

Capacity Building for Investment Liberalization and Facilitation —Compendium Paper

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Executive Summary

This paper summarizes the findings of a project implemented by the APEC Working Group on Human Resources Development in collaboration with the Investment Experts Group of the Committee on Trade and Investment. Its objectives are to raise the capacities of public officials and business executives concerned with foreign direct investment, and to identify specific economic reform measures that would help to create a more attractive investment climate.

The project was conducted by developing 11 case studies of cross-border investments involving 14 APEC member economies. Some deal with controversial cases of investor-host economy disputes, while others address interesting situations with important lessons for APEC from the perspective of both the investing and the host economies. The cases illustrate a number of common themes, and together provided lessons for both officials and private sector executives, in particular the following:

- *As it is impossible to anticipate every eventuality, foreign investors need to have a well-developed contingency plan to address the inevitable challenges that arise.*
- *Investors need to appreciate the different interests of host economy stakeholders, while host economies require strong public policy-making processes that balance the interests, rights and obligations of domestic stakeholders.*
- *Investor and host economies have common interests and can learn from each other.*

The lessons from the cases point to both challenges and opportunities for the APEC process as it seeks to promote investment liberalization and facilitation in the Asia-Pacific region. Specifically the project suggests that a stronger emphasis on capacity building would be warranted to strengthen the willingness and the ability of stakeholders in both the public and private sectors to work together more effectively in creating an investor-friendly business environment.

Introduction

In the 1994 Bogor Declaration, APEC established a target for achieving effective liberalization of trade and investment among its developed member economies by 2010, a timeline which has almost arrived. While the progress of regional economic integration in the Asia-Pacific over the past fourteen years has been truly impressive, various impediments to cross-border investment remain, often in the form of “behind the border” regulations that increase the costs and risks of doing business.

The APEC process itself has sponsored many projects to promote investment liberalization and facilitation. At this juncture a joint activity specifically focused on capacity building—for this purpose defined as the transfer of practical knowledge to officials and business executives alike—appeared to address an important remaining information gap.

Its objectives were twofold, as follows:

- First, the project was intended to raise the capacities of public officials involved in the development of policies and legislation that impact on foreign direct investment, by making them more aware of how the design and execution of public policies impact on the investment climate. Moreover, the project was intended to enhance the capacity of

business executives to implement cross-border investment projects successfully by making them more aware of the challenges of project implementation, the risk involved, and the appropriate mitigation strategies.

- Second, the project was designed to identify specific economic reform measures that would help create a more attractive investment climate. The emphasis was on how legal and regulatory processes throughout the life cycle of an investment (from establishment, through operations to dissolving the business) either contribute to or detract from an economy's investment climate.

As has been the case with similar APEC joint projects, the chosen approach was the development of case studies focusing on actual business experiences with cross-border investment in the APEC region. Eleven case studies were prepared involving a total of 14 APEC economies (plus two neighboring economies in Southeast Asia that were not APEC members), either as hosts or originators of the cross-border investment. The investment projects on which the cases were based involved a variety of situations, encompassing different economic sectors, types of projects, stages of development and implementation challenges. Together, they provided a rich background of information and experience on the interface between public policy-making and business execution.

The Use of Case Studies as Research and Teaching Tools

In its classic form a case study is an illustration of a real life situation that presents the people concerned with dilemmas or challenges. Following this pattern, the cases for this project were chosen to demonstrate actual investment decisions and their outcomes, including the challenges encountered and how they were overcome. The cases were developed not only to document how problems were resolved, but also to illustrate the lessons learned from the experience, taking into account the scenario in the context of the events, people and factors influencing the situation. The cases also imply a number of capacity building needs.

Many of the 11 cases developed under this project (see Exhibit 1) can also be used as teaching cases in the regular university classroom or for targeted training programs for executives. They were chosen so that they would be of interest to all major stakeholders involved in cross-border investment, including public officials from both the originating and host economies, business executives responsible for overseas investments, and professional services organizations that advise and serve the investment principals. The cases are intended to be used in enhancing understanding of the key elements, as well as innovative ways of addressing issues and problems, using fact-based examples of a company's experience. Thus this report and its supporting resource materials will be useful to both public officials and business executives who are involved in, and contribute to the liberalization and facilitation of cross-border investment, including central/local government officials, investment promotion agencies, private consultants, and entrepreneurs considering entry into overseas markets in the Asia-Pacific region.

The cases all deal with an investment situation involving a company operating in one or more of the APEC member economies, though there may be multiple players in the investment situation. They do not deal with general analyses of macroeconomic-level investment climate issues. Still, the perspectives of the cases vary considerably. Some deal with very well-known and sometimes controversial cases, including investor-host economy disputes. Others are less familiar, but nonetheless interesting business situations with

important lessons for APEC. In the majority of the cases, the investment project had already been implemented, though in three instances, the focus of the case was on the pre-investment decision stage rather than on the problems encountered after the investment had taken place.

The cases were generally prepared from the perspective of both the investing and the host economies, though in this regard the emphasis also varied. Many deal with the interrelationship between public policy and regulatory affairs and the business climate. Others reflect the practical experiences of individual business executives operating in a cross-cultural environment, while still others discuss the roles of diverse stakeholders ranging from local officials to investment promotion agencies and facilitators such as logistics companies. Despite these intended differences in perspective, however, the cases illustrate a number of common themes. Together they provide important lessons of relevance to officials and business persons alike in the APEC region.

