

Survey Questionnaire

Introduction

Your location offer

Please describe your location offer, highlighting key industries and key areas of advantage that may be relevant to foreign investors.

An introduction to your investment regime

Please highlight the defining characteristics of this investment regime including your broad investment policy/strategy. Include the methods used to attract investment, and the desired purpose of investment (e.g. capital accumulation, employment, technology transfer, etc.)

Do you have an investment priority plan, or an equivalent policy used to identify key economic activities in which investment is encouraged? If so, please provide a brief description.

Regulation of foreign investment

The process for foreign entities/nationals to invest in your economy

Please describe the steps that an investor must go through to invest in your economy. Because this process may differ across types of investment, please provide a high-level overview of this process.

In describing this process, can you please identify:

- *licenses or formal registration that needs to be obtained,*
- *notification mechanisms, and*
- *the average time taken for each step of the process.*

Does this apply to all investment? Please provide information about different treatments if there are any. (For differential treatment by sector, please respond in next section.)

Conditions of investment

Are any conditions imposed upon certain types of investment or in certain industries?

Investment promotion and facilitation

Please describe the operational strategy employed by your investment promotion agency (IPA).

Where can an investor find more information about the process of investing in your economy? Please provide sources of additional information including your investment promotion agency website.

Investment protection

How property rights are protected in your economy

Describe what protection is provided of property, and under what conditions it can be expropriated.

Describe what protection of intellectual property rights is provided.

Flow of funds

What kind of exchange rate regime do you have?

And if managed, under what circumstances or purpose does your government/central bank intervene?

Are there any restrictions on the repatriation of funds related to a foreign investment (e.g. profits, dividends, royalties, loan payments)?

Mechanisms to review decisions, and settle disputes

What is the process to have decisions about foreign investment reviewed?

What, if any, mechanism do you have for foreign investors to settle disputes?

Has your economy signed or acceded to the International Centre for Settlement of Investment Disputes (ICSID) and if so, when?

International investment agreements

Please mark against the list of economies below (not attached), the economies with which you have an international investment agreement. Please provide a brief description of these IIAs, or your IIAs in general below.

Where can an investor find more information about the protection of their rights, and returns from their investments? Please provide sources of additional information and website addresses, if relevant.

Movement of persons

Treatment of foreign nationals or personnel of foreign firms

Please describe the conditions of entry and stay for foreign nationals or personnel of foreign firms.

Please provide sources of additional information and website address if available.

Taxation

Taxation of foreign nationals and foreign firms

Please describe the tax treatment of:

- *Company profits*
- *Personal income/profits*
- *Funds for repatriation*

Is the basis for taxation economy or global? If the basis for taxing is global, with whom do you have tax treaties?

Where can an investor find more information about the tax treatment of foreign nationals and firms? Please provide sources of additional information and website addresses, if relevant.

APEC NON-BINDING INVESTMENT PRINCIPLES

Jakarta, November 1994

In the spirit of APEC's underlying approach of open regionalism,

Recognising the importance of investment to economic development, the stimulation of growth, the creation of jobs and the flow of technology in the Asia-Pacific region,

Emphasising the importance of promoting domestic environments that are conducive to attracting foreign investment, such as stable growth with low inflation, adequate infrastructure, adequately developed human resources, and protection of intellectual property rights,

Reflecting that most APEC economies are both sources and recipients of foreign investment,

Aiming to increase investment including investment in small and medium enterprises, and to develop supporting industries,

Acknowledging the diversity in the level and pace of development of member economies as may be reflected in their investment regimes, and committed to ongoing efforts towards the improvement and further liberalisation of their investment regimes,

Without prejudice to applicable bilateral and multilateral treaties and other international instruments,

Recognising the importance of fully implementing the Uruguay Round TRIMs Agreement,

APEC members aspire to the following non-binding principles:

Transparency

- 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.

Non-discrimination between Source Economies

- 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 favourable than that accorded to investors from any other economy in like situations, without prejudice to relevant international obligations and principles.

National Treatment

- With exceptions as 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 favourable than that accorded in like situations to domestic investors.

Investment Incentives

- Member economies will not relax health, safety, and environmental regulations as an incentive to encourage foreign investment.

Performance Requirements

- Member economies will minimise the use of performance requirements that distort or limit expansion of trade and investment.

Expropriation and Compensation

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

Repatriation and Convertibility

- Member economies will further liberalise towards 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 currency.

Settlement of Disputes

- 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.

Entry and Sojourn of Personnel

- Member economies will permit the temporary entry and sojourn of key foreign technical and managerial personnel for the purpose of engaging in activities connected with foreign investment, subject to relevant laws and regulations.

Avoidance of Double Taxation

- Member economies will endeavour to avoid double taxation related to foreign investment.

Investor Behaviour

- Acceptance of foreign investment is facilitated when foreign investors abide by the host economy's laws, regulations, administrative guidelines and policies, just as domestic investors should.

Removal of Barriers to Capital Exports

- Member economies accept that regulatory and institutional barriers to the outflow of investment will be minimised.

Annex 3

Excerpt from the Osaka Action Agenda 2002 Update

4. INVESTMENT

OBJECTIVE

APEC economies will achieve free and open investment in the Asia-Pacific region by:

- a. liberalizing their respective investment regimes and the overall APEC investment environment by, *inter-alia*, progressively providing for MFN treatment and national treatment and ensuring transparency; and
- b. facilitating investment activities through, *inter-alia*, technical assistance and cooperation, including exchange of information on investment opportunities.

GUIDELINES

Each APEC economy will:

- a. progressively reduce or eliminate exceptions and restrictions to achieve the above objective, using as an initial framework the WTO Agreement, the APEC Non-Binding Investment Principles, any other international agreements relevant to that economy, and any commonly agreed guidelines developed in APEC including the Menu of Options for Investment Liberalization and Business Facilitation;
- b. seek to expand APEC's network of bilateral and regional investment agreements and contribute to multilateral work on investment;
- c. facilitate investment flows within the Asia-Pacific region through promoting awareness of investment opportunities, enhancing market access conducive to investment, undertaking capacity building and technical cooperation activities, and implementing measures such as those in the Menu of Options; and
- d. examine ways to incorporate new investment forms and activities for the sound and sustainable economic growth and development of the Asia-Pacific region including investment forms and activities that support the new economy.

COLLECTIVE ACTIONS

APEC economies will:

1. Transparency
Short-term
 - a. Increase the transparency of APEC investment regimes by:
 - (i) Updating the APEC Guidebook on Investment Regimes;
 - (ii) Establishing software networks on investment regulation and investment opportunities;
 - (iii) Improving the state of statistical reporting and data collection; and
 - (iv) Increasing understanding among member economies on investment policy-making issues.
2. Policy Dialogue
Short-term
 - b. Promote dialogue with the APEC business community on ways to improve the APEC investment environment.

- c. Continue a dialogue with appropriate international organizations dealing with global and regional investment issues.

3. Study and Evaluation

Short-term

- d. Define and implement follow-on training to the WTO implementation seminars;
- e. Undertake an evaluation of the role of investment liberalization in economic development in the Asia-Pacific region.
- f. Study possible common elements between existing subregional arrangements relevant to investment.

Medium-term

- g. Refine APEC's understanding of free and open investment.

Long-term

- h. Assess the merits of developing an APEC-wide discipline on investment in the light of APEC's own progress through the medium-term, as well as developments in other international fora.
- i. Study the advantages and disadvantages of creating investment rules – bilateral, regional, or multilateral – with a view to fostering a more favorable investment environment in the Asia-Pacific region.

4. Facilitation

Short-term and continuing

- j. Undertake practical facilitation initiatives by:
 - (i) Progressively working towards reducing impediments to investments including those investments related to e-commerce;
 - (ii) Undertaking the business facilitation measures to strengthen APEC economies; and
 - (iii) Initiating investment promotion and facilitation activities to enhance investment flow within APEC economies.

5. Economic and Technical Cooperation

Short-term

- k. Identify ongoing technical cooperation needs in the Asia-Pacific region and organize training programs which will assist APEC economies in fulfilling APEC investment objectives.

6. Capacity Building Initiatives

- l. Undertake new activities that contribute to capacity building.

7. Menu of Options

- m. Ongoing improvement of the Menu of Options.

Options for Investment Liberalization and Business Facilitation to Strengthen the APEC Economies - For Voluntary Inclusion in Individual Action Plans

APEC leaders and ministers at Bogor, Osaka, Subic, and Vancouver have committed their economies to create free and open investment by 2010 and 2020. They endorse Individual Action Plans (IAPs) as a core instrument in this process. They have called for transparency in, and the annual improvement of IAPs. ABAC has also called on APEC economies to make progress in the investment area.

In response to both government and business, the Investment Experts Group, at St. Johns, Canada, undertook to compile a "menu of options" for helping economies to identify policy measures that member economies may include unilaterally in their IAPs for implementation of this objective. There was a consensus that the project should focus on concrete measures, rather than on continued philosophical debate. APEC ministers endorsed the "menu" initiative at Vancouver.

With these instructions in mind, the following document is a non-exhaustive "*master menu*" of investment-liberalizing and business-facilitating measures from which economies may voluntarily select any of a number of *options* to make progress toward creating a free and open investment regime. It is intended as a *reference tool* that economies may refer to when updating their IAPs.

The APEC approach to liberalization and facilitation of trade and investment, as reiterated by APEC Leaders at Vancouver, recognizes the diversity that exists among APEC economies. This "menu of options" is consistent with this recognition of diversity, providing members with a broad range of choices suitable for different circumstances. The items are not prescriptive and, where chosen, may be modified to suit particular circumstances. The menu is not designed to set out the steps in the liberalization process and will evolve over time.

The IEG intends to update this menu on a regular basis, starting in 1999, so as to capture the benefit of APEC economies' increasing experience and changing views.

| Item No. | Description |
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| GENERAL | |
| 1.01 | <p>Broaden definitions of investment and foreign investment in existing legislation, regulations and administrative procedures to permit the widest variety of forms of investment and allow for newly emerging forms to be covered, without a need for future changes in domestic legislation/ regulations.</p> <p>-- The definition might include – illustratively - not just new ("green field") investments, but also acquisition of shares of domestic enterprises, management contracts, long-term leases, all forms of business organization (e.g. wholly owned, subsidiaries, partnerships, branches, joint ventures, smart partnerships, strategic alliances, venture capital), certain kinds of debt instruments, intellectual property, etc.</p> |
| 1.02 | Permit and promote all forms of investment through means other than, or additional to, broadening the definitions of investment and foreign investment in existing legislation, regulations and administrative procedures. |
| 1.03 | Commit to locking in current treatment for investors in specific sectors (i.e. standstill on restrictions). |

| <u>On prior authorization requirements:</u> | |
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| 1.04 | Eliminate or phase out prior authorization requirements. If appropriate, replace them with post-establishment notification. |
| 1.05 | Make approval within any existing prior-authorization mechanism automatic except in limited specified situations. |
| 1.06 | Raise the threshold (value of an investment) above which prior authorization is required. If appropriate, announce progressive raising of the threshold, according to a schedule with a certain date to eliminate most or all prior authorization requirements. |
| 1.07 | Limit the requirement for prior authorization to selected sectors. If appropriate, replace it with post-establishment notification. |
| <u>Involving other economies:</u> | |
| 1.08 | Sign or establish (or, as appropriate, sign or establish additional) bilateral, regional, and/or multilateral agreements or arrangements for the protection of investment that provide commitments to the current level of protection and openness for investors/ investment. |
| 1.09 | Sign or establish (or, as appropriate, sign or establish additional) bilateral, regional and/or multilateral agreements or arrangements for the protection of investment with enhanced protection and openness for investors/ investments (e.g. fewer restricted sectors of an economy, fewer restrictions within sectors, stronger mechanisms for resolving disputes). |
| TRANSPARENCY | |
| 2.01 | Make available to investors timely updates of changes to investment regimes, including via the APEC Secretariat (who will use it for the APEC investment guidebook). |
| 2.02 | Publish and/or make widely available through other means, on a timely basis, information on an economy's investment code, investment laws and regulations, and procurement procedures, with an eye to ensuring transparency in the administration of investment laws, regulations and procedures at federal/central, provincial/state and local authority levels. |
| 2.03 | If screening is used, publish and/or make widely available through other means the guidelines for evaluating and scoring projects for their approval. |
| 2.04 | Conduct briefings (in appropriate fora) on the current investment policies and future directions to be undertaken by the government. |
| 2.05 | Give advance notice of proposed regulations and laws, and provide an opportunity for public comment. |
| 2.06 | Clarify procedures and practices regarding application, registration, government licensing and procurement by: <ul style="list-style-type: none"> -- Publishing (and widely disseminating) clear and simple instructions, and an explanation of the process (the steps) involved in applying/bidding/registering; -- Publishing (and widely disseminating) definitions of criteria for assessment of investment proposals; -- Publishing (and widely disseminating) contact points for inquiries on |

