	Group of Seven Industrialized Economies
GATS	GATT/WTO General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
IMF	International Monetary Fund
ISO	International Standards Organization
Jakarta	Location of the 6th APEC Ministerial Meeting, 13-14 November 1994.

MFA	GATT Multi-Fibre Agreement
MFN	Most-Favored Nation
MRA	Mutual Recognition Agreements
NAFTA	North American Free Trade Agreement
NBIP	APEC Non-Binding Investment Principles
OECD	Organization for Economic Cooperation and Development
Osaka	Location in Japan of the third APEC Economic Leaders Meeting, 19 November 1995, and the 7th APEC Ministerial Meeting, 16-17 November 1995.
PASC	Pacific Area Standards Conference
PBF	APEC Pacific Business Forum
PECC	Pacific Economic Cooperation Council
ROO	Rules of Origin
Seattle	Location in the United States of the 5th APEC Ministerial Meeting, 18-19 November 1993
SMEs	Small and Medium Enterprises
SRTA	Subregional Trade Arrangement
TASF	Technical Assistance Special Fund
TPRM	GATT/WTO Trade Policy Review Mechanism
TPT	Technical Barriers to Trade Agreement
TRIMS	GATT/WTO Trade-Related Investment Measures Agreement
TRIPS	GATT/WTO Trade-Related Aspects of Intellectual Property Rights Agreement
UR	Uruguay Round of GATT Multilateral Trade Negotiations
WTO	World Trade Organization

## TERMS OF REFERENCE OF THE APEC EMINENT PERSONS GROUP

### A. Bogor Economic Leaders' Declaration of Common Resolve

We express our appreciation for the important and thoughtful recommendations contained in the reports of the Eminent Persons Groups and the Pacific Business Forum. The reports will be used as valuable points of reference in formulating policies in the cooperative framework of the community of Asia-Pacific economies. We agree to ask the two groups to continue with their activities to provide the APEC economic leaders with assessments of the progress of APEC and further recommendations for stepping up our cooperation.

We also ask the Eminent Persons Group and the Pacific Business Forum to review the interrelationships between APEC and the existing sub-regional arrangements (AFTA, ANZERTA and NAFTA) and to examine possible options to prevent obstacles to each other and to promote consistency in their relations.

(Extract from the APEC Economic Leaders' Declaration of Common Resolve, Bogor, Indonesia, 15 November 1994)

### B. Seattle Joint Ministerial Statement

Ministers expressed their great appreciation for the initial Report of the Eminent Persons Group, which assessed the current position and outlook of the APEC Region, developed a long-term vision for open trade in the APEC region and proposed a program of initiatives to implement the vision. The EPG Chair, Dr C Fred Bergsten, presented the group's unanimous Report which emphasized that APEC must accelerate and expand cooperation in order to respond to three threats to the continued vitality of the region: erosion of the multilateral global trading system; evolution of inward looking regionalism; and risk of fragmentation within the Asia-Pacific region. The EPG recommended APEC undertake initiatives in four areas: regional and global trade liberalization; trade facilitation programs; technical cooperation; and institutionalizing APEC.

Ministers warmly welcomed the Report's broad thrust and direction, pointing out the Report's bold vision of open trade, investment and economic

development in the region provides an important foundation and catalyst for future regional cooperation. In a wide-ranging discussion Ministers noted the contribution of the EPG in promoting vigorous debate on the economic challenges facing the Asia-Pacific region, reaffirmed the central value of a strengthened open multilateral trading system to continued growth in APEC economies, urged acceleration and extension of APEC's trade and investment facilitation and technical cooperation and expressed their desire to enhance APEC's role as a vehicle for regional and global trade and investment liberalization.

They also noted the EPG vision reflected the strengthening of economic relationships and a growing sense of cohesion and community in the Asia-Pacific region, reflecting APEC's commitment to consultation and consensus building. Ministers directed the APEC Secretariat to give broad distribution to the Report. They also suggested EPG members might wish to discuss the Report with the business community, academia and the general public, and APEC members might wish to encourage this process.

Ministers discussed several approaches to addressing the Eminent Persons Group recommendations, noting in particular that those recommendations closely linked to ongoing work should be implemented promptly; those recommendations related to the outcome of the Uruguay Round would require additional study and consideration; and those recommendations related to longer term trade liberalization would require further elaboration by the EPG, on the advice of the Senior Officials.

In light of the above, Ministers instructed Senior Officials to develop pragmatic programs to implement the EPG recommendations on trade liberalization and facilitation, technical cooperation, and the development of the APEC structure and decision-making process. Ministers further requested Senior Officials to prepare a strategy and program to advance regional and global open trade, identify mechanisms to achieve that goal, and report to Ministers at the next ministerial meeting.

Ministers asked the Eminent Persons Group, on the advice of Senior Officials, to present further more specific proposals on how the recommended long-term vision might be realized. Ministers wish to consider these proposals at their meeting in Indonesia in 1994.

(Extract from Report of Fifth Ministerial Meeting, Seattle, WA, United States of America, 17-19 November 1993)

### C. Bangkok Ministerial Terms of Reference

To develop a vision of trade in the Asia Pacific region in the medium term (to the year 2000), including:

- general trends in economic growth, structural change, trade and investment flows, and the regional and global trade policy environment; and
- the policy scope for advancing the APEC region's development through strengthened economic and trade linkages.

To identify constraints and issues which should be addressed by Governments in order to advance the dynamism of trade in the region. Specific areas that might be considered include:

- the main barriers to expanding trade in the region and the scope for reducing these barriers to trade (in goods and services) and to investment in a way which is consistent with GATT principles and not to the detriment of other economies; and
- the scope, within the APEC framework, for contributing to the resolution of trade frictions.

To identify priorities for the region in future multilateral trade negotiations and in the future evolution of the GATT.

In developing their recommendations, the EPG should take into account the various levels of economic development of APEC economies.

(Extract from Report of Fourth Ministerial Meeting, Bangkok, Thailand, 10-11 September 1992)