Summary of the Cases

1. KPS China looks to Australia for First Offshore Manufacturing Facility

This case study describes the investment experience of KPS China, outlining the company's reasons for coming to Australia and the processes involved in setting up a business in that economy. It details some of the challenges faced by the company and how they were resolved. The case study also describes the roles played by Commonwealth and State government agencies in facilitating the investment.

Once the manufacturing operation is running smoothly, KPS China is planning to establish a research and development (R&D) center in Australia. The center, scheduled to be opened in mid-2008, will be located within the factory to ensure easy access to materials and facilities.

KPS China also hopes to purchase land in Australia within the next three years to replace its present rented premises with a larger production facility and more advanced equipment.

2. Real Estate Development Project in Chile by a Private Entrepreneur of Malaysia

The case concerns an urban development project, which aimed to build a satellite town on 600 hectares of rural property, implemented in Central Chile between 1996 and 1997 by a private Malaysian corporation. The initial investment planned for the purpose was estimated to be US\$ 17,136 million.

The prospective investor submitted the required investment application to the Foreign Investment Committee of Chile (CIE), which was approved by the agency on 3 March 1997.

However at the beginning of the project, the foreign investor faced a number of administrative obstacles arising from urban regulations in effect in the chosen geographic area. This resulted in the official rejection of the project by the Chilean Ministry of Housing and Urban Development, owing to conflict between the project and the urban development plan in effect at that time.

The investor resorted to the International Centre for Settlement of Investment Disputes (ICSID), on the basis of the Bilateral Investment Treaty for Investment Promotion and Protection executed by Chile and Malaysia in 1992. The arbitration proceedings have been going on for close to seven years and have still not been resolved. The controversy has given

rise to an interesting and important analysis by ICSID concerning the balance between the right of a member economy to adopt a sovereign economic policy decision, on the one hand, and its obligations and strict adherence to the provisions of international treaties on the other. It is clear that commitments not to discriminate against a foreign investor may constrain the host economy's freedom to develop and implement internal policies.

3. Setting up a Factory in China: Sanyan Steel Co., Ltd

In recent years, almost all major global passenger car manufacturers have invested in the growing China market and have set up manufacturing facilities there. To serve the final assemblers, many auto parts manufacturers have also been establishing production lines in China, so that the auto assemblers can localize their parts manufacturing operation and achieve higher local content in the China market.

In 2001 Sanyan Steel Co., Ltd was the world's largest producer of B-grade special steel, a key input to the manufacture of auto parts. Instead of supplying hot rolled steel bar to the parts manufacturers, who in turn shipped them from Japan to China, Sanyan Steel decided to establish its own plant in China.

The case explores the on-the-ground experiences of the Japanese expatriate manager who was assigned to build and open the new facility. His experience offers some key advice for other expatriate managers, including acknowledging that each economy is different, as are the values and aspirations of the citizenry. Expatriate managers must make a concerted effort to understand what local partners do and why, engage partners in decision-making, help them learn from mistakes and acknowledge their positive contributions.

4. A Test of Many Wills: PT Asuransi Jiwa Manulife Indonesia

This case concerns the well-documented experiences of the Indonesian affiliate of Manulife Financial, a Canadian life insurance company, during the early years of the current decade. Manulife's forerunner, The Manufacturers Life Insurance Company, had operations in Asia, including Sumatra, from about the turn of the twentieth century. The group's current operations in Indonesia began in 1985, however, through a joint venture called PT Asuransi Jiwi Dharmala.

In 2000 Manulife Financial attempted to buy out the interest of its Indonesian partner, the Dharmala Group, a second-generation, family-controlled Indonesian conglomerate that began as a trading company and more recently expanded into financial services. The group was very highly leveraged and had found itself in considerable difficulty following the Asian Financial Crisis. By 2000 its major non-bank arm, Dharmaka Sakti Sejahtera, was bankrupt.

The result of Manulife's buy-out attempt was a protracted legal battle and test of wills that became exceptionally nasty by the normal standards of resolving business disputes, whether through litigation or negotiation. As events unfolded, a Manulife Asuransi Jiwa Dharmala company executive was jailed, and the Manulife affiliate itself petitioned into bankruptcy and temporarily closed. The credibility of both the Indonesian legal system in general and its process for restructuring financial institutions in particular were called into question in many developed economies, while Canada and Manulife were accused by Indonesian observers of abusing their powers.

5. *Freeport's Grasberg/Ertsberg Mine in West Papua, Indonesia*

Freeport-McMoRan Copper & Gold, Inc. has been investing in the exploration and exploitation of copper, gold and silver in Grasberg/Ertsberg mine in West Papua, Indonesia since 1967. The Freeport case provides an excellent example of the changing environment and the challenges that foreign investors face in demonstrating their corporate social responsibility (CSR).

While Freeport's investment has been profitable and has contributed to the economy of Indonesia, it has however caused serious security and environmental problems. Freeport's payments to Indonesian military and police officials have been heavily criticized. In response, Freeport has been investing in security and environmental protection as well as in local community development, and such investment has been fairly effective in improving the security and environmental conditions of the mine and the societal conditions of the local community.