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| | <p>standards, technical regulations, and conformity requirements;</p> <p>-- Conduct periodic reviews of prior authorization requirement procedures to ensure they are simplified and transparent;</p> <p>-- Make available to investors all rules and information relating to investment promotion schemes.</p> |
| NON-DISCRIMINATION | |
| <u>Related to MFN</u> | |
| 3.01 | Commit to MFN treatment economy-wide, except in a few limited cases as may be specified by individual member economies, immediately or over a publicly announced period of time. |
| 3.02 | For economies that have already committed to MFN treatment, review where MFN exceptions to it taken in the past can be eliminated or reduced (in other words, review whether the "few limited cases" of exceptions to MFN can be narrowed even further). |
| <u>Related to National Treatment or both MFN and National Treatment</u> | |
| <u>Sectors</u> | |
| 3.03 | Extend national treatment now (or starting on a particular date) in one or more sectors. |
| 3.04 | Extend national treatment economy-wide except in a few limited cases now, or starting on a certain date; or |
| 3.05 | Progressively extend national treatment to one more sectors. |
| 3.06 | Open additional sectors to participation by foreign investors, or permit foreign investment economy-wide with only limited exceptions. In other words, reduce the size of the list of sectors that are closed or partially restricted to foreign investment. |
| 3.07 | Eliminate or phase out sectoral restrictions on a foreign investment. |
| 3.08 | Review existing agreements, treaties, and laws to see if any exceptions to national treatment can be eliminated. |
| <u>Ownership</u> | |
| 3.09 | Allow all investors to choose their form of establishment within legislative and legal frameworks. |
| 3.10 | Update regulations to eliminate joint venture requirements for establishment. |
| 3.11 | <p>Permit greater foreign equity ownership in sectors partially opened to foreign investment, or permit greater foreign equity ownership economy-wide.</p> <p>-- Prepare a schedule now for future increases in foreign equity ownership.</p> <p>-- Accelerate implementation of dates for liberalizing sectors where possible.</p> |
| 3.12 | Eliminate or phase out conditions for foreign ownership in relation with export ratios or domestic sales. |
| 3.13 | Reduce areas with joint-venture criteria under investment promotion schemes to allow greater foreign participation. |

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| 3.14 | Implement (and announce) a policy of not requiring the divestiture or dilution of the ownership of investments on the basis of nationality. Eliminate or phase out requirements to transfer ownership to local firms over a period of time. |
| 3.15 | Eliminate or phase out restrictions for foreign investors on the establishment of local branches. |
| 3.16 | Eliminate or phase out restrictions for foreign investors to diversity operations. |
| 3.17 | Eliminate or phase out restrictions on foreigners with respect to operational permits and licenses. |
| 3.18 | Where a time period for foreign investors to find local partners is specified, extend the period of time. |
| <i>Finance and Capitalization</i> | |
| 3.19 | Update regulations to reduce or eliminate restrictions on foreign borrowing by corporations. |
| 3.20 | Liberalize foreigners' access to domestic financial instruments (e.g. money market instruments, corporate bond markets). |
| 3.21 | With respect to the entry of foreign investment, eliminate or phase out requirements to deposit certain guarantees for foreign investors. |
| 3.22 | Reduce, reduce progressively, or eliminate minimum capitalization requirements in sectors where such capitalization requirements are not needed for prudential reasons. |
| 3.23 | Eliminate or phase out subsequent additional investment or reinvestment requirements for foreign investors. |
| 3.24 | Open existing investment incentive programs to participation by foreign investors, so they are equally available to domestic as well as foreign investors. |
| <i>Other Measures</i> | |
| 3.25 | Eliminate or ease discriminatory restrictions on imports needed to support foreign investment. |
| 3.26 | Change policies, guidance, regulations, or laws to eliminate pricing by state-designated monopolies that is discriminatory on the basis of nationality. |
| 3.27 | Change policies, guidance, regulations or laws to eliminate discriminatory access to local raw materials and inputs. |
| EXPROPRIATION AND COMPENSATION | |
| 4.01 | Consistent with international law standards/principles, limit permissible expropriation to cases involving a public purpose where expropriation is undertaken in a non-discriminatory manner, under due process of law, and accompanied by payment of prompt, adequate and effective compensation. -- Take steps to amend expropriation laws and regulations based on the above-mentioned standards/principles of international law with respect to expropriation. |
| 4.02 | Included in bilateral, regional or multilateral investment treaties, agreements, and/or arrangements a commitment on compensation in cases of expropriation. |

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| 4.03 | To improve transparency, define, publish and disseminate to investors the relevant investment treaties and arrangements. |
| PROTECTION FROM STRIFE AND SIMILAR EVENTS | |
| 5.01 | Decide - and, as possible, commit in investment agreements/arrangements between governments and private investors and in bilateral/multilateral government-to-government treaties, agreements, and/or arrangements - that the government will accord treatment that is non-discriminatory on the basis of nationality to investments with respect to losses that investments may suffer in the government's territory that are due to war, other armed conflict, revolution, national emergency, insurrection, civil disturbance, or other similar events. |
| TRANSFERS OF CAPITAL RELATED TO INVESTMENTS | |
| 6.01 | Remove or reduce restrictions on the transfer of funds related to foreign investment, such as profits, dividends, royalties, loan payments, interest, infusions of additional financial resources after the initial investment has been made, and proceeds from liquidations - all in a freely convertible or a freely usable currency. -- Eliminate or phase out restrictions that impede recovery of profit, such as ceilings on royalties, technical assistance fees or special taxes, restrictions on access to foreign exchange, and control over the allocation of foreign currencies. |
| 6.02 | Make a binding commitment, in treaties, agreements or arrangements, to eliminate or progressively reduce restrictions on the transfers of funds related to foreign investment, such as profits, dividends, royalties, loan payments, interest, infusions of additional financial resources after the initial investment has been made, and proceeds from liquidation - all in freely convertible or freely usable currencies. |
| 6.03 | Guarantee the right to transfer capital related to an investment in and out of an economy, without delay and at market rates of exchange, with only limited exceptions. |
| PERFORMANCE REQUIREMENTS | |
| 7.01 | Publish and implement a phase-out plan for WTO TRIMs-inconsistent programs identified on TRIMs illustrative list. |
| 7.02 | Reach consistency with WTO TRIMs' illustrative list by 2000. Take steps to accelerate implementation of phase-out plans where possible. |
| 7.03 | Eliminate, phase out, or relax unilaterally and/or through government-to-government agreements and treaties, on an economy-wide or sectoral basis, requirements such as: -- local hiring requirements, -- local training requirements, -- requirements to manufacture locally, -- local sales requirements, -- required technology transfer, |

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| | <p>-- required local research and development,</p> <p>-- export requirements (e.g. those expressed as requirements to generate foreign exchange or achieve a particular export target).</p> |
| ENTRY AND STAY OF PERSONNEL | |
| 8.01 | Consistent with an economy's visa laws regarding the entry and stay of personnel, allow the temporary entry and stay of personnel needed to establish, develop, administer or advise on the operation of an investment of theirs (i.e. investor and key managerial or technical personnel and advisers). |
| 8.02 | Offer visas for investors that facilitate entry and reentry (or identify other ways, consistent with domestic laws and policy, to facilitate investors' ability to enter and reenter for investment purposes). |
| 8.03 | Take steps to permit investors/project sponsors to hire the top managerial advisory talent of their choice, regardless of nationality. |
| 8.04 | Take steps to permit investors/project sponsors to hire the top technical. and/or advisory talent of their choice, regardless of nationality. |
| SETTLEMENT OF DISPUTES | |
| 9.01 | Develop effective mechanisms for resolving disputes and mechanisms for enforcing the solutions found to those disputes. |
| 9.02 | Take steps to become a member of the International Convention on the Settlement of Investment Disputes (ICSID) and/or other widely recognized international arbitration bodies. |
| | <i>Note: We defer to the APEC Dispute Mediation Experts Group for specific menu options for IAPs related to improvements in dispute mediation.</i> |
| INTELLECTUAL PROPERTY | |
| 10.01 | Develop adequate protection for intellectual property. |
| 10.02 | Provide protection for intellectual property that at least meets the standards established in the WTO Agreement on Trade Related Aspects of Intellectual Property (TRIPS). |
| 10.03 | <p>Provide adequate and effective enforcement measures, including as appropriate, administrative, civil, and criminal, against infringement of intellectual property rights.</p> <p>-- Increase cooperation among agencies responsible for the administration and enforcement of intellectual property matters and between IPR agencies and those responsible for regulatory issues.</p> <p>-- Provide and streamline, as appropriate, judicial and administrative procedures to ensure timely processing of enforcement actions.</p> <p>-- Increase public education about the importance of intellectual property and its role in the economy as well as the need for effective and efficient enforcement of intellectual property rights.</p> <p>-- Enhance cooperative relationship between different law enforcement agencies.</p> <p>-- Ensure close and efficient cooperation between enforcement</p> |

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| | agencies and the right holders. |
| 10.04 | <p>Develop and implement programs that require official agencies in member economies to respect intellectual rights in their operations, such as by using only legitimate software in an authorized manner.</p> <p>-- To the extent possible, provide an adequate budget for purchase of legitimate software.</p> |
| 10.05 | <p>Develop/further improve intellectual property regimes:</p> <p>-- Where possible, give effect to international norms for intellectual property protections.</p> <p>-- To the extent possible, cooperate with other nations in international for a.</p> |
| <p><i>Note: We defer to the APEC Intellectual Property Rights(IPR) Group for specific menu options for IAPs related to IPR improvements.</i></p> | |
| <p>AVOIDANCE OF DOUBLE TAXATION</p> | |
| 11.01 | <p>Sign, where appropriate, bilateral avoidance of double taxation agreements that are in conformity with international norms. Expand coverage of such agreements as appropriate.</p> |
| <p>COMPETITION POLICY AND REGULATORY REFORM</p> | |
| 12.01 | <p>Ensure consistency between investment policies and competition and regulatory reform policy.</p> |
| <p><i>Note: We defer to the APEC Competition Policy Group for specific menu options for IAPs related to improving competition.</i></p> | |
| <p>BUSINESS FACILITATING MEASURES TO IMPROVE THE DOMESTIC BUSINESS ENVIRONMENT</p> | |
| 13.01 | <p>Reduce discriminatory use of bureaucratic discretion, by means such as:</p> <p>-- preparing and distributing written in-house guidelines for administrative practices related to the handling of applications, registrations, licensing, etc.</p> <p>-- establishing in-house decision appeal mechanisms, as well as appeal mechanisms available to the public.</p> |
| 13.02 | <p>Streamline application, registration, government licensing and government procurement procedures by:</p> <p>-- simplifying forms;</p> <p>-- simplifying the submission (e.g. permitting electronic submission, or centralizing approval offices in a "one-stop shop");</p> <p>-- shortening processing time of such applications/registrations, and</p> <p>-- reducing unnecessary steps.</p> |
| 13.03 | <p>Take positive steps to assist investors by measures such as:</p> <p>-- establishing an office to serve as a clearinghouse (one-stop agency/unit) for interested investors to learn market opportunities and</p> |

