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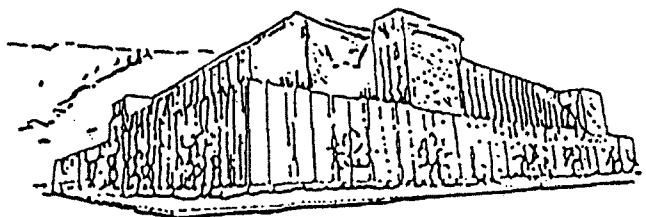
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**AN OVERVIEW AND EVALUATION OF APEC MEMBERS' CURRENT
STAGE OF INVESTMENT LIBERALIZATION**

By

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Diplom-Kaufmann (FH), Fachhochschule fuer Technik und Wirtschaft Berlin

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Presented in partial fulfillment of the requirements

for the degree of

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1997

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An Overview and Evaluation of APEC Members' Current Stage of Investment Liberalization (66 pp.)

Director: Nader H. Shoostari *N. H. S.*

The Asia-Pacific Economic Cooperation (APEC) has been a topic of controversy since its formation in 1989. Critical issues are the principles of "open regionalism," consensus, and voluntarism. The study examines and evaluates the current stage of investment liberalization and facilitation within APEC and draws conclusions about future liberalization steps.

Descriptive and historical methods are applied for the analysis of the development of APEC and its investment liberalization process. The data used are secondary and historical. The timeline of review of APEC is from its initiation to the beginning of 1997.

APEC's history, goals, organizational structure, working methods, and achievements are touched upon to give a basic understanding of the topic and show the standards that the forum has set for itself. General and collective initiatives, and working groups affecting investment issues are examined allowing for the assessment of major trends in the investment area.

The major emphasis is on APEC members' individual investment frameworks. The centers of interest are investment approval requirements, MFN treatment, repatriation and convertibility of funds, taxation issues, performance requirements, capital export limitations, and expropriation and compensation issues.

The findings show that APEC is still far from the self-imposed goal of free and open investment throughout the Asia-Pacific region despite significant progress. The contrast in rules and regulations affecting foreign investment is – with a few exceptions – relatively strong among the member economies. This contrast and high barriers to foreign investment in certain industry sectors and countries require intensified cooperation in all examined sub-areas, with the emphasis being on further easing and elimination of existing investment approval requirements and the implementation of legal frameworks in a number of areas. If appropriate measures are undertaken, the further investment liberalization process will reach the declared goal of free and open investment in the Asia-Pacific region.

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CHAPTER ONE

INTRODUCTION

Statement of the Problem

The purpose of this study is to examine and evaluate the stage of investment liberalization and facilitation within the Asia-Pacific Economic Cooperation (APEC) forum.

The paper will analyze the existing investment frameworks of the APEC member economies to allow an assessment of the current stage of investment liberalization within this forum. The emphasis in this study will be on the individual member countries rather than on collective actions of APEC, although the latter will be considered.

The main question that should be answered by the research is: How far away are APEC members' economies from the self-imposed goal of free and open investment throughout the Asia-Pacific region?

The research process is guided by the following specific questions: 1.) How strong is, among the member economies, the contrast in the rules and regulations affecting foreign investment? 2.) What are the implications of this contrast for further investment liberalization process? 3.) Is this process effective enough to reach the declared goal of free and open investment in the Asia-Pacific region? And, 4.) What are

the prospects for further liberalization in countries with the highest investment barriers within APEC?

APEC's history, its goals, organizational structure, working methods and achievements are touched upon to provide the reader with a basic understanding of the topic and show the standards that the forum has set for itself. Next, general and collective initiatives, and groups affecting investment issues are examined allowing for the assessment of major directions and trends in the investment area.

The major emphasis in this thesis will be on the existing investment frameworks of the APEC member economies. In the center of interest will be investment approval requirements, MFN treatment, repatriation and convertibility of appropriate funds, taxation issues, performance requirements, capital export limitations, and expropriation and compensation issues.

Finally, the current stage of investment liberalization within the forum will be summarized and the overall prospects evaluated. The timeline of review of APEC is from its initiation in 1989 to the beginning of 1997.

Rationale for the Study

The Asian-Pacific region represents the fastest growing and most dynamic part of the world's economy. The initiation of the APEC consultation process in 1989 took this development into account and, after a period of informality, institutionalized the

participants' joint effort of enhancing economic cooperation and development throughout the region as well as deregulating and liberalizing a wide range of the members' economic sectors. Today the participants in APEC account for more than one half of the world's GDP and nearly half its trade.