However, there remains considerable room for improvement. Although Freeport has vigorously defended its actions, the US Securities Exchange Commission (SEC) and the US Justice Department are investigating Freeport's payment to Indonesian officials. As a successful investor in natural resources development in developing economies, Freeport faces strong pressure to tackle social problems, environmental protection and local community development. It is also under intense pressure to make its business and accounting more transparent.

6. *Revitalizing a Regional Economy: Hokkaido Tracks' Investment in Tourism*

Taking advantage of tourist concerns over safety following September 11, a group of Australians selected the small town of Kutchan in Hokkaido, Japan as the ideal spot to build an international resort. With Japan still struggling with the so-called "lost decade" that followed the collapse of the 1980s bubble economy, the investment has proceeded far from smoothly, and the investors have had to resolve a succession of problems in dealing with the local authorities. At the same time, absorbing this new overseas investment has also required the local administration and the local community to rise to challenges well beyond their previous experience in the process of building a relationship with the foreign investors. There have been a number of important lessons learned from this seemingly implausible but quite successful investment.

Customer Perspective: The investment in Kutchan by the Australian entrepreneurs has spurred the revival of Niseko industry and the surrounding tourist areas from the decline caused by the collapse of the bubble economy. The opportunity to develop unique local attractions only became apparent with the influx of overseas visitors, as did the need to reposition accommodations and hospitality facilities to global standards.

Development of Clear Rules and Regulations and Information Sharing: The Kutchan experience demonstrates that to smooth the way for foreign investment, investment risk needs to be reduced by developing the relevant legislation, fostering legal specialists, consultants and the other local personnel needed to support this investment, and improving means of local fund sourcing.

Toward sustainable development: Niseko's future success will hinge on whether the authorities, local residents and investing firms can work together to plan and implement the comprehensive development of the area as an international resort.

7. *Starting up a Hotel in Cusco*

The tourism sector is a vital part of the Peruvian economy and a major source of foreign exchange earnings, as well as a sector characterized by substantial foreign direct investment. This case focuses on the registration procedures required to establish a new hotel in Cusco. Three key procedures were examined, for which there was shared responsibility between a central body (the National Institute of Culture) and the local government authority, as follows: obtaining a construction permit; conducting a project evaluation; and conducting an archaeological study.

There were no clearly established procedures to indicate where a potential investor should start these processes, just as there were no mechanisms to facilitate cooperation and coordination between the National Institute of Culture (INC) and the local government. The time spent to obtain the authorization was around 200 days. The findings of the case stood in contrast to the results of the latest World Bank *Doing Business* reports (2006, 2007 and 2008), which found that Peru has improved its investment climate by reducing the time required to start up a business from 102 days to 72 days. Both the case study and the World Bank found that delays most often occurred at the local government level, due to a lack of clarity and transparency on the process and appropriate procedures.

8. *Reviving Foreign Investments in the Philippines: The Case of a Mining Project in Rapu-Rapu Island*

In January 2004, Philippine President Gloria Macapagal-Arroyo issued an Executive Order aimed to revive the country's mining industry. A Mineral Action Plan (MAP) identified 24 high-priority mining projects that would generate US\$ 6.7 billion in investments, among them a project in the remote island of Rapu-Rapu in Albay province. It was groomed as a showcase of the Philippine government's renewed drive to provide a climate conducive for mining investments, and to demonstrate that "responsible mining is possible" in the Philippines.

The project encountered problems almost immediately, as two incidents of "mine-tailing" spills occurred, killing fish, crustaceans and other marine organisms. The spills created a "fish scare" leading credence to anti-mining groups which were calling for the mine's closure. This prompted the government to reverse course and suspend the mine's operations for an indefinite period, resulting in large financial losses for the investor.

Six months after ordering the suspension of operations, the Department of Environment and Natural Resources (DENR) allowed the company to conduct a series of test runs on its ore-processing facilities on the island. The test-runs were intended to help decide whether to close the project permanently or allow it to resume commercial operations. Environmentalists opposed the decision, while pro-mining groups welcomed it. The controversy made the agency very cautious in giving the green light, stretching the test runs for 120 days, even as the mine's financial losses mounted to Php 2.5 billion by the 15th month of the project's suspension.

9. *Corning (Taiwan)*

Corning Display Technologies [Taiwan], a subsidiary of Corning Inc., USA, was established in 1981. Corning engages in the production of glass substrates for active matrix liquid crystal displays (LCDs), also known as thin film transistor liquid crystal displays (TFT-LCDs). Two glass substrate plants have been established to support the high demands of Chinese Taipei's

panel makers. To date, the company has invested more than US\$ 1 billion in its Chinese Taipei operations.

The development of new laws for the protection of intellectual property (IP) in Chinese Taipei was critical to Corning Taiwan's decision to invest. Under considerable pressure from overseas governments and businesses, Chinese Taipei updated a number of its laws to improve IP protection and established a task force to combat piracy. Regular training programs were provided to judges and prosecutors on the enforcement of IP rights. All of these efforts were aimed to improve IP protection in Chinese Taipei within a short timeframe.

However, the rapid pace of these changes proved to be controversial with protests in front of the Legislative Yuan and the Bureau of Foreign Trade becoming common. Legislating global standards for IP protection while taking into account the needs of local industry and society proved to be a challenging leadership task. Extensive efforts were made to communicate with the relevant stakeholders and to educate the public. Finally, the relevant bills were passed.