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| | <p>potential investment partners;</p> <p>-- providing a network of all the government agencies that the investors or businesspersons have contact with in doing investments;</p> <p>-- establishing/designating one government agency to handle investors' complaints (e.g. investment ombudsman).</p> |
| 13.04 | Examine the role and effects of investment incentives at all levels of government: federal/central, state/provincial and local. |
| 13.05 | <p>Offer incentives which are voluntary, non-discriminatory, and limited in duration, such as:</p> <p>-- tax breaks,</p> <p>-- loans guarantees,</p> <p>-- grants, subsidies and industrial development bonds,</p> <p>-- employment training programs,</p> <p>-- programs aimed at helping companies achieve greater efficiency,</p> <p>-- WTO-consistent export promotion programs,</p> <p>-- small business development,</p> <p>-- high technology development programs,</p> <p>-- measures to support development of new industries,</p> <p>-- industrial linkage programs,</p> <p>-- mobilization of domestic resources.</p> |
| 13.06 | <p>Introduce measures to assist companies seeking to achieve greater efficiency such as:</p> <p>-- zero inventory</p> <p>-- just in time program</p> <p>-- other related programs</p> |
| 13.07 | Establish legal and taxation systems in areas such as stock exchanges, corporate division and mergers and acquisitions to enable flexible corporate reorganization. |
| 13.08 | Introduce accounting and financial reporting systems that follow internationally accepted accounting standards. |
| 13.09 | Develop and streamline bankruptcy law systems that facilitate corporate reorganization. |
| 13.10 | Establish a financial system that enables a variety of financing and capital raising methods. |
| 13.11 | Strengthen and promote improved standards of corporate governance. |

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| 13.12 | Develop a labor market that facilitates domestic labor mobility, taking into account national labor market conditions and policies. |
| 13.13 | Improve standards of professional services, such as legal and accounting services. |
| TECHNOLOGY TRANSFER | |
| 14.01 | Improve the transparency of related laws and regulations. |
| 14.02 | Reduce the restrictions on the transfer of technology consistent with the protection of essential security interests (for example by modifying as appropriate existing laws and regulations) to facilitate the flow of technology for the economic development of member economies. |
| 14.03 | Develop legislation, regulations and measures for the adequate and effective protection of technology and related interests arising from technology transfer. |
| VENTURE CAPITAL AND START-UP COMPANIES | |
| 15.01 | <p>Introduce measures to assist businesses in different stages including start-up companies seeking equity funding, such as:</p> <ul style="list-style-type: none"> -- establishment of a legal and taxation system to assist the development of the venture capital industry and investment banking; and -- establishment of sound and transparent initial public offering (IPO) markets for small and medium enterprises (SMEs). |

Annex 5

LEADERS' STATEMENT TO IMPLEMENT APEC TRANSPARENCY STANDARDS

Los Cabos, Mexico
27 October 2002

Bangkok, Thailand
21 October 2003

Santiago, Chile
21 November 2004

We, the Economic Leaders of APEC, reaffirm the commitment made in the Shanghai Accord to pursue implementation of APEC's transparency principles. In so doing, we observe that transparency:

- is an important element in promoting economic growth and financial stability at the domestic and international levels;
- is conducive to fairer and more effective governance and improves public confidence in government;
- is a General Principle in the Osaka Action Agenda which requires its application to the entire APEC liberalization and facilitation process;
- is a basic principle underlying trade liberalization and facilitation, where the removal of barriers to trade is in large part only meaningful to the extent that the members of the public know what laws, regulations, procedures and administrative rulings affect their interests, can participate in their development, can participate in administrative proceedings applying them and can request review of their application under domestic law;
- in monetary, financial and fiscal policies, and in the dissemination of macroeconomic policy data ensures the accountability and integrity of central banks and financial agencies, and provides the public with needed economic, financial and capital markets data; and
- will be enhanced through well-targeted, demand-driven capacity building to assist developing economies make progress toward greater openness.

Accordingly, we are committed to implementing the following transparency standards, taking into account the General Principles in the Osaka Action Agenda. We recognize that

implementation of these standards will be an important APEC-led contribution to achieving a successful outcome for the WTO Doha Development Agenda.

Transparency in Trade and Investment Liberalization and Facilitation

General Principles

1.
 - (a) Each Economy will ensure that its laws, regulations, and progressively, procedures and administrative rulings of general application respecting matters in Section C of Part One of the Osaka Action Agenda are promptly published or otherwise made available, for example via the Internet, in such a manner as to enable interested persons and other Economies to become acquainted with them.
 - (b) Each Economy will have or designate an official journal or journals and publish any measures referred to in paragraph 1 in such journals. Each Economy will publish such journals on a regular basis and make copies of them readily available to the public.
 - (c) An Economy may comply with subparagraph (b) by publication on the Internet.
 - (d) Each Economy will promote observance of the provisions of this paragraph by the regional and local governments and authorities within its customs territory.
2. When possible, each Economy will:
 - (a) publish in advance any measure referred to in paragraph 1 that it proposes to adopt; and
 - (b) provide where applicable interested persons a reasonable opportunity to comment on such proposed measures.
3. Upon request from an interested person or another Economy, an Economy will endeavor to promptly provide information and respond to questions pertaining to any actual or proposed measure referred to in paragraph 1.
4. Each Economy will ensure in its administrative proceedings applying any measure referred to in paragraph 1 that:
 - (a) wherever possible, persons of another Economy that are directly affected by a proceeding are provided reasonable notice, in accordance with domestic procedures, when a proceeding is initiated, including a description of the nature of the proceeding, a statement of the legal authority under which the proceeding is initiated and a general description of any issues in controversy;

- (b) such persons are afforded a reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative action, when time, the nature of the proceeding and the public interest permit; and
 - (c) its procedures are in accordance with domestic law.
5. Where warranted, each Economy will ensure that appropriate domestic procedures are in place to enable prompt review and correction of final administrative actions, other than those taken for sensitive prudential reasons, regarding matters covered by these Standards, that:
- (a) provide for tribunals or panels that are impartial and independent of any office or authority entrusted with administrative enforcement and have no substantial interest in the outcome of the matter;
 - (b) provide parties to any proceeding with a reasonable opportunity to present their respective positions;
 - (c) provide parties to any proceeding with a decision based on the evidence and submissions of record or, where required by domestic law, the record compiled by the administrative authority; and
 - (d) ensure, subject to appeal or further review under domestic law, that such decisions are implemented by, and govern the practice of, the offices or authorities regarding the administrative action at issue.
6. For purposes of these Standards, administrative ruling of general application means an administrative ruling or interpretation that applies to all persons and fact situations that fall generally within its ambit and that establishes a norm of conduct but does not include: (a) a determination or ruling made in an administrative or quasi-judicial proceeding that applies to a particular person, good or service of another Economy in a specific case; or (b) a ruling that adjudicates with respect to a particular act or practice.

Specific Principles

7. Consistent with the above Standards, Economies will follow the transparency provisions contained in the following documents:
- (a) APEC Group on Services Menu of Options for Voluntary Liberalization, Facilitation and Promotion of Economic and Technical Cooperation in Services Trade and Investment;
 - (b) APEC Investment Experts Group Options for Investment Liberalization and

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Business Facilitation to Strengthen the APEC Economies-For Voluntary Inclusion in Individual Action Plans;

- (c) APEC Principles to Enhance Competition and Regulatory Reform;
 - (d) APEC Sub-Committee on Standard and Conformance objective to ensure transparency according to the WTO Agreements on Technical Barriers to Trade and Sanitary and Phytosanitary Measures, and the SCSC 1994 Declaration of an APEC Standards and Conformance Framework and 1998 Terms of Reference; and
 - (e) APEC Principles on Trade Facilitation.
8. (a) APEC sub-fora that have elaborated the above transparency provisions should review these regularly and, where appropriate, improve, revise or expand them further.
- (b) APEC sub-fora that have not developed specific transparency provisions should do so.
- (c) APEC sub-fora that develop such new or revised transparency provisions should present them to Leaders upon completion for incorporation into this Statement.

Transparency in Monetary, Financial and Fiscal Policies and the Dissemination of Macroeconomic Policy Data

9. Prior to our agreement in the Shanghai Accord to implement APEC transparency principles, we agreed in Brunei Darussalam in 2000 to support the key standards identified by the Financial Stability Forum. Three of these key standards focus on transparency:
- (a) Code of Good Practices on Transparency in Monetary and Financial Policies: Declaration of Principles;
 - (b) Code of Good Practices on Fiscal Transparency; and
 - (c) General and Special Data Dissemination Standards.
10. Following APEC Finance Ministers' decision to support the assessment of Economies' implementation of these transparency codes through the IMF-led Reports on the Observance of Standards and Codes (ROSCs), Economies are encouraged to participate fully in the ROSC program. As voluntary disclosure of ROSC modules promotes transparency, Economies should, where practicable, disclose the results of these assessments.

Confidential Information

11. The provisions of this Statement will not require any Economy to disclose confidential information where such disclosure would impede law enforcement, the enactment of laws, or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular persons or enterprises.

Area-Specific Transparency Standards

12. (a) Economies are committed to implementing the area-Specific Transparency Standards contained in Sections A-H below in a manner consistent with the Standards in paragraphs 1-6 and 11 above.¹
- (b) Economies agree to review periodically the Area-Specific Transparency Standards contained in Sections A-H below and, where appropriate, improve, revise or expand them further.

¹ Economies in accession to the WTO accept the area-Specific Transparency Standards on the understanding that this will neither influence the outcome of their on-going WTO accession negotiations nor prejudice the results of the relevant WTO negotiations.

A. Services

Introduction

Economies agree to implement, in respect of services, the General Principles contained in paragraphs 1-6 and paragraph 11 of the Leaders' Statement to Implement APEC Transparency Standards ("Leaders' Statement").

Economies believe that, in the services context, it is particularly important to emphasize Leaders' observation that transparency contributes to: good governance; improving public confidence in, and legitimacy of, regulatory regimes; better understanding of regulatory objectives; more efficient markets; and a more attractive investment climate in both small and large economies.

Economies take note of Leaders' recognition that implementation of these standards will be an important APEC-led contribution to achieving success in the WTO Doha Development Agenda (DDA) GATS negotiations.

Transparency Standards on Services

1. (a) Each economy will, in the manner provided for in paragraph 1 of the General Principles in the Leaders' Statement, ensure that its laws, regulations, and administrative procedures related to applications for licenses or authorizations (including, inter alia, licensing procedures and requirements/criteria, qualification procedures and requirements, and technical standards) and their renewal or extension are promptly published or otherwise made available in such a manner as to enable interested persons and other Economies to become acquainted with them.

(b) Economies will use the Internet as much as possible, and specifically, official government web sites, to fulfill this obligation.
2. Economies will publicize and maintain at least one enquiry point that will endeavor to promptly provide information and respond to questions from an interested person or another Economy pertaining to any actual or proposed measure. Economies will also make the names, official addresses, and other contact information (including website, telephone, facsimile) of its enquiry point(s) publicly available.
3. Economies will diligently complete and provide annual updates to their electronic Individual Action Plans (E- IAPs) for services sectors.
4. Regarding authorizations and licensing procedures, when possible:
 - (a) the competent authorities of an Economy will, within a reasonable period of time after the submission of an application considered complete under domestic laws and regulations, inform the applicant of the decision

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concerning the application. The competent authorities will establish deadlines for processing of completed applications under normal circumstances.

- (b) at the request of the applicant, the competent authorities of the Economy will provide, without undue delay, information concerning the status of the application, including any reason for denial. Applicants will also be given the opportunity to resubmit or amend their application for further review, or file an appeal if an application is denied or found in violation of public regulations.
 - (c) Economies will publish the time schedule for and costs of examinations required as part of the application process for a license or authorization in accordance with paragraph 1 of the Leaders' Statement.
5. These Standards should be administered in a reasonable, objective and impartial manner.