Since its formation, and especially since it "went public" with the first meeting of its "economic leaders" in Seattle in 1993, APEC has been a topic of controversy. Some observers are fascinated with the principle of "open regionalism" whereas others are more than skeptical about the future of this idea. In particular, the principles of consensus and voluntarism are looked upon as inefficient, especially from a western point of view. In this paper the focus will be on the investment liberalization issue and an attempt will be made to evaluate the current stage of APEC member economies in this field in order to draw conclusions about future liberalization steps and their feasibility.

The area of investment was chosen because although trade *and* investment liberalization are always mentioned in APEC official statements and declarations, the investment issue does not get the attention it deserves. A reason for that might be the "easy" handling of the topic that traditional trade theories and specific tariffs allow. In contrast, measures affecting investment are not as easy to evaluate. Globalization and the need for outsourcing and expansion of existing markets call for an examination and discussion of relevant investment liberalization issues.

The findings of this study should be of general interest as they provide the reader with information about the stage of the investment liberalization process within APEC as well as about its prospects. The findings might also be of interest to individuals and companies contemplating investing in the region who need a quick overview of the topic in order to evaluate the basic political factors that influence their investment decision-making process.

Research Methods

This study is based on the descriptive and historical method which will be applied as the present and past status of APEC and its investment liberalization process is analyzed. The data used will be secondary and historical. It will be based mainly on APEC Secretariat documents and appropriate published sources of secondary data such as periodicals and trade journals. Due to limited library resources and the constant change/progress in matters that affect the research topic, books will only represent a minor source for data exploration. The focus will be on sources whose data have been up-to-date in the beginning of 1997.

CHAPTER TWO

AN OVERVIEW OF APEC

History and Goals

The Asia-Pacific Economic Cooperation (APEC) started as an informal discussion forum in 1989. It was initiated by Australia's former Prime Minister Bob Hawke to enhance economic dialogue throughout the Pacific Basin. The participating ASEAN countries were interested in APEC having a non-institutionalized character. This wish represented both the awareness of the heterogeneity of the countries involved as well as the Asian preference for "soft" forms of negotiation. The member countries' diversity in terms of stage of economical development, established political systems, prevailing religion, official language, cultural and social values, etc. made it natural for APEC to concentrate on only one possible aspect of cooperation – the economy. Although APEC is much more formalized and institutionalized today than originally intended, the get-togethers of the heads of its member countries' governments are still called "leadership meetings" and not "summits", and the dress code is defined as "casual".

At its first meeting APEC comprised the following twelve countries: Australia, Brunei Darussalam, Canada, Indonesia, Japan, Republic of Korea, Malaysia, New Zealand, Republic of the Philippines, Singapore, Thailand, and the United States. Over the years membership was extended to Chile, the People's Republic of China, Hong