Although the process was painful, the outcome was fruitful. The persistence of the Chinese Taipei authorities to establish an appropriate legal system consistent with global standards for the protection of IP has been critical to attracting and maintaining global investment including that of Corning.

10. Shin Corporation (Thailand) and Temasek (Singapore)

Shin Corporation was one of the largest conglomerates in Thailand, founded in 1983 as Shinawatra Computer by Thaksin Shinawatra, former Thai Prime Minister. It took on its current name in 1999. On January 23, 2006, the Shinawatra family sold its remaining 49.6 percent stake in the company to nominees of Temasek Holdings, the Singapore government's investment arm, for US\$ 1.88 billion. The sale turned out to be highly controversial in Thailand, and contributed to the downfall of the Thaksin government.

The Shin Corporation group was linked by stock control to various companies including Shin Satellite and Advance Info Service, the largest mobile phone network in the economy. It also held stakes in Thai Air Asia, a consumer finance company and a local television station. The company's operations were divided into four lines of business: Wireless Telecommunications Business; Satellite and International Business; Media and Advertising Business; E-Business and Others.

In the early 1960s, the Singapore government took stakes in a variety of local companies, in sectors such as manufacturing and shipbuilding. Prior to the incorporation of Temasek Holdings in 1974, these stakes were held directly by the Ministry of Finance, now Temasek's sole shareholder.

As a result of this aborted transaction, Thailand is debating the nature of its foreign investment laws and regulations. The nature of Shin Corporation's businesses, together with the company's close connection to Thailand's then political leadership, and the status of Temasek Holdings as an arm of the Singapore government virtually guaranteed that the transaction would be highly controversial, and would result in concerns about the protection of strategic sectors.

11. Logistic Facilitation for Investment Opportunity in Viet Nam and Lao PDR: A Pre-Feasibility Case Study

This case documents an initiative of a Thai company called Acutech Co., Ltd, a logistic services company. In 2007 the management of Acutech conducted a pre-feasibility study to consider options to relocate factories of their manufacturing customers from Thailand to neighboring economies. Acutech has tried to design an integrated system for investors in Lao PDR to reduce the logistic costs of raw material inputs acquired from the Lam Chabang port and Bangkok spare parts suppliers. Acutech has also explored a joint venture business with a Vietnamese logistics company in Danang as a means of developing future business ties with Vietnamese firms for both road and marine shipment of goods.

Acutech thought that both risk and uncertainty could be reduced through the provision of well-designed logistics services to serve companies in the supply chain. In order to position itself to provide such services Acutech decided to enter into a joint venture partnership with a private-sector Vietnamese operator in logistic services. The planned joint operation would cover Vietnam, Lao PDR and Thailand as well as Cambodia. The partnership has not yet been fully implemented, as the required level of physical infrastructure is not yet in place in Lao PDR, in Cambodia and Lao Bao, as well as Danang. Nonetheless, the initial investigation confirms that the proposed joint venture is an appropriate strategy for the long term.

Common Issues of Foreign Investment in APEC

The 11 investment cases analyzed a variety of business situations ranging from natural resource extraction through manufacturing and to consumer and business services. They reflect the dynamism of the APEC region and its member economies, both as originators and hosts of foreign direct investment. Despite this diversity, the cases highlight a number of common issues related to foreign direct investment in the Asia-Pacific region, and a number of implications for the APEC dialogue process.

1. While it would be impossible to anticipate every eventuality, foreign investors need to have a comprehensive plan to address challenges as they arise.

By design, the cases focused primarily on the challenges of implementing cross-border investment projects. Thus it came as no surprise that things rarely turned out exactly as planned. There were unanticipated challenges that needed to be addressed in virtually all of the cases, as well as business risks encountered that had not been anticipated. Clearly, having perfect foresight would be impossible. The need is to identify the types of risk the investor might face and to develop contingency plans accordingly.

In a number of cases the challenges encountered revolved around the alignment of interests between the foreign investor and various local stakeholders, and the settlement of conflicts among them. Ideally, the mechanism for settling disputes would be set out in advance, and would involve impartial third party commercial arbitration or ultimately the courts with mutually-agreed jurisdiction. But in practice, as some of the cases showed, even having established mechanisms in place to deal with conflict did not in-and-of-itself guarantee a smooth or impartial resolution of problems when they arose.

The reality is that resolving commercial disputes is inherently complex, particularly where multiple interests are at stake. Doing so in a cross-border, cross-cultural context only adds to

the complexity. Developing an effective, transparent rules-based legal framework in the host economies is without doubt critical, not only to protecting local interests, but also to maintaining an attractive business environment for overseas investors. Similarly, in a number of the cases the foreign investor found itself in a situation where it had to resort to crisis management techniques in order to extricate itself from the problems it had confronted.

2. *Investors need to appreciate the different interests of host economy stakeholders.*

For their part investors need to understand the environments in which they choose to do business. Better global sources of information on local laws and regulations would help this process, including ideally an up-to-date compendium of laws and regulations that impact foreign investors.

But developing a comprehensive understanding of local environments is not easy. It requires an intensive on-the-ground knowledge of the actual conditions in the host economy, including a sophisticated understanding of the interaction of various local stakeholder interests and an appreciation of how decisions are made. Success is most likely to be achieved through a combination of local experience and expatriate management that is open to learning and skilled at bridging cultural gaps. Developing strong local partnerships based on mutual understanding and trust is also critical, though the case experience demonstrates equally that such partnerships can falter when interests diverge.