B. Investment

Introduction

On 27 October 2002, in Los Cabos, Mexico, APEC Leaders adopted the Statement to Implement APEC Transparency Standards (“Leaders’ Statement”), and directed that these standards be implemented as soon as possible, and in no case later than January 2005.

In paragraph 8 of the Leaders’ Statement, APEC Leaders instructed APEC sub-fora that have elaborated transparency provisions to review these regularly, and, where appropriate, improve, revise or expand them further. Economies were further instructed that such revised transparency provisions should be presented to Leaders upon completion for incorporation into the Leaders’ Statement. Accordingly, the following set of transparency standards on investment were developed for incorporation into the Leaders’ Statement. These principles flow from the General Principles on Transparency agreed to by APEC Leaders at Los Cabos and also build on the Options for Investment Liberalization and Business Facilitation to Strengthen the APEC Economies – For Voluntary Inclusion in Individual Action Plans. Economies agree to implement, in respect of investment, the General Principles contained in paragraphs 1 through 6 and paragraph 11 of the Leaders’ Statement.

These principles provide specific guidance for implementation within an investment context.

Transparency Standards on Investment

1. Each Economy will, in the manner provided for in paragraph 1 of the Leaders’ Statement, ensure that its investment laws, regulations, and progressively procedures and administrative rulings of general application (“investment measures”) are promptly published or otherwise made available in such a manner as to enable interested persons and other economies to become acquainted with them.
2. In accordance with paragraph 2 of the Leaders’ Statement, each Economy will, to the extent possible, publish in advance any investment measures proposed for adoption and provide a reasonable opportunity for public comment.
3. In accordance with paragraph 3 of the Leaders’ Statement, upon request from an interested person or another Economy, each Economy will:
 - (a) endeavor to promptly provide information and respond to questions pertaining to any actual or proposed investment measures referred to in paragraph 1 above; and
 - (b) provide contact points for the office or official responsible for the subject matter of the questions and assist, as necessary, in facilitating communications with the requesting economy.

4. Where warranted, each Economy will ensure that appropriate domestic procedures are in place to enable prompt review and correction of final administrative actions, other than those taken for sensitive prudential reasons, regarding investment matters covered by these standards, that:
 - (a) provide for tribunals or panels that are impartial and independent of any office or authority entrusted with administrative enforcement and have no substantial interest in the outcome of the investment matter;
 - (b) provide parties to any proceeding with a reasonable opportunity to present their respective positions;
 - (c) provide parties to any proceeding with a decision based on the evidence and submissions of record or, where required by domestic law, the record compiled by the administrative authority; and
 - (d) ensure subject to appeal or further review under domestic law, that such decisions will be implemented by, and govern the practice of, the offices or authorities regarding the administrative action at issue.
5. If screening of investments is used based on guidelines for evaluating projects for approval and for scoring such projects if scoring is used, in accordance with paragraph 1 of the Leaders' Statement each Economy will publish and/or make publicly available through other means those guidelines.
6. Each Economy will maintain clear procedures regarding application, registration, and government licensing of investments by:
 - (a) publishing and/or making available clear and simple instructions, and an explanation of the process (the steps) involved in applying/government licensing/registering; and
 - (b) publishing and/or making available definitions of criteria for assessment of investment proposals.
7. Where prior authorization requirement procedures exist, each Economy will conduct reviews at the appropriate time to ensure that such procedures are simple and transparent.
8. Each Economy will make available to investors all rules and other appropriate information relating to investment promotion programs.
9. When negotiating regional trade agreements and free trade agreements that contain provisions with an investor/state dispute settlement mechanism, each Economy should consider whether or not to include transparency provisions.

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10. Each Economy will participate fully in APEC-wide efforts to update the APEC Investment Guidebook.

C. Competition Law and Policy and Regulatory Reform

Introduction

In October 2002, in Los Cabos, Mexico, APEC Leaders adopted the Statement to Implement APEC Transparency Standards (“Leaders’ Statement”), and directed that these standards be implemented as soon as possible, and in no case later than January 2005.

In paragraph 8 of the Leaders’ Statement, APEC Leaders instructed that APEC sub-fora that have not developed specific transparency provisions should do so, and further instructed that such new transparency provisions should be presented to Leaders upon completion for incorporation into the Leaders’ Statement. Accordingly, the following set of transparency standards on competition and deregulation for incorporation into the Leaders’ Statement were developed.

These principles flow from the General Principles on Transparency agreed to by APEC Leaders at Los Cabos, and provide specific guidance for implementation within the context of competition law and policy and regulatory reform.

Transparency Standards on Competition Law and Policy

1. In furtherance of paragraph 1 of the General Principles of the Leaders’ Statement, each Economy will ensure that its competition laws, regulations, and progressively, procedures, administrative rulings of general application and judicial decisions of general application are promptly published or otherwise made available in such a manner as to enable interested persons and other Economies to become acquainted with them.
2. In furtherance of paragraphs 4 and 5 of the General Principles of the Leaders’ Statement, each Economy will ensure that before it imposes a sanction or remedy against any person for violating its national competition law, it affords the person the right to be heard and to present evidence, except that it may provide for the person to be heard and present evidence within a reasonable time after it imposes an interim sanction or remedy; and that an independent court or tribunal imposes or, at the persons request, reviews any such sanction or remedy. Proceedings subject to this paragraph are to be in accordance with domestic law.

Transparency Standards on Regulatory Reform

1. In furtherance of paragraph 1 of the General Principles of the Leaders’ Statement, each Economy will ensure that its laws, regulations, procedural rules and administrative rulings of general application relating to regulatory reform are promptly published or otherwise made available in such a manner as to enable interested persons and other economies to become acquainted with them.
2. In furtherance of paragraphs 2 and 3 of the Leaders’ Statement, Economies recognize the importance of ensuring transparency in the regulatory reform process

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and of soliciting and responding to inquiries from interested persons and other Economies. Accordingly, each Economy will, where possible (a) publish in advance regulatory reform measures that it proposes to adopt, and (b) provide where applicable interested persons a reasonable opportunity to comment on such proposed measures. In addition, upon request from an interested person or another Economy, each Economy will endeavor to promptly provide information and respond to questions pertaining to any actual or proposed regulatory reform measure.

Confidential Information

Economies agree that nothing in these standards requires any Economy to disclose confidential information.²

² The Leaders' Statement includes a provision for the protection of confidential information. This statement is included here to emphasize the importance of the protection of confidential information in the contexts of both competition law and policy and regulatory reform.

D. Standards and Conformance

Introduction

On 27 October 2002, in Los Cabos, Mexico, APEC Leaders adopted the Statement to Implement APEC Transparency Standards (“Leaders’ Statement”), and directed that these standards be implemented as soon as possible, and in no case later than January 2005.

In paragraph 8 of the Leaders’ Statement, APEC Leaders instructed that “APEC sub-fora that have not developed specific transparency provisions should do so,” and further instructed that such new transparency provisions should be presented to Leaders upon completion for incorporation into the Leaders’ Statement. Accordingly, the Subcommittee on Standards and Conformance (SCSC) developed the following set of transparency standards for incorporation into the Leaders’ Statement.

These principles flow from the General Principles on Transparency agreed to by APEC Leaders at Los Cabos and the obligations of the WTO Agreements on Technical Barriers to Trade and on the Application of Sanitary and Phytosanitary Measures.

Transparency Standards on Standards and Conformance

1. In accordance with paragraph 1 of the Leaders’ Statement, and the WTO Agreements on Technical Barriers to Trade (TBT) and on the Application of Sanitary and Phytosanitary (SPS) Measures, each Economy will:
 - (a) promptly publish or otherwise make available to all interested parties, through readily accessible, widely available media, for example via the Internet, information on its laws, regulations, policies, administrative rulings, certification, qualification and registration requirements, technical regulations, standards, guidelines, procedures and practices relating to standards and conformance; and,
 - (b) have or designate an official journal or journals and publish in them information on technical regulations, sanitary and phytosanitary measures and related conformity assessment procedures on a regular basis and make copies of them readily available to the public.
2. As far as practicable, each Economy will maintain one centrally located website for the information referred to above.
3. In accordance with paragraph 2 of the Leaders’ Statement and the WTO TBT and SPS Agreements, each Economy will publish in advance any standards or conformance requirement that it proposes to adopt and provide interested persons a reasonable opportunity to comment on such proposed measures and take those comments into account before a final measure is adopted. Each Economy that is a WTO member will notify proposals to the WTO as required by the TBT and SPS Agreements.

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4. In accordance with paragraph 3 of the Leaders' Statement, upon request from an interested person or another Economy, each Economy will endeavor to promptly provide information and respond to questions pertaining to any actual or proposed standards and conformance measure.
5. Recognizing that standards and conformance measures can have an adverse impact on trade and development, each Economy will ensure that such measures are developed and administered in a transparent manner, and in compliance with WTO TBT/SPS obligations, as well as the APEC Guidelines for the Preparation, Adoption and Review of Technical Regulations, and the APEC SCSC Principles and Features of Good Practice for Technical Regulations so as to prevent the creation of unnecessary or arbitrary barriers to trade.
6. Each Economy will promote awareness of and compliance with the transparency provisions of the WTO TBT and SPS Agreements.
7. Each Economy that is a WTO Member will cooperate in the Triennial Reviews of the TBT Agreement to promote awareness of and compliance with the transparency provisions of the TBT Agreement, the APEC Guidelines for the Preparation, Adoption and Review of Technical Regulations, and the APEC SCSC Principles and Features of Good Practice for Technical Regulations.
8. Each Economy will continue to provide updated information for the SCSC Contact List which is maintained on the APEC Secretariat's website and includes a range of contacts for each economy relevant to standards and conformance activities.
9. Each Economy will, as appropriate, promote the observance of these transparency standards by the regional and local governments, and non-governmental standardizing bodies within its territory.

E. Intellectual Property

Introduction

On 27 October 2002, in Los Cabos, Mexico, APEC Leaders adopted the Statement to Implement APEC Transparency Standards (“Leaders’ Statement”), and directed that these standards be implemented as soon as possible, and in no case later than January 2005.

In paragraph 8 of the Leaders’ Statement, APEC Leaders instructed that “APEC sub-fora that have not developed specific transparency provisions should do so,” and further instructed that such new transparency provisions should be presented to Leaders upon completion for incorporation into the Leaders’ Statement. Accordingly, the Intellectual Property Experts Group (IPEG) developed the following set of transparency standards on intellectual property for incorporation into the Leaders’ Statement.

These principles flow from the General Principles on Transparency agreed to by APEC Leaders at Los Cabos, and provide specific guidance for implementation within an intellectual property context.