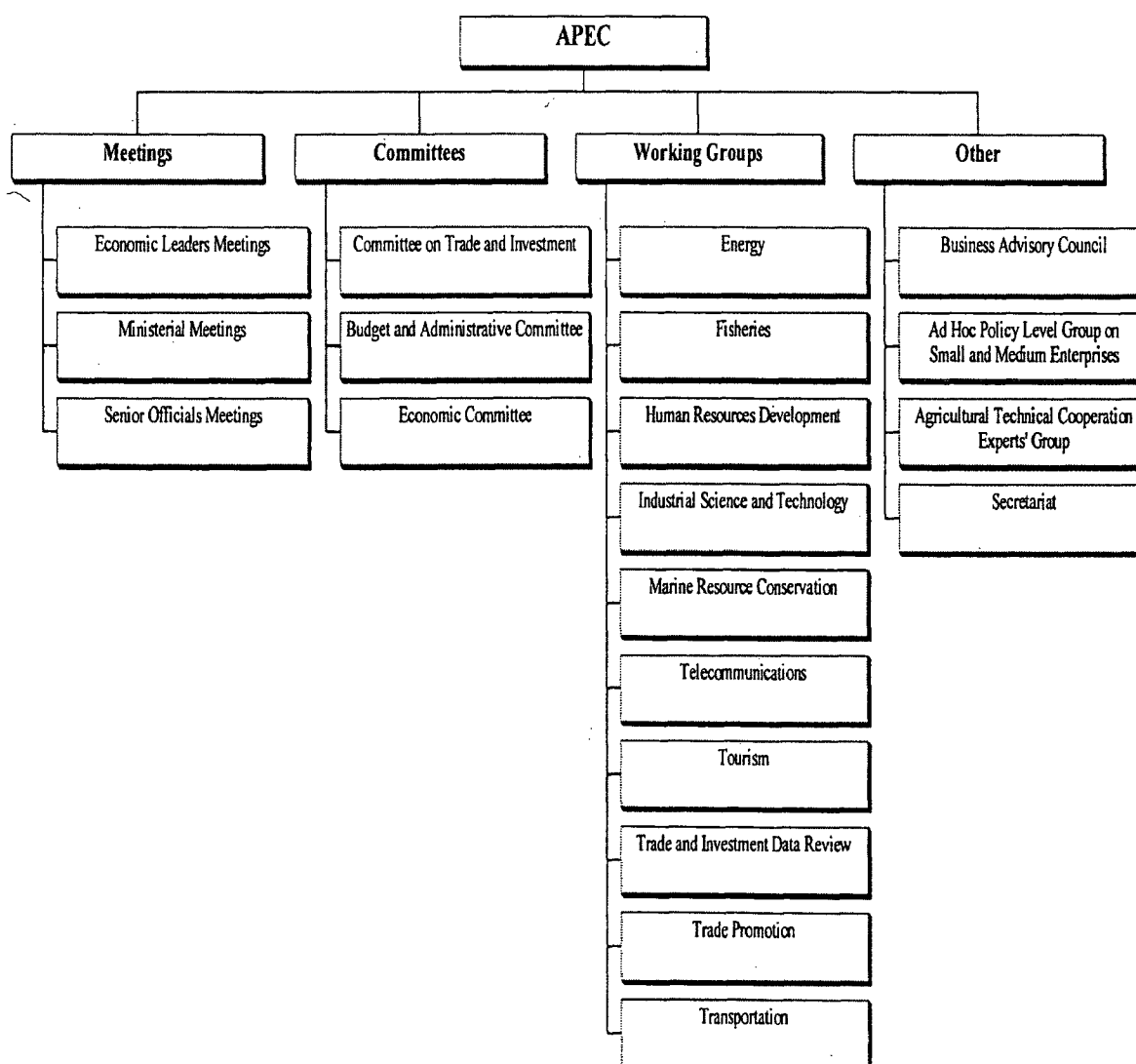
Kong, Mexico, Papua New Guinea, and Taiwan. Today APEC's members represent the fastest growing economic region of the world, one half of its population, more than half of its annual economic output, and nearly half of its trade.

At the time of its initial meeting APEC had no specific goal or vision. The intention was "just" to provide an opportunity for its members to exchange individual points of view on a variety of issues and to discuss economic development and cooperation throughout the Asia-Pacific rim. Two years later APEC's purpose became a little bit more specific. In the Seoul APEC Declaration, member countries agreed on the enhancement of regional growth and development, the encouragement of goods, services, capital, labor, and technology flow, cooperation in tourism, transport, and telecommunications, promotion of industrial cooperation, reduction of trade and investment barriers, and the development and strengthening of the multilateral trading system. The last two goals are especially remarkable as it was intended that they would be accomplished in a manner consistent with GATT principles and furthermore extend the corresponding benefits also to non-members. Thus, APEC did not want to become a new regional trading block but to promote the idea of "open regionalism". The underlying motivation was to use the APEC process as an accelerator for the realization of GATT principles and the global trade and investment liberalization. The pursuit of all goals is aimed at the facilitation of international business as well as the improvement of the living standard of not only all participating countries but also the world as a whole.

Organizational Structure and Working Methods

Although in the beginning of its existence APEC wanted to stay as little formalized and institutionalized as possible it does have an organizational structure today, as can be seen in illustration 1.

Illustration 1: Organizational Structure of APEC



In 1993 the APEC Secretariat in Singapore started its operations. Its establishment was proposed by the U.S. at the fourth APEC meeting in Bangkok in 1992. APEC's discussions are led, its work is carried out, and its projects are realized by its different meetings, committees, and working groups.

There are three types of meetings: Ministerial Meetings, Economic Leaders Meetings, and Senior Officials Meetings.

Since the first meeting in 1989, Ministerial Meetings take place once a year. The Foreign Ministers and Ministers of Economic Affairs of the APEC member countries attend those meetings. They discuss regional and global economic development and decide on topics and organizational frameworks for projects, working groups and other APEC fora.

Since 1993 the Ministerial Meetings are complemented by the APEC Economic Leaders Meetings which take place simultaneously. The initiative for these annual meetings came from U.S. President Clinton who invited the APEC government heads to Blake Island, Seattle, Washington. The Leaders Meetings informally represent the APEC process in public and leaders discuss their vision about future development of the forum.