3. *Host economies require strong public policy-making processes that balance the interests, rights and obligations of domestic stakeholders.*

The host economy must balance the need to implement policies to assure the competitiveness of its economy and its attractiveness to investors with the need to mitigate major risks that may be associated with a given FDI project, for example the need to assure environmental protection. Moreover, the host economy government must recognize that, in order to avoid ongoing conflict with domestic stakeholders, it must proactively communicate the benefits of cross-border investment and thus promote the acceptance of foreign investment by civil society.

The host economy faces many challenges as it balances the interests of divergent domestic stakeholders. The host economy's central government is primarily responsible for assuring an attractive investment climate, for informing potential investors of benefits and potential risks, and for coordinating public administration with local authorities. Governments must be careful in providing incentives to investors, and must honor previously-made commitments. Reputations are at risk to the potential detriment of future investments if they do not.

In a number of the cases analyzed, local authorities had considerable difficulty maintaining a consistent policy, sometimes leading to conflicting decisions that increased the investors' risks and heightened uncertainty. These challenges were the result of legal and/or institutional problems, cultural differences embedded in local ways of life, as well as the need to balance divergent interests among the various stakeholders.

APEC members can build a framework where private business decisions are made in a transparent way. Recently APEC has stressed the importance of strengthening the effectiveness of domestic regulatory processes by its member economies. The underlying logic is that efficient and consistent regulation lowers the cost of doing business, as companies spend less time dealing with bureaucracy and more time managing their

businesses. Governments in turn devote fewer resources to redundant or ineffective administrative processes and more to the delivery of services to citizens.

One approach would be for APEC members to work together to develop checklists of barriers to the successful implementation of cross-border investments and potential measures to overcome them. With regards to cross-border direct investment, among the most important regulatory reform considerations are the following:

- Ensuring transparency in investment-related policies, including taxation.
- Binding commitments to reduce barriers to foreign investment.
- Liberalizing trade, and in particular ensuring that rules of origin in free trade agreements (FTAs) provide appropriate and consistent incentives to cross-border investment.
- Reducing corruption in public administration.
- Minimizing unnecessary political discretion and policy reversals.

While there is a strong *a priori* case for liberalizing and facilitating foreign investment, the cases did point out a number of examples of legitimate domestic social, environmental and economic policy goals that also need to be addressed. Thus it is important for host economies to ensure that their policy-making sovereignty is not unduly compromised through the promotion of cross-border investment. Acceptance of the legitimacy and the potential benefits of cross-border investment by the local population is critical to the long-term success of the venture and to conflict avoidance. Equally host economies need to understand that sudden policy reversals often neither meet the long-term needs of domestic stakeholders nor contribute to an investment-friendly environment. The same is true of the lack of coordination and cooperation between regulatory authorities or levels of government. The key to balancing these considerations is to harness private investment through effective development planning by local authorities.

4. Investor and host economies have common interests and can learn from each other.

APEC can act as a forum to share information and reduce misinformation. On balance the cases provide strong support for the perspective that the foreign investor and its local partners can learn from each other to their mutual benefit. This is consistent with the extensive literature on the positive spill-over effects of foreign direct investment. For example, foreign investment can strengthen managerial capacity in the host economy, improve productivity, and facilitate the transfer of technology. Likewise, foreign-owned facilities tend to pay higher wages and have better working conditions than locally-owned businesses.

Just as foreign investors learned (sometimes with great difficulty) how to operate effectively in unfamiliar environments, so too did foreign investors identify opportunities of which local partners (both public and private sector) were either unaware or were unable to exploit. For example, in one case foreign investment in the tourism industry revitalized a regional economy in decline by developing an opportunity which local entrepreneurs had not seen. In another, the prospect of attracting foreign investment was a major factor catalyzing the modernizing of local legislation. In yet another case foreign investment may prove critical to the effective delivery of the infrastructure required to facilitate trade and to link a rapidly changing local economy with its surrounding region. Overall the cases validated the central hypothesis of the project, namely, that effective collaboration between governments and the business sector is an important factor in the successful implementation of cross-border investments.

Challenges for APEC and its Members...

As a voluntary, non-binding process of policy dialogue and information sharing, what can APEC do to facilitate cross-border investment in the Asia-Pacific region? Taken together, the cases and their implications create some challenges for the APEC process, but also many opportunities for further collaboration.

Among the challenges are the pressures from specific interest groups to reverse the progress that has been made towards market liberalization in many economies over the past two decades. At the same time there is a strongly-expressed need in many economies to preserve local values, which needs to be balanced against the potential benefits of enhanced economic integration.

APEC also has a fundamental challenge relating to the diversity of its membership, with a wide gap in the current levels of economic development and in the capacity of individual member economies to participate in cross-border investment. However, these ranges of circumstance and experience also create opportunities to build capacity and to share good practices.

...and Opportunities

The opportunities for collaboration among APEC member economies to further facilitate cross-border investment are many. However, based on the experiences identified in the cases examined, four are notable.