Transparency Standards on Intellectual Property

1. In accordance with paragraph 1 of the Leaders’ Statement, each Economy will promptly publish in its domestic language or otherwise make available its laws, regulations, and progressively, all procedures concerning the protection, including enforcement, of intellectual property rights in such a manner as to enable interested parties to become acquainted with them.
2. Furthermore, each Economy will clarify procedures and practices regarding application, issuance, and registration of intellectual property rights by publishing the following information:
 - (a) Clear and simple instructions, and an explanation of the steps involved regarding the application and registration process,
 - (b) Examination guidelines and assessment criteria used to review an application for approval, if applicable,
 - (c) Contact points for inquires on standards, technical regulations, and other requirements,
 - (d) Provisions that are directed to SMEs.
3. Each Economy will also provide a system for the registration of industrial property, which shall include:

- (a) Providing to the applicant a communication in writing, which may be electronic, of the reasons for any refusal to register a trademark or grant a patent;
 - (b) Providing to the applicant an opportunity to respond to communications from the relevant government authorities, to contest an initial refusal, and to have a higher authority review any refusal to register a trademark or grant a patent;
 - (c) An opportunity for interested parties to petition to oppose or to challenge a trademark or patent application or to seek cancellation after a trademark has been registered or a patent has been granted; and
 - (d) A requirement that decisions in opposition or cancellation proceedings be reasoned and in writing.
4. Each Economy will provide that final judicial decisions or administrative rulings, those where appeals are no longer possible, of general applicability pertaining to the protection, including enforcement, of intellectual property rights shall be communicated to the parties to the proceedings. Each Economy will also provide for publication of such decisions or rulings, or where such publication is not practicable, made publicly available, in a domestic language in such a manner as to enable governments and rights holders to become acquainted with them.
 5. In accordance with paragraph 2 of the Leaders' Statement, each Economy will, when possible, publish in advance any proposed changes to laws, regulations, and progressively, all procedures concerning the protection, including enforcement, of intellectual property rights, and provide where applicable interested persons a reasonable opportunity for public comment. Each Economy will also make available to all interested parties timely updates of changes to intellectual property law statutory regimes, including as appropriate via the APEC Secretariat.
 6. In addition to paragraphs 3, 4, and 5 of the Leaders' Statement, each Economy will conduct as appropriate periodic reviews of administrative regulations, rules, and procedures to ensure they are simplified, consistent, and transparent. Outstanding issues raised by the reviews will be resolved where possible in a timely manner.
 7. Where possible, each Economy will publish information on its efforts to provide effective enforcement of intellectual property rights in its civil, administrative and criminal system, including any statistical information that the Economy may collect for such purposes.
 8. Each Economy will conduct regular briefings in appropriate fora to provide updates on the status of intellectual property protection and enforcement as well as future policy direction, if appropriate

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Confidential information

Nothing in the provisions of this statement shall require an Economy to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.

F. Customs Procedures

Introduction

On 27 October 2002, in Los Cabos, Mexico, APEC Leaders adopted the Statement to Implement APEC Transparency Standards (“Leaders’ Statement”), and directed that these standards be implemented as soon as possible, and in no case later than January 2005.

In paragraph 8 of the Leaders’ Statement, APEC Leaders instructed that “APEC sub-fora that have not developed specific transparency provisions should do so,” and further instructed that such new transparency provisions should be presented to Leaders upon completion for incorporation into the Leaders’ Statement. Accordingly, the United States proposes that the Sub-Committee on Customs Procedures develop the following set of transparency standards on customs for incorporation into the Leaders’ Statement.

The following customs transparency standards flow from, and are to be read consistently with, the General Principles on Transparency agreed to by APEC Leaders in Los Cabos, and provide specific guidance for implementation within the customs context.

Transparency Standards on Customs Procedures

1. In furtherance of paragraph 1 of the Leaders’ Statement, each Economy, will promptly publish and make available on the Internet, information on its customs laws, regulations, procedures and administrative rulings of general application in such a manner as to enable interested persons to become acquainted with them.
2. In furtherance of paragraph 2 of the Leaders’ Statement, each Economy will, to the extent possible, publish in advance any regulations of general application governing customs procedures proposed for adoption, and provide a reasonable opportunity for comments from interested persons.
3. In furtherance of paragraph 4 of the Leaders’ Statement, and taking into account Economies’ individual circumstances, upon request from an interested person in its territory, each Economy wherever possible will provide for the issuance, of advance rulings based on specific facts and circumstances provided by such requester prior to the importation of a good into its territory, for areas such as:
 - (a) tariff classification;
 - (b) the application of the provisions set forth in the WTO Agreement on Customs Valuation;
 - (c) the application of duty drawback;
 - (d) country of origin marking requirements;

- (e) the application of rules of origin under free trade agreements and other preferential tariff regimes; and
 - (f) admissibility requirements.
4. Subject to domestic confidentiality requirements, each Economy, will make such advance rulings publicly available for purposes of ensuring application of the rulings to other goods where the facts and circumstances are the same as those under which the rulings are issued.
5. In furtherance of paragraph 5 of the Leaders' Statement, where warranted each Economy will maintain procedural transparency and fairness in customs procedures by:
- (a) providing for the prompt review and correction of customs administrative actions;
 - (b) ensuring that importers are provided with the right to a level of administrative review independent of the employee or office issuing the determination subject to review; and
 - (c) maintaining the availability of judicial review of customs administrative determinations.
6. Each Economy will, maintain one or several contact points to which interested parties can address questions concerning customs matters, and shall make available on the Internet information concerning the procedures for making such inquires.

G. Market Access

Introduction

On 27 October 2002, in Los Cabos, Mexico, APEC Leaders adopted the Statement to Implement APEC Transparency Standards (“Leaders’ Statement”), and directed that these standards be implemented as soon as possible, and in no case later than January 2005.

In paragraph 8 of the Leaders’ Statement, APEC Leaders instructed that “APEC sub-fora that have not developed specific transparency provisions should do so,” and further instructed that such new transparency provisions should be presented to Leaders upon completion for incorporation into the Leaders’ Statement. Accordingly, the Market Access Group developed the following set of transparency standards on market access for incorporation into the Leaders’ Statement.

These principles flow from the General Principles on Transparency agreed to by APEC Leaders at Los Cabos, and provide specific guidance for implementation within a market access context.

Transparency Standards on Tariff and Non-Tariff Measures

1. (a) In accordance with paragraph 1 of the Leaders’ Statement, each Economy will promptly publish or otherwise make available to all interested parties, through readily accessible, widely available media (for example via the Internet), information on its laws, regulations, and progressively, procedures and administrative rulings relating to tariff and non-tariff measures.
 - (b) Such information could include publication of the following measures:
 - (i) tariff schedules, with current applied tariff rates, on the Internet;
 - (ii) details of preferential tariff programs;
 - (iii) tariff rates applicable under Free Trade Agreements and Regional Trade Agreements; and
 - (iv) NTMs maintained by member economies.
2. In accordance with paragraph 2 of the Leaders’ Statement, when possible each Economy will endeavour to publish in advance any tariff or non-tariff measure that it proposes to adopt, and provide interested persons a reasonable opportunity to comment on such proposed measures.
3. In accordance with paragraph 3 of the Leaders’ Statement, upon request from an interested person or another Economy, each Economy will endeavour to promptly

provide information and respond to questions pertaining to any actual or proposed measures referred to in paragraph 1 above.

4. Each Economy will endeavour to ensure that non-tariff measures are administered in a transparent manner, so as to mitigate their effect on the trade and development of other Economies.
5. Each Economy that is a WTO Member will, where possible, provide information on non-tariff measures when requested by other WTO Members in the context of the WTO negotiations on market access and will participate actively in these negotiations as they move forward.
6. Each Economy that is a WTO Member will comply with notification procedures under the WTO Agreement on Import Licensing Procedures.
7. Each Economy that is a WTO Member will submit its updated tariff data (both bound, and, where possible, current applied) and trade data to the WTO Integrated Data Base on a timely basis. Economies in the process of acceding to the WTO will, where possible, submit current applied tariff and trade data to the WTO Integrated Data Base. Each economy will also submit current applied tariff data to the APEC tariff database in a timely manner.
8. Each Economy will provide to the APEC Secretariat for inclusion on the website of the Market Access Group (MAG) links to individual government websites, including, where possible, links to specific officials responsible for developing, administering, implementing and/or enforcing policies related to tariff and non-tariff measures. Each Economy further agrees to provide current information on import regulations for the MAG's Import Regulation website. Each Economy will also provide as much information as possible on rules and procedures, and details of enquiry points, in its e-Individual Action Plan.

H. Business Mobility

Introduction

Since its inception, the APEC Business Mobility Group (BMG) has recognized that transparent and predictable business mobility procedures are essential to a stable and open trading regime. As a consequence many BMG initiatives have facilitated openness, transparency and information exchange in an effort to ensure that APEC members make immigration measures (new and amended, including those in international agreements) publicly available to all interested parties. Economies have provided up to date, information on rules and procedures governing temporary residency, processing standards and contact points in the *APEC Business Travel Handbook* and have shared information on immigration legislation, trade agreements, policies and technologies on the BMG web site.

On 27 October 2002, in Los Cabos, Mexico, APEC Leaders adopted the “Statement to Implement APEC Transparency Standards” (hereinafter referred to as the “Leaders’ Statement”), and directed that these standards be implemented as soon as possible, and in no case later than January 2005. In paragraph 8 APEC Leaders instructed that “APEC sub-fora that have not developed specific transparency provisions should do so,” and further instructed that such new transparency provisions should be presented to Leaders upon completion for incorporation into the Leaders’ Statement.

The following Business Mobility Standards relate to immigration laws, regulations, policies, administrative rulings, procedures and practices related to the temporary entry and stay of business persons, at the pre-arrival, entry, stay and departure phases.

Transparency Standards on Business Mobility

Publication and Access

1. In accordance with paragraph 1 of the Leaders’ Statement, each Economy will promptly publish or otherwise make available to all interested parties, through readily accessible, widely available media, for example via the Internet, information on its immigration laws, regulations, policies, and progressively, administrative rulings of general application, procedures and practices as they relate to business persons, collectively referred to as “immigration measures”. Economies will ensure that immigration regulations and requirements based on policy are clear, concise, current, simple, transparent and readily available, and meet applicable Standards for Pre-Arrival and Entry and will:
 - (a) Provide user-friendly application forms, instructions and reference materials.

Consultation

2. In accordance with paragraph 2 of the Leaders’ Statement, each Economy will, when possible, publish in advance using the media and other mechanisms as appropriate proposed immigration measures that might affect business mobility and where

applicable provide interested persons a reasonable opportunity to comment on such proposed measures. Such measures should include:

- (a) A set of rules and regulations that provide sanctions for the production, sale and use of fraudulent documents;
- (b) Effective rules and regulations that are precise in specifying what constitutes document fraud and what the sanctions are for producing, selling or using fraudulent documents; support inspectors, investigators and prosecutors in apprehending and taking action against fraudulent document producers, vendors and users; and promote business facilitation as well as protect the country's inhabitants;
- (c) In respect to professional service, a comprehensive Code(s) of Conduct that sets out in very practical terms the behavior expected of all immigration officials, including employee's responsibilities, service policies and standards, clear guidance and practical examples, and that is developed in consultation with internal and external stakeholders as appropriate; and
- (d) Mechanisms for reporting or filing complaints on code of conduct breaches without fear of reprisal or prejudice.

Information Services

3. In accordance with paragraph 3 of the Leaders' Statement, upon request from an interested person or another Economy, each Economy will endeavor when possible to promptly provide information and respond to questions pertaining to any actual or proposed immigration measures and will provide:
 - (a) Points of inquiry for business persons or businesses with questions;
 - (b) Simple, quick and user-friendly application processes with clear information and instructions on requirements relating to any exemptions, fees and charges;
 - (c) Information that is easily accessible to internal/external stakeholders (Customer Help Desks/Call Centres or Industry Consultative Committees, Internet, displays and signs); and
 - (d) Where appropriate, will provide mechanisms so that stakeholders' service charters are developed which clearly state the level of service they can expect, and are displayed in public areas such as airports, Immigration offices and overseas missions.

Decision Making

4. In accordance with paragraph 4 of the Leaders' Statement, each Economy will ensure that immigration measures are administered in a transparent manner, including, wherever possible, reasonable notice in accordance with domestic procedure when a proceeding is initiated, and an opportunity to present facts and arguments in support

of their positions, when time, the nature of the proceeding, and the public interest permit, and that the procedure is in accordance with domestic law. Economies shall

- (a) Strive for transparency in decision-making that is based on an economy's prevailing employment and immigration policies and procedures and, where applicable, provide decisions that are in writing and denials that provide reasons based on requirements and information on any right of appeal or waivers;
- (b) Strive for reasonable processing times for decision-making in an effort to avoid unnecessary delay or uncertainty on the part of business travelers;
- (c) Ensure that decisions are consistent with published guidelines and requirements through regular quality control reviews;
- (d) Ensure that employees are trained in decision-making procedures and have access to current written guidelines and instructions relating to interpretation of regulations and laws;
- (e) Ensure that authority to make decisions includes appropriate checks and balances, and is strictly controlled to prevent abuse of power;
- (f) Provide periodic review mechanism of systems and procedures to ensure uniformity and consistency in decision making; reviews undertaken in consultation with employees to eliminate "red tape;"
- (g) Develop and implement mechanisms which monitor and evaluate the organization's performance against established service standards;
- (h) To the extent possible, have a system in place for monitoring consistency between different offices, provinces or regions concerning decisions, procedures and information provided;
- (i) Where appropriate, clearly define and make publicly available the basis or criteria upon which discretionary power is exercised by officials; and
- (j) To the extent possible, convey reasons for decisions to applicants and document grounds for decisions clearly and retain these for monitoring and review.