The Ministerial and Economic Leaders Meetings are held each year in a different member country. Every second year they take place in an ASEAN economy. Aside from meetings of Foreign Ministers and Ministers of Economic Affairs, there have also been

several meetings of Ministers of a variety of functional areas such as finance and trade. The meetings of the Finance Ministers will be presented in greater detail in chapter three.

The Senior Officials Meetings are held twice a year. The first meeting takes place after the annual Ministerial Meeting. Senior Officials make sure that the Ministerial Meetings' decisions are transformed into detailed work plans and implemented. They are also in charge of the coordination of the committees' and working groups' work programs. The second Senior Officials Meeting is held two months prior to the next Ministerial Meeting. The progress made since the last meeting is evaluated, recommendations to the Ministers are made and the agenda for the following Ministerial Meeting is determined. Also, the Senior Officials Meetings have the responsibility to ensure that the Ministerial Meetings' decisions and the working programs are carried out.

Committees represent another organizational structure of APEC. Currently there are three existing committees: the Committee on Trade and Investment, the Budget and Administrative Committee, and the Economic Committee.

The Committee on Trade and Investment was initiated at the 1993 Ministerial Meeting on the basis of a Declaration on Trade and Investment Framework. The goal of the declaration was to promote the intra-APEC flow of goods and services. Thus, the Committee on Trade and Investment's main tasks are the formulation of an APEC point of view on trade and investment matters, and the pursuance and coordination of trade and

investment facilitation and liberalization. The committee's work will be examined more thoroughly in chapter three.

The Budget and Administrative Committee was brought into being at the 1993 Ministerial Meeting as well. As the name indicates, its main task is to manage APEC's budget and administration. The committee is responsible for all budget-related issues and advises the APEC Senior Officials in this regard. It is also in charge of APEC's financial procedures for project funding. Also, the Budget and Administrative Committee reviews and assesses the working groups' achievements and makes suggestions to the Senior Officials regarding their performance improvement.

The Economic Committee, launched in 1994, was preceded by the Ad Hoc Group on Economic Trends and Issues. The committee's responsibilities include the analysis of economic statistics and development programs, the draw-up of a regional economic outlook, and research on a variety of economic topics. The fields researched are of high relevance to the region and deal, for instance, with the economic impact of trade liberalization or with migration within APEC. Furthermore, it is the committee's responsibility to discuss the interrelation between economic growth and a growing population on the one hand, and the supply of and impact on natural resources on the other hand. The Economic Committee is also in charge of the realization of APEC's work program on economic infrastructure. This program's goal is to enhance the private sector's involvement in regional infrastructure investment.

Working groups represent the third major pillar in APEC's organizational structure. They concentrate on a range of specialized functional areas and encourage cooperation among member countries in those areas. Working groups analyze APEC's current situation in their area of expertise, collect data, and make the results of their work accessible to member countries. They are appointed by the Ministerial and Senior Officials Meetings. One or several member countries are in charge of each working group. For example, Australia is in charge of managing the Energy Working Group.

Currently there are the following ten working groups in operation: Energy Working Group, Fisheries Working Group, Human Resources Development Working Group, Industrial Science and Technology Working Group, Marine Resource Conservation Working Group, Telecommunications Working Group, Tourism Working Group, Trade and Investment Data Review Working Group, Trade Promotion Working Group, and Transportation Working Group. The work of the Trade and Investment Data Review Working Group will be examined in the third chapter of this paper.

In addition to these ten working groups, an Agricultural Technical Cooperation Experts' Group was founded at the end of 1996. The group's main responsibility is the implementation of a work program for agricultural technical cooperation. The goal of the work program is the coordination and improvement of the work of a wide range of agriculture-related areas and industries.

In 1995 an Ad Hoc Policy Level Group on Small and Medium Enterprises was established. The main task of this group is to monitor those activities of all APEC groups that are of concern to small and medium enterprises. The group also organizes workshops about issues that are of importance to small and medium enterprises.

Aside from its meetings, committees and working groups APEC also has a Business Advisory Council. The council was established in 1995 in order to give recommendations for the realization of the Osaka Action Agenda which was adopted in the same year. It also addresses other issues that are of importance to the business sector. The council is made up of not more than three business people from each APEC member country. It was preceded by the Pacific Business Forum and the independent Eminent Persons Group. The latter's goal was to develop a vision for the Asia-Pacific