1. *Technology Diffusion through the Establishment of Regionally-Integrated Production:* The diffusion of technology is one of the fundamental benefits of foreign direct investment and is well-documented in the economic literature. The cases provide a number of specific examples of the transfer of practical know-how to the benefit of both the investing and the host economies. There is every reason to believe that the competitive global business environment will continue to encourage the development of integrated cross-border production and distribution systems in the Asia-Pacific region. APEC should use every available opportunity to encourage this process.
2. *Institution for Conflict Resolution:* The cases demonstrate the importance and benefits of agreeing in advance on how commercial disputes would be adjudicated when they arise, though they also show that this is not a panacea. Third-party commercial arbitration process is one such vehicle. There are already some very competent institutions in the world providing these services, and APEC and its members might benefit from developing closer linkages with them.
3. *Realization of Genuine Barrier-Free Investment:* This is an integral part to the Bogor Goals and will be addressed through several bilateral, plurilateral and multilateral channels. APEC can contribute to this process through the Individual Action Plans (IAPs) peer review process, through the promulgation of model chapters for Free Trade Agreements, and perhaps most importantly, through joint work programs on investment facilitation and domestic regulatory reform. The latter is especially important for two reasons. First, at a practical level, domestic policy reform often precedes binding international commitments related to liberalization of trade in services and international investment. Second, well-conceived voluntary domestic regulatory reform can address simultaneously several complementary policy goals, including mobilizing domestic

entrepreneurship, strengthening the investment climate, and improving public administration.

4. *Capacity Building for Local Community Officials:* As noted, streamlining domestic regulations not only increases an economy's attractiveness to global investors, but also directly helps its domestic entrepreneurs (through a more business-friendly environment) and citizens (through enhanced delivery of government services). As a number of the cases have shown, bottlenecks in public administration often arise due to lack of coordination across government agencies, and especially between the central government and local authorities. Thus, eliminating unnecessary red tape will require the building of awareness among local officials of the broader consequences of decisions within their jurisdiction. Providing practical knowledge and skills for public officials to coordinate their efforts would improve both efficiency and effectiveness.

What Kind of Capacity Building Should APEC Promote?

This project has produced case studies that suggest specific capacity building needs for the relevant stakeholders of foreign investments. It is possible to develop training curriculums using the case materials, both for academic institutions and for short-duration practical training courses. Based on the analyses of the cases and subsequent discussion among the project participants, a framework focusing on capacity building has been developed. While this is a start, the possibilities for capacity building to facilitate effective cross-border investment go well beyond this particular project. To be effective and sustainable, capacity building efforts should involve on-going effort by appropriate institutions, based on well-conceived integrated work plans.

Relevant Stakeholders: It appears particularly important to ensure that all relevant stakeholders become involved in capacity-building activities. How effectively stakeholders relate to each other appears to be critical both to maximizing the benefits of cross-border investment and to resolving differences. Thus developing awareness of the importance of effective multi-stakeholder consultation in the policy making process would be a fundamental component of an integrated capacity-building strategy, as would be training on effective strategies for implementing such consultation processes. The capacity-building plans should involve non-government organizations (NGOs) and representatives of civil society as well as public officials, business organizations and the academic community.

Appropriate modalities: It is recognized that institutional structures vary across APEC members and that no single model would fit every situation. Depending on the circumstances, however, it would be appropriate for APEC members to support an existing institution to assume a lead role. This could be a think tank, an academic or an executive training institution, or a business services organization, depending on the specific circumstances prevailing in each member economy. The effectiveness of the relationship among key stakeholders was a critical process issue that had a major impact on the successful implementation of the investment in many of the 11 cases studied.

Foci: The cases also identified several more technical subjects that were also very important, for example, environmental protection, urban planning, preserving of archeological heritage, logistics, and intellectual property protection. Technical competence to deal with these complexities is critical, as is an understanding both of the local legal and institutional framework and the economy's international obligations. Thus a comprehensive capacity-building plan needs to address both process ("soft") issues and technical ("hard")

issues. The plan also requires to take account of the needs at three complementary levels, including:

- strengthening the policy-making process;
- strengthening public and private organizations to implement policies; and
- improving the knowledge and skills of individual officials in agencies responsible for investment policy and investment promotion.

The cases also strongly suggest that APEC should continue to advocate that its members develop transparent legal and regulatory frameworks behind the border, as a complement to foreign investment promotion. Many APEC member economies continue to struggle with questions of how to carry out their obligations for liberalized foreign investment due to lack of individual knowledge and institutional capacity within their public administrations. This must also be addressed.

APEC's advocacy of socially-responsible behavior on the part of businesses on a voluntary basis is also supported by the case findings. Capacity building activities can support both of these efforts. Similarly, businesses contemplating a cross-border investment need to have a better understanding of what to expect, while host economies need to be better equipped to inform civil society about the nature of potential benefits of such investments.

Investment Stages: The capacity building needs differ depending on the stages of the investment process. The project suggests the three stages: pre-investment, operation and divestment. A set of capacity building programs may be developed to prepare the stakeholders to meet challenges at each stage.

Some major capacity building needs identified by the case studies and/or in subsequent workshop discussions have been summarized in Exhibit 2. These identified needs are not meant to comprise an exhaustive list, nor is it suggested that all these capacity building needs can or should be tackled by APEC. However it is hoped that this list will be an informative reference document as relevant APEC fora consider future capacity building efforts related to investment liberalization and facilitation. The document may also be useful in reporting the progress towards the achievement of the Bogor Goals through the preparation of IAPs and the related peer review process.