Review

5. In accordance with paragraph 5 of the Leaders' Statement and its own immigration laws, where warranted, each Economy will provide procedures that are simple, consistent, and easily accessible for review and appeal of immigration decisions and, where warranted, prompt correction of final administrative actions, regarding immigration measures which provide parties to the proceeding with a reasonable opportunity to present their respective positions, a decision based on the evidence and submissions in the administrative record, tribunals or panels that are impartial and independent of any office or authority entrusted with administrative enforcement and

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have no substantial interest in the outcome of the matter, and implementation of the final decision. To ensure transparent administrative regulations and decision-making, Immigration Administrations shall have

- (a) To the extent possible, objective performance standards for managers to ensure compliance and accountability for the Standards on Professional Conduct;
- (b) To the extent possible, guidelines and policies that clearly state management responsibilities in employee development and in the promotion and monitoring of ethical practices and integrity; and
- (c) Selection criteria for managerial positions that include demonstrated ability to accept responsibility and accountability for implementation of the Standards on Professional Conduct.

I. Government Procurement

Introduction

The Government Procurement Experts Group (GPEG) was established in 1995 to consider ways to increase transparency of, and liberalise, government procurement markets in accordance with the goals of the Bogor Declaration. APEC identified and agreed a collective action plan for government procurement. A key component of the plan was to develop a set of non-binding principles on government procurement. This was in line with the APEC General Principle of flexibility, enunciated in the Osaka Action Agenda: “Considering the different levels of economic development among the APEC economies and the diverse circumstances in each economy, flexibility will be available in dealing with issues arising from such circumstances in the liberalisation and facilitation process”.

In 1999 GPEG completed the Non-Binding Principles on Government Procurement (NBPs) that identify elements and illustrative practices on the principles of transparency, value for money, open and effective competition, fair dealing, accountability and due process, and non-discrimination. The NBPs have the support and commitment of all Economies and have been adopted as the basis of the Government Procurement section of APEC economies' annually revised Individual Action Plans recording progress towards the Bogor goals of free and open trade and investment.

The NBPs have been a major contributor to the success of Economies and GPEG in promoting transparency in government procurement. The majority of GPEG members have completed their voluntary reviews and reports of their government procurement systems against the non-binding principle of Transparency. Through this process, Economies are exploring how best to implement the principles and to voluntarily bring their systems into conformity with them. This general transparency principle applies to all aspects of government procurement, including the elements of the general operational environment, procurement opportunities, purchase requirements, bid evaluation criteria and award of contracts. Establishing and maintaining transparent procurement markets not only assists Economies to learn from each other but also enables industry to obtain a clear understanding of the procurement markets operating within member economies.

On 27 October 2002, in Los Cabos, Mexico, APEC Leaders adopted the “Statement to Implement APEC Transparency Standards” (“Leaders' Statement”), and directed that these standards be implemented as soon as possible, and in no case later than January 2005.

Paragraph 7 of the Leaders' Statement states that, consistent with the transparency standards in paragraphs 1-6 of the Leaders' Statement, Economies will follow the transparency provisions contained in the APEC Government Procurement Experts Group (GPEG) NBPs. In paragraph 8 of the Leaders' Statement, APEC Leaders instructed that “APEC sub-fora that have elaborated transparency provisions should review these regularly and, where appropriate, improve, revise or expand them further,” and also instructed that such new transparency provisions should be presented to Leaders upon completion for incorporation into the Leaders' Statement. Ministers Responsible for Trade meeting in

Khon Kaen on June 2-3 “instructed officials to complete work underway to develop area-specific Transparency Standards.”

The Transparency Standards on Government Procurement, as set out below, are consistent with and fully reflect the General Principles in the Leaders' Statement and the transparency-related provisions of the NBPs. Implementation of both the Transparency Standards on Government Procurement and the NBPs will promote transparency in government procurement in the Asia-Pacific region.

Transparency Standards on Government Procurement

Transparency in the government procurement context means that sufficient and relevant information should be made available to all interested parties consistently and in a timely manner through a readily accessible, widely available medium. This applies to all aspects of government procurement, including the general operational environment, procurement opportunities, purchase requirements, bid evaluation criteria and award of contracts.

1. Consistent with paragraph 1 of the Leaders' Statement, each Economy will:

- (a) ensure that its laws, regulations, and progressively judicial decisions, administrative rulings, policies (including any discriminatory or preferential treatment such as prohibitions against or set asides for certain categories of suppliers), procedures and practices (including procurement methods) related to government procurement (collectively referred to as “procurement rules”) are promptly published or otherwise made available, for example, via the Internet, in such a manner as to enable interested persons and other Economies to become acquainted with them;
- (b) designate an official journal or journals and publish the procurement rules in such journals on a regular basis and make copies of the journals readily available to the public (e.g., via the Internet); and
- (c) promote observance of the provisions of this paragraph by the regional and local governments and authorities within its customs territory.

2. Each economy will disseminate information on its procurement rules, for example, by:

- (a) publishing either a positive or negative list of the procuring entities subject to its rules; and
- (b) providing a description of its procurement rules on the APEC Government Procurement Experts Group Home Page and linking its government procurement Home Page, where available, with the APEC Government Procurement Experts Group Home Page.

3. Consistent with paragraph 2 of the Leaders' Statement, when possible each Economy will publish in advance any procurement rules that it proposes to adopt; and provide, where

applicable, interested persons a reasonable opportunity to comment on such proposed procurement rules.

4. Consistent with paragraph 3 of the Leaders' Statement, each Economy will endeavor upon request from an interested person or another Economy to promptly provide information and respond to questions pertaining to any actual or proposed rules. Each Economy will also establish contact points for such inquiries.

5. Consistent with paragraph 4 of the Leaders' Statement, in administrative proceedings applying to any procurement rule, each Economy will ensure that:

- (a) wherever possible, persons of another Economy that are directly affected by a proceeding are provided reasonable notice, in accordance with domestic procedures, when a proceeding is initiated, including a description of the nature of the proceeding, a statement of the legal authority under which the proceeding is initiated and a general description of any issues in controversy;
- (b) such persons are afforded a reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative action, when time, the nature of the proceeding and the public interest permit; and
- (c) its procedures are in accordance with domestic law.

6. Consistent with paragraph 5 of the Leaders' Statement, where warranted, each Economy will ensure that appropriate domestic procedures are in place to enable prompt review and correction of final administrative actions, other than those taken for sensitive prudential reasons, regarding matters covered by these Standards, that:

- (a) provide for tribunals or panels that are impartial and independent of any office or authority entrusted with administrative enforcement and have no substantial interest in the outcome of the matter;
- (b) provide parties to any proceeding with a reasonable opportunity to present their respective positions;
- (c) provide parties to any proceeding with a decision based on the evidence and submissions of record or, where required by domestic law, the record compiled by the administrative authority; and
- (d) ensure, subject to appeal or further review under domestic law, that such decisions are implemented by, and govern the practice of, the offices or authorities regarding the administrative action at issue.

7. Each Economy will endeavour to maximize transparency in access to procurement opportunities. This should be accomplished where possible by:

- (a) where open tendering is adopted, publishing procurement opportunities in a medium readily accessible to suppliers (e.g., on the Internet);
- (b) making the same information on procurement opportunities available in a timely manner to all potential suppliers;
- (c) publishing contact details of purchasers, and their product/ service purchase interests, for suppliers wishing to register their interest in being notified of bidding opportunities that may not be publicly advertised;
- (d) making available early advice of complex high-value procurement needs through staged procedures such as public requests for information, requests for proposals and invitations for pre-qualification, and allowing adequate time for interested suppliers to prepare and submit a response;
- (e) making publicly available requirements and procedures for pre-qualification of suppliers; and
- (f) any time limits established for various stages of the procurement process.

8. Each Economy will make available for suppliers all the information required to prepare a responsive offer. This should include where possible:

- (a) providing in procurement notices the following information: the nature of the product or service to be procured; specifications; quantity, where known; time frame for delivery; closing times and dates; where to obtain tender documentation, where to submit bids, and contact details from which further information can be obtained;
- (b) providing any changes to participating suppliers; and
- (c) providing tender documentation and other information to suppliers promptly on request.

9. Each Economy will maintain transparent criteria for evaluating bids and evaluate bids and award contracts strictly according to these criteria. This should be done where possible by:

- (a) specifying in procurement notices or tender documentation all evaluation criteria, including any preferential arrangements; and
- (b) maintaining, for a predetermined period proper records of decisions sufficient to justify decisions taken in the procurement process.

10. Each Economy will award contracts in a transparent manner. This should be accomplished where possible by:

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- (a) publishing the outcome of the tender including the name of the successful supplier and the value of the bid; and
- (b) as a minimum promptly notifying unsuccessful suppliers of the outcome of their bids and where and when contract award information is published, and debriefing unsuccessful suppliers on request.

11. Consistent with paragraph 11 of the Leaders' Statement, an Economy does not need to disclose confidential information where such disclosure would impede law enforcement, the enactment of laws, or that would be contrary to the public or national interest, or compromise security of the economy concerned or that would prejudice the legitimate commercial interests of particular persons or enterprises. Each economy will keep commercially sensitive information secure and prevent its use for personal gain by procurement officials or to prejudice fair, open and effective competition.

APEC Investment Facilitation Action Plan (IFAP)

Introduction – the benefits of investment

There is strong international consensus on the benefits of investment, across the spectrum of its activities: from tangible assets to intellectual property. Such investment drives economic productivity, builds jobs, raises incomes, strengthens trade flows and spreads international best technologies and practices. Investment bolsters economic growth for developed and developing economies alike.

APEC's member economies recognise the significant economic benefits of investment and are active in promoting investment and facilitating cross-border investment flows. Facilitating investment requires work: a concerted national and international effort to create and sustain the most conducive climate for investment

APEC has been instrumental in this effort in the Asia-Pacific region beginning with its adoption in 1994 of the non-binding investment principles. These are designed to improve and further liberalise investment regimes and they include measures on facilitation. To reinforce APEC's work in this area, in 2007 in Sydney APEC Leaders agreed to the development of an Investment Facilitation Action Plan (IFAP) aimed at further promotion of investment in APEC member economies. Effective investment facilitation can make a significant contribution to the sort of broader investment climate reform efforts widely practiced by APEC member economies.

What is investment facilitation?

To harness the advantages of foreign investment, it is critical that governments have investment procedures in place that do not unnecessarily increase the costs or risk of doing business, or constrain business competition (which individually or collectively lower productivity and growth). Investment facilitation refers to actions taken by governments designed to attract foreign investment and maximise the effectiveness and efficiency of its administration through all stages of the investment cycle.

Investment facilitation covers a wide range of areas, all with the ultimate focus on allowing investment to flow efficiently and for the greatest benefit. Transparency, simplicity and predictability are among its most important principles. The costs of opacity far outweigh the costs of enhancing transparency. Investors look for an investment environment that is stable, and that offers international best practice standards of protection, including the swift and equitable resolution of investment disputes.

A sound investment facilitation strategy ensures that all investment applications are dealt with expeditiously, fairly and equitably. Investment facilitation also requires creating and maintaining transparent and sound administrative procedures that apply for the lifetime of the investment, including effective deterrents to corrupt practices. Finally, investment facilitation is enhanced by the availability of quality physical infrastructure, high-standard business services, talented and flexible labour forces, and the sound protection of property rights.