Exhibit 1 List of Cases (with Possible Capacity Building Needs)

Economies	Title & Industry	Stages & Issues	Stakeholders	Capacity Building Needs
1 Australia China	KPS China Looks to Australia for First Offshore Manufacturing Facility (<i>Wool waste construction material</i>)	Pre-investment and initial phase <ul style="list-style-type: none"> ▶ Selection of investing destination ▶ Connecting to relevant parties ▶ Providing information on procedures 	<ul style="list-style-type: none"> ▶ Investors ▶ Investment promotion agency 	<ul style="list-style-type: none"> ▶ Exposure to local culture ▶ Analysis of market and input requirements ▶ Knowledge of relevant contacts and information sources ▶ Knowledge of government agencies and their roles
2 Chile Malaysia	Real Estate Development Project in Chile by a Private Entrepreneur of Malaysia (<i>Real Estate development</i>)	Pre-investment (approval process) <ul style="list-style-type: none"> ▶ Permission for investment ▶ Conflicting regulations between central and local government ▶ Dispute resolution process 	<ul style="list-style-type: none"> ▶ Investor ▶ Host government and local governments ▶ Arbitration center 	<ul style="list-style-type: none"> ▶ Local rules and regulations ▶ Contingency and risk management ▶ Alignment of national and local regulations ▶ Dispute resolution alternatives
3 China Japan	Setting up a Factory in China: Sanyan Steel Co., Ltd (<i>Special steel for auto parts</i>)	Full operation stage <ul style="list-style-type: none"> ▶ Communication ▶ Managing local employees and managers ▶ Dealing with the government regulators ▶ Local culture and practices 	<ul style="list-style-type: none"> ▶ Investor ▶ Management and workforce ▶ Central and local governments 	<ul style="list-style-type: none"> ▶ Cross-cultural management and communication skills ▶ Management of people
4 Indonesia Canada	A Test of Many Wills: PT Asuransi Jiwa Manulife Indonesia (<i>Life insurance</i>)	Full operation stage <ul style="list-style-type: none"> ▶ Highly leveraged partner ▶ Failed attempt to buy-out JV ▶ Credibility of legal system 	<ul style="list-style-type: none"> ▶ Joint venture partners ▶ Governments 	<ul style="list-style-type: none"> ▶ Selection of JV partners ▶ Financial and risk management skills ▶ Negotiation skills (Dealing with governments) ▶ Knowledge of legal process ▶ Public relations management
5 Indonesia USA	Freeport's Grasberg/Ertsberg Mine in West Papua, Indonesia (<i>Mining</i>)	Full operation stage <ul style="list-style-type: none"> ▶ Pollution and Environment management ▶ Corporate Social Responsibility ▶ Corruption and illegal payment ▶ Transparency ▶ Community development 	<ul style="list-style-type: none"> ▶ Investor ▶ Host government (central and local) ▶ Community ▶ NGOs 	<ul style="list-style-type: none"> ▶ Best practices in mining ▶ Public relations management ▶ Stakeholder management ▶ Communication and cross-cultural skills ▶ Value formation

Economies	Title & Industry	Stages & Issues	Stakeholders	Capacity Building Needs
6 Japan Australia	Revitalizing the Regional Economy: Hokkaido Tracks' Investment in Tourism <i>(Property development for tourism)</i>	Full operation stage <ul style="list-style-type: none"> ▶ Unclear and inadequate laws and regulations ▶ Protecting the environment ▶ Identifying customer needs ▶ Managing conflicting needs of community and investors ▶ Private and public collaboration ▶ Inadequate tourism infrastructures ▶ Attracting and retaining employees with technical skills ▶ Employment permit for foreign workers/professionals 	<ul style="list-style-type: none"> ▶ Investors ▶ Local government ▶ Local community ▶ Financial institutions 	<ul style="list-style-type: none"> ▶ Entrepreneurship skills (identifying opportunity) ▶ Managing risks for uncertainty ▶ Long term, strategic planning (for local government) ▶ Negotiation skills ▶ Understanding customer needs
7 Peru	Starting up a Hotel in Cusco <i>(Construction for tourism)</i>	Pre-investment stage <ul style="list-style-type: none"> ▶ Unclear procedures for construction permissions ▶ Length of time for investment approval 	<ul style="list-style-type: none"> ▶ Investors ▶ Host government ▶ Institutions protecting historical heritage 	<ul style="list-style-type: none"> ▶ Collaboration and communication among different agencies ▶ Strategic planning for development
8 Philippine Australia	Reviving Foreign Investments in the Philippines: The Case of a Mining Project in Rapu-Rapu Island <i>(Mining)</i>	Pre-investment stage <ul style="list-style-type: none"> ▶ Changing and conflicting rules of investment and environment protection ▶ Relations with local community ▶ CSR and environment management 	<ul style="list-style-type: none"> ▶ Investors ▶ Host government (different agencies) ▶ Local community ▶ NGOs 	<ul style="list-style-type: none"> ▶ Best practices in mining and environment management ▶ Negotiation skills ▶ Values formation ▶ Transparency measures ▶ Communication skills
9 Chinese Taipei USA	Corning (Taiwan) <i>(Glass manufacturing)</i>	Full operation and expansion <ul style="list-style-type: none"> ▶ Building trust of partners for expanding investment ▶ Rules and regulations on intellectual property 	<ul style="list-style-type: none"> ▶ Investors ▶ Local partner and managers ▶ Host government 	<ul style="list-style-type: none"> ▶ Technology transfer management ▶ Intellectual property protection system and law enforcement
10 Thailand Singapore	Shin Corporation (Thailand) and Temasek (Singapore) <i>(Telecommunication)</i>	Pre-investment stage <ul style="list-style-type: none"> ▶ Foreign ownership of strategic industries for national security ▶ Political leadership and private business connection 	<ul style="list-style-type: none"> ▶ Investors ▶ Host government ▶ Community and public opinion 	<ul style="list-style-type: none"> ▶ Potential risk analysis ▶ Managing consensus ▶ Negotiation skills ▶ Value formation
11 Viet Nam (Lao/Cambodia) Thailand	Logistic Facilitation for Investment Opportunity in Viet Nam and Lao PDR: A Pre-Feasibility Case Study <i>(Logistics)</i>	Pre-investment stage <ul style="list-style-type: none"> ▶ Pre-feasibility study of investment in logistics ▶ Local infrastructure ▶ Potential partner selection ▶ Need and potential assessment 	<ul style="list-style-type: none"> ▶ Investors ▶ Local partners ▶ Host governments 	<ul style="list-style-type: none"> ▶ Assessment of potentials ▶ Feasibility study techniques ▶ Risk management skills ▶ Knowledge of logistics and information technology ▶ Networking skills

Source: Compiled from the case studies by the Overseer's Office.

Exhibit 2 Institutional and Human Capacity Building Requirements for Cross-Border Investment

Stakeholders		Investment Stages		
		Pre-Operation	During Operation	Divestment
HOME ECONOMY	Investing firm	<ul style="list-style-type: none"> ▶ Greater sensitivity to local community needs and the impact of investment on the environment. ▶ Greater flexibility to change and adjust according to the need of host economy and its environment. ▶ Enhanced entrepreneurial skills, specifically the ability to identify opportunities and assess risks. ▶ Better understanding of customer needs and local cultural and business environments. ▶ Enhanced negotiation skills, particularly related to public-private collaborations. 	<ul style="list-style-type: none"> ▶ Enhanced abilities to manage risks or uncertainty. ▶ Greater skills in managing differences cross culturally. ▶ Improved capacity for communication and crises management. ▶ Enhanced ability to relate to the public. 	<ul style="list-style-type: none"> ▶ Better understanding of exit and conflict resolution mechanisms.
	Legal and Professional advisors, industrial associations	<ul style="list-style-type: none"> ▶ Enhanced ability to provide user-friendly information on laws/regulations of the host economy, including a potential compendium of FDI-related regulations. 	<ul style="list-style-type: none"> ▶ Improved advocacy to promote consistency of investment incentives (tax and others). 	
	Governments	<ul style="list-style-type: none"> ▶ Enhanced ability to provide information on the legal framework of host economies. 		
BOTH	International NGOs	<ul style="list-style-type: none"> ▶ Enhanced ability to assess social needs and social impacts (labor, environment, sustainable development, social acceptability, etc.). 	<ul style="list-style-type: none"> ▶ Enhanced ability to form strategic alliance with business for effective promotion of causes. 	

Stakeholders	Investment Stages			
	Pre-Operation	During Operation	Divestment	
Central government	<ul style="list-style-type: none"> ▶ More transparent legislation, strengthened and more transparent regulatory systems. ▶ Improved ability to secure physically safe business environment. ▶ More consistent attention to the protection of local heritage. ▶ Better protection of intellectual property rights and contractual rights. ▶ Improved infrastructure. ▶ Enhanced anti-corruption efforts. ▶ Faster and more effective establishment of approval processes and procedures. ▶ More effective use of multi-stakeholder consultations, including public-private dialogue, before enacting changes in legislation and regulation, to resolve conflicting policy goals. ▶ Better capacity to oversee implementation of regulations as well as investors' compliance with domestic regulations. 	<ul style="list-style-type: none"> ▶ More effective assurance of the consistent application of investment incentives. ▶ Greater transparency in reaching decisions. 	<ul style="list-style-type: none"> ▶ More transparency and smooth exit mechanism, including company deregistration and repatriation of profits and invested capital. 	
HOST ECONOMY	Local government/agencies	<ul style="list-style-type: none"> ▶ Improved capacity to identify broader local needs. ▶ Strengthened strategic planning capability. ▶ Improved capacity to enact and implement local regulations. ▶ More effective coordination across agencies. ▶ More consistent protection of local heritage. ▶ More active role of local government in promoting desirable investments. ▶ Enhanced ability to work with community associations to promote social acceptability of foreign investment by members of civil society. ▶ Better capacity to oversee implementation of regulations as well as investors' compliance with domestic regulations. 	<ul style="list-style-type: none"> ▶ More transparent, relevant and effective zoning regulations. ▶ Greater transparency in reaching decisions. ▶ Enhanced ability to develop policies to balance conflicting interests of stakeholders in the community. 	
	Business partners	<ul style="list-style-type: none"> ▶ Enhanced ability to understand own strengths and weaknesses so as to effect synergy with foreign investors. ▶ Enhanced ability to communicate cross-culturally. 	<ul style="list-style-type: none"> ▶ More sensitivity to quality of product/services and sustainability of operation. ▶ Greater effectiveness in bridging the business goals with the local community and government needs. 	
	Community	<ul style="list-style-type: none"> ▶ Improved capacity to identify and articulate community needs. 		

Source: Compiled from the case studies and project workshop discussions.