Multilateral Investment Facilitation

Several multilateral organisations have active programs in support of strengthening facilitation practices as part of broader investment promotion policies. The World Bank is at the forefront of these efforts, providing information services and diversified technical assistance to help governments and relevant intermediaries involved in promoting investment enhance their ability to respond effectively to investor needs.

UNCTAD analyses trends in FDI and their impact on development, compiles data on FDI, provides advisory services and training on international investment issues, helps developing countries improve policies and institutions that deal with FDI, and assists these countries to participate in international negotiations on investment. The OECD has developed investment policy instruments, such as the *Framework for Investment Policy Transparency* and the *Policy Framework for Investment*, to assist governments in developing frameworks for investment facilitation.

APEC's IFAP is designed constructively to complement these existing international efforts. It is a consensus plan on investment facilitation that reflects the specificities and priorities of APEC members. While it is non-binding, the IFAP reinforces APEC's commitment to significantly enhanced regional economic integration.

APEC and investment facilitation

Since its inception in 1989, APEC has emphasised the importance of investment facilitation through practical activities in its work program. In 1995, APEC Leaders adopted the Bogor Goals of free and open trade and investment in the Asia-Pacific region by 2020. At the same time they committed to accelerate APEC's trade and investment facilitation programs. Investment facilitation accordingly is one of the aims of the 1995 Osaka Action Agenda (OAA).

APEC member economies are continuing efforts to enhance transparency of investment regimes, improve investment climates and encourage and facilitate free and open investment in the region. The 2007 report on *Strengthening Regional Economic Integration* emphasises the need to improve further the investment climate in APEC member economies and refocuses APEC's investment liberalisation and facilitation agenda on concrete initiatives that accelerate regional economic integration and reduce behind-the-border barriers.

Among APEC's achievements that have included investment facilitation so far are:

- APEC Non-Binding Investment Principles (1994);
- Options for Investment Liberalisation and Business Facilitation to Strengthen APEC Economies (1997);
- Guide to the Investment Regimes of APEC Member Economies (6th edition, 2007); and
- Study on *Enhancing Investment Liberalisation and Facilitation in Economic Development in the Asia-Pacific Region*, which examined ways to reduce 'behind-the-border' barriers to domestic investment.

These initiatives were undertaken in recognition of the diversity that exists among APEC member economies, and they provide members with a broad range of policy choices suitable for different economic circumstances.

Aims of APEC's IFAP

The main aims of the IFAP are to:

- strengthen regional economic integration;
- strengthen the competitiveness and sustainability of economic growth of APEC's member economies;
- expand prosperity and employment opportunities in the APEC region; and
- make further progress toward achievement of the Bogor Goals.

APEC's investment facilitation principles

The following principles are not exhaustive. They provide a guide to the kind of provisions that would constitute better practice in investment facilitation. They will not prejudice the positions of APEC members in any of their current or future unilateral actions or negotiations with investment provisions.

A working framework

| Principles | Government role | Business impact |
|--|--|---|
| <ul style="list-style-type: none"> ▪ <i>Promote accessibility and transparency in the formulation and administration of investment-related policies</i> | <ul style="list-style-type: none"> ▪ Provide full, clear and up-to-date picture of investment regime, including advance notice of proposed changes ▪ Ensure readily available information, including through “one-stop” or special enquiry points and on-line services where appropriate ▪ Promote legislative simplification including plain language drafting ▪ Publicise outcomes of periodic reviews of investment regime | <ul style="list-style-type: none"> ▪ Encourages business interest and enables business decisions ▪ Allows business to include prospective changes in its planning decisions ▪ Gives business confidence that laws, regulations and policies are consistent across different areas and levels of government ▪ Promotes a perception in business that the government aims to maintain a good investment climate |
| <ul style="list-style-type: none"> ▪ <i>Enhance stability of investment environments, security of property and protection of investments</i> | <ul style="list-style-type: none"> ▪ Provide an environment which is politically and economically stable. ▪ Provide secure property rights covering tangible and intangible assets including land use rights. ▪ Provide well-performing court systems. ▪ Facilitate effective contract enforcement. ▪ Limit and review the use of regulatory expropriation and guarantee prompt adequate and effective compensation. ▪ Encourage development of effective, reasonable cost mechanisms for resolving disputes including private arbitration services. ▪ Consider membership of recognised international arbitration bodies. ▪ Provide a mechanism for the enforcement of arbitral awards. | <ul style="list-style-type: none"> ▪ Reduces non-commercial risk associated with investment ▪ Links more appropriately effort and reward increasing incentive to invest. ▪ Increases business confidence in the domestic legal system ▪ Increases ability to raise finance especially for SMEs ▪ Provides investor guarantee of compensation for regulatory takings. ▪ Gives recourse to impartial channels of dispute settlement ▪ Gives an additional layer of protection in cases of disputes |
| <ul style="list-style-type: none"> ▪ <i>Enhance predictability and consistency in investment-related policies</i> | <ul style="list-style-type: none"> ▪ Systematise and institutionalise common application of investment regulations. ▪ Give equal treatment in the operation and application of domestic laws and regulations on investment. | <ul style="list-style-type: none"> ▪ Ensures certainty to encourage business decisions ▪ Simplifies business transactions and builds business confidence ▪ Reassures investors that they are being given equal treatment ▪ Reduces cost of doing business and |

| Principles | Government role | Business impact |
|--|---|--|
| | <ul style="list-style-type: none"> ▪ Avoid discriminatory use of bureaucratic discretion ▪ Establish clear criteria and transparent procedures for administrative decisions including with respect to investment approval mechanisms. | <ul style="list-style-type: none"> adds to competitiveness ▪ Reduces scope for corruption |
| <ul style="list-style-type: none"> ▪ <i>Improve the efficiency and effectiveness of investment procedures</i> | <ul style="list-style-type: none"> ▪ Simplify, streamline and quicken investment regime and processes . ▪ Provide timely, relevant and prompt advice. ▪ Encourage and foster institutional cooperation and coordination ▪ Where appropriate, establish “one-stop” approval authority – eg an active investment promotion agency with adequate funding ▪ Clarify policy roles and accountabilities between different levels of government. ▪ Keep the costs to the investor of the investment approval process to a minimum. | <ul style="list-style-type: none"> ▪ More attractive investment environment ▪ Speeds up investment processes ▪ Avoids duplication and double-handling at different levels of government ▪ Lowers the cost of doing business, especially for small and medium sized enterprises with higher barriers to entry |
| <ul style="list-style-type: none"> ▪ <i>Build constructive stakeholder relationships</i> | <ul style="list-style-type: none"> ▪ Maintain mechanisms for regular consultation and dialogue with interested parties including investors. ▪ Provide framework to identify and address problems encountered by investors. ▪ Promote improved standards of corporate governance. ▪ Promote responsible business conduct. | <ul style="list-style-type: none"> ▪ Enables business to help shape productive investment environment ▪ Ensures problems can be dealt with expeditiously ▪ Strengthens private-public sector partnerships ▪ Enables business to operate in a more socially responsible manner |
| <ul style="list-style-type: none"> ▪ <i>Utilise new technology to improve investment environments</i> | <ul style="list-style-type: none"> ▪ Apply new technology to improve information, application and approval processes. ▪ Promote the adoption of new technology, including through training of officials at all levels of government in their use. ▪ Provide adequate and effective protection of technology and related intellectual property rights. ▪ Develop strategies to meet the intellectual property needs of | <ul style="list-style-type: none"> ▪ Increased accessibility and reduced business costs ▪ Enhanced security through measures such as passwords and e-signatures ▪ Encourages business to invest in research and development and to train personnel in the use of new technologies ▪ Encourages business to invest in continuous improvement for new technologies and processes |

| <i>Principles</i> | <i>Government role</i> | <i>Business impact</i> |
|---|---|---|
| | SMEs. | |
| <ul style="list-style-type: none"> ▪ <i>Establish monitoring and review mechanisms for investment policies</i> | <ul style="list-style-type: none"> ▪ Maintain mechanism for regular evaluation of investment regime. ▪ Benchmark and measure performance of institutions involved in facilitating investment. | <ul style="list-style-type: none"> ▪ Maximises effectiveness of investment regime, including in line with current international best practice ▪ Encourages business to be innovative and forthcoming with new ideas |
| <ul style="list-style-type: none"> ▪ <i>Enhance international cooperation</i> | <ul style="list-style-type: none"> ▪ Consider joining international instruments promoting international investment. ▪ Encourage investment facilitation through bilateral agreements, including free-trade agreements. ▪ Make use of international and regional initiatives aimed at building investment expertise, including information sharing. | <ul style="list-style-type: none"> ▪ Promotes international competitiveness of the economy ▪ Increases predictability of the investment environment through binding treaty action ▪ Especially relevant to companies with investments in more than one economy |

APEC's broader business facilitation agenda

APEC's investment facilitation work cannot be considered in isolation from APEC's broader business facilitation activities. APEC continues to be the regional leader in promoting trade and investment liberalisation and facilitation, which remains a cornerstone for strengthening regional economic growth and integration. APEC's agenda is also increasingly focused on structural economic reform, so-called 'behind the border' initiatives to bolster trade and investment in the region. This includes areas such as domestic regulatory reform, corporate and public governance, critical infrastructure and capacity building. Ongoing reform in these areas is integral to underpinning productivity growth, increasing economic growth and stability and boosting trade and investment flows. APEC also has a growing human security agenda in support of stronger trade and investment environments, such as countering the threat of terrorism, food security and emergency management.

IFAP is intended to complement and reinforce existing APEC work on investment facilitation (outlined at Attachment A). In the same way, it is intended to work hand in glove with business and industry stakeholders. An important partner in this work is the APEC Business Advisory Council (ABAC). Ongoing consultation with these stakeholders is a feature of the IFAP.

Capacity Building

An important feature of IFAP is provision for capacity building and technical cooperation to assist lesser developed APEC member economies with implementation. Such capacity building may include activities such as

- APEC activities aimed at improving capacity in developing economies; and
- participation in activities — including training and where appropriate use of other capacity building initiatives such as toolboxes — offered bilaterally or organised by multilateral or regional organisations such as the World Bank, UNCTAD and OECD.

In the course of developing Key Performance Indicators (KPIs) for IFAP actions, sub-fora may consider to identify a minimum of one capacity building need and mechanism to address this. Such mechanisms may include assistance from individual APEC member economies, cooperative activities in APEC, and, on occasion, assistance from international and regional institutions.

Measurement and Reporting

CTI has agreed to develop a work program on implementation of the actions in the IFAP including related to methodologies for reporting progress.

Critical Dates

2008

- MRT:
 - CTI/SOM to finalise IFAP drafting for Ministers' endorsement
 - Ministers to consider endorsement of the IFAP
- SOM III:
 - CTI to consider recommendations on KPIs and reporting methodologies for endorsement
 - CTI to consider capacity building proposals for endorsement
- Leaders: Report progress to Leaders

2009

- SOM I:
 - CTI to consider report by sub-fora and fora on implementation of IFAP
- SOM III:
 - CTI to consider report by sub-fora and fora on implementation of IFAP
- Leaders: Report progress to Leaders

Investment facilitation – menu of actions and measures

| <i>Specific actions</i> | <i>Timetable</i> |
|---|------------------|
| <i>Promote accessibility and transparency in the formulation and administration of investment-related policies</i> | |
| <ul style="list-style-type: none"> ▪ Publish laws, regulations, judicial decisions and administrative rulings of general application, including revisions and up-dates. | Continuing |
| <ul style="list-style-type: none"> ▪ Adopt centralised registry of laws and regulations and make this available electronically. | By 2010 |
| <ul style="list-style-type: none"> ▪ Establish a single window or special enquiry point for all enquiries concerning investment policies and applications to invest | 2008 |
| <ul style="list-style-type: none"> ▪ Make available all investment-related regulations in clear simple language, preferably in languages commonly used by business | |
| <ul style="list-style-type: none"> ▪ Establish an Investment Promotion Agency (IPA), or similar body, and make its existence widely known | 2009 and beyond |
| <ul style="list-style-type: none"> ▪ Make available to investors all rules and other information relating to investment promotion and incentive schemes | |
| <ul style="list-style-type: none"> ▪ Allow investors to choose their form of establishment within legislative and legal frameworks. | |
| <ul style="list-style-type: none"> ▪ Ensure transparency and clarity in investment-related laws | |
| <ul style="list-style-type: none"> ▪ Establish an APEC-wide website or e-portal to replace the hard copy publication the APEC Investment Guidebook (IEG) | By end 2009 |
| <ul style="list-style-type: none"> ▪ Encourage on-line enquiries and on-line information on all foreign investment issues | Continuing |
| <ul style="list-style-type: none"> ▪ Publish and/or make widely available screening guidelines for assessing investment proposals | |
| <ul style="list-style-type: none"> ▪ Maintain a mechanism to provide timely and relevant advice of changes in procedures, applicable standards, technical regulations and conformance requirements | |
| <ul style="list-style-type: none"> ▪ To the extent possible, provide advance notice of proposed changes to laws and regulations and provide an opportunity for public comment | Continuing |
| <ul style="list-style-type: none"> ▪ Explore the possibility of using the international benchmarks on a voluntary basis as a reference point for peer dialogue and measuring progress | 2009 |
| <i>Enhance stability of investment environments, security of property and protection of investments</i> | |
| <ul style="list-style-type: none"> ▪ Establish timely, secure and effective systems of ownership registration and / or property use rights for land and other forms of property. | Continuing |
| <ul style="list-style-type: none"> ▪ Create and maintain an effective register of public or state owned property. | 2010 |
| <ul style="list-style-type: none"> ▪ Ensure costs associated with land transactions are kept to a minimum including by fostering competition. | Continuing |

| Specific actions | Timetable |
|--|-------------------|
| <ul style="list-style-type: none"> ▪ Explore the possibility of using the World Bank <i>Doing Business</i> indicator “Registering Property” as the basis for peer dialogue and benchmarking and measuring progress across APEC | 2010 |
| <ul style="list-style-type: none"> ▪ Foster the dissemination of accurate market reputation information including creditworthiness and reliability | Continuing |
| <ul style="list-style-type: none"> ▪ Explore the possibility of using the World Bank <i>Doing Business</i> indicator “Enforcing Contracts” as the basis for peer dialogue and benchmarking and measuring progress across APEC | 2009 |
| <ul style="list-style-type: none"> ▪ Encourage or establish effective formal mechanisms for resolving disputes between investors and host authorities and for enforcing solutions, such as judicial, arbitral or administrative tribunals or procedures | Continuing |
| <ul style="list-style-type: none"> ▪ Encourage and facilitate the use of arbitration and other means of alternative dispute resolution for the settlement of international commercial disputes between private parties | Continuing |
| <ul style="list-style-type: none"> ▪ Facilitate commercial dispute resolution for foreign investors by providing reasonable cost complaint-handling facilities, such as complaint service centres, and effective problem-solving mechanisms | |
| <ul style="list-style-type: none"> ▪ Encourage the adoption of a dispute settlement framework that reflects the <i>International Convention on the Settlement of Investment Disputes between States and Nationals of Other States</i> (ICSID) | 2008 and beyond |
| <ul style="list-style-type: none"> ▪ Take steps to accede to an arbitral convention | |
| <ul style="list-style-type: none"> ▪ Explore the possibility of using the World Bank <i>Doing Business</i> indicator “Protecting Investors” as the basis for peer dialogue and benchmarking and measuring progress across APEC | 2009 |
| Enhance predictability and consistency in investment-related policies | |
| <ul style="list-style-type: none"> ▪ Increase use of legislative simplification and restatement of laws to enhance clarity and identify and eliminate inconsistency. | |
| <ul style="list-style-type: none"> ▪ Provide equal treatment for all investors in the operation and application of domestic laws and principles on investment. | |
| <ul style="list-style-type: none"> ▪ Reduce the scope for discriminatory bureaucratic discretion in interpreting investment-related regulations | Beginning in 2008 |
| <ul style="list-style-type: none"> ▪ Maintain clear demarcation of agency responsibilities where an economy has more than one agency screening or authorising investment proposals or where an agency has regulatory and commercial functions | |
| <ul style="list-style-type: none"> ▪ Establish and disseminate widely clear definitions of criteria for the assessment of investment proposals | |
| <ul style="list-style-type: none"> ▪ Establish accessible and effective administrative decision appeal mechanisms including where appropriate impartial “fast-track” review procedures | 2009 |
| <ul style="list-style-type: none"> ▪ Explore the possibility of using the World Bank <i>Doing Business</i> indicator “Dealing with Licenses” as the basis for peer dialogue | 2009 |

| Specific actions | Timetable |
|---|------------------|
| and benchmarking and measuring progress across APEC | |

| Specific actions | Timetable |
|--|------------------|
| Improve the efficiency and effectiveness of investment procedures | |
| <ul style="list-style-type: none"> ▪ Simplify and streamline application and, registration, licensing and taxation procedures and establish a one-stop authority, where appropriate, for the lodgement of papers | |
| <ul style="list-style-type: none"> ▪ Simplify and reduce the number of forms relating to foreign investment and encourage electronic lodgement | |
| <ul style="list-style-type: none"> ▪ Shorten the processing time and procedures for investment applications. | |
| <ul style="list-style-type: none"> ▪ Promote use of “silence is consent” rules or no objections within defined time limits to speed up processing times, where appropriate | |
| <ul style="list-style-type: none"> ▪ Ensure the issuing of licences, permits and concessions is done at least cost to the investor | |
| <ul style="list-style-type: none"> ▪ Simplify the process for connecting to essential services infrastructure | Continuing |
| <ul style="list-style-type: none"> ▪ Explore the possibility of using the World Bank <i>Doing Business</i> indicator “Starting a Business” as the basis for peer dialogue and benchmarking progress across APEC | 2010 |
| <ul style="list-style-type: none"> ▪ Establish and disseminate widely clear and simple instructions and explanations concerning the application and registration process | |
| <ul style="list-style-type: none"> ▪ Implement strategies to improve administrative performance at lower levels of government. | |
| <ul style="list-style-type: none"> ▪ Facilitate availability of high standard business services supporting investment | |
| Build constructive stakeholder relationships | |
| <ul style="list-style-type: none"> ▪ To the extent possible, establish a mechanism to provide interested parties (including business community) with opportunity to comment on proposed new laws, regulations and policies or changes to existing ones prior to their implementation. | 2008 |
| <ul style="list-style-type: none"> ▪ Continue to share APEC member economies’ experiences of successful stakeholder consultative mechanisms | 2009 |
| <ul style="list-style-type: none"> ▪ Promote the role of policy advocacy within IPAs as a means of addressing the specific investment problems raised by investors including those faced by SMEs | Continuing |
| <ul style="list-style-type: none"> ▪ Continue to share APEC member economies’ experiences of successful public private dialogue to take advantage of the information on successes and problems encountered by established investors | Continuing |
| <ul style="list-style-type: none"> ▪ Promote backward investment linkages between businesses, | |

| <i>Specific actions</i> | <i>Timetable</i> |
|--|-------------------------|
| especially between foreign affiliates and local enterprises including through the promotion of industry clusters | |
| <ul style="list-style-type: none"> ▪ Encourage high standards of corporate governance through cooperation aimed at promoting international concepts and principles for business conduct, such as APEC's programs on corporate governance and anti-corruption. | |
| <ul style="list-style-type: none"> ▪ Examine and share APEC member economies' experience with responsible business conduct instruments. | Continuing |
| <i>Utilise new technology to improve investment environments</i> | |
| <ul style="list-style-type: none"> ▪ Promote the introduction and use of new technologies aimed at making the investment process simpler and faster | |
| <ul style="list-style-type: none"> ▪ Maintain adequate and effective protection of technology and related intellectual property rights | |
| <ul style="list-style-type: none"> ▪ Where possible, give effect to international norms for property protection | |
| <i>Establish monitoring and review mechanisms for investment policies</i> | |
| <ul style="list-style-type: none"> ▪ Conduct periodic reviews of investment procedures ensuring they are simple, transparent and at lowest possible cost. | 2008 and 2009 |
| <ul style="list-style-type: none"> ▪ Establish indicators for monitoring the performance of the special inquiry points or Investment Promotion Agencies such as those set down by the Multilateral Investment Guarantee Agency | 2010 |
| <i>Enhance international cooperation</i> | |
| <ul style="list-style-type: none"> ▪ To the best extent possible, accede to, or observe, multilateral and/or regional investment promotion and facilitation conventions | |
| <ul style="list-style-type: none"> ▪ Make use, where appropriate, of international and regional initiatives aimed at building investment facilitation and promotion expertise, such as those offered by the World Bank, UNCTAD and OECD | |
| <ul style="list-style-type: none"> ▪ Ensure measures exist to ensure effective compliance with commitments under international investment agreements | |
| <ul style="list-style-type: none"> ▪ Review existing international agreements and treaties to ensure their provisions continue to create a more attractive environment for investment. | Continuing |

Attachment A

Investment facilitation actions already under way

| <i>Principle</i> | <i>Action under way</i> |
|---|--|
| <i>Accessibility and transparency</i> | <ul style="list-style-type: none"> • Tourism Destinations using Planning Processes to Facilitate Investment (TWG) • Capacity Building on Tourism Satellite Account as basis for Promoting Liberalization and Facilitation on Tourism Services (TWG 01/2008T) • Reducing Trade, Regulatory, and Financing Barriers to Accelerate the Uptake of Clean Coal Technologies by Developing Economies in the Asia Pacific Region (EWG 01/2008T) • ABAC: Business Statements on the importance of Transparency to Facilitate Investment |
| <i>Stability, security and protection</i> | |
| <i>Predictability and consistency</i> | <ul style="list-style-type: none"> • Seminar on Good Governance on Investment Promotion (CTI 10/2008T) • Cross-border Mergers and Acquisitions on Exports, FDI and Competition Policy (EC) • ABAC: Business Statements on the importance of Harmonisation of Rules to Facilitate Investment |
| <i>Efficiency and effectiveness</i> | <ul style="list-style-type: none"> • APEC-UNCTAD Joint Capacity Building Project for Addressing Knowledge Gaps in the Use of Foreign Direct Investment (Stage 1) (CTI 03/2008A) • APEC-UNCTAD Joint Capacity Building Project for Addressing Knowledge Gaps in the Use of Foreign Direct Investment (Stage 2) (CTI 04-2008A) • Doing Business - Investment at the Sub-National Level to Promote Economic Integration (Phase 1) (CTI 35/2008T) • Measures Affecting Cross Border Exchange and Investment in Higher Education in the APEC Region (HRD 02/2008T) • Study on Measures of Ease of Doing Business in APEC (EC) • ABAC: Business Statements on the importance of Simplification of Approvals Processes to Facilitate Investment |
| <i>Constructive stakeholder relationships</i> | <ul style="list-style-type: none"> • Workshop on SMEs' Financing in Asia-Pacific Region (SMEWG 02/2008A) • Capacity Building for Investment Liberalisation and Facilitation (HRDWG project for 2007-2008) (HRD 01/2007T) • Capacity Building for Sharing Success Factors of Improvement of Investment Environment (CTI 32/2008T) • ABAC: Matrix of Successful Investment Facilitation Measures |
| <i>Use of new technology</i> | |
| <i>Monitoring and review</i> | |

| <i>Principle</i> | <i>Action under way</i> |
|--|---|
| <i>Enhance international cooperation</i> | <ul style="list-style-type: none">• Seminar on Recent Trends on Investment Liberalization and Facilitation in Transport and Telecommunications Infrastructure (CTI 09/2008T)• APEC Energy Trade and Investment Study and Roundtable (EWG)• Capacity Building for International Investment Agreements (CTI 02/2008T)• Core Elements in International Investment Agreements Project (Phase II) (CTI 34-2008T)• APEC Seminar for Sharing Experience in APEC Economies on Relations between Competition Authorities and Regulator Bodies (CTI 13/2008T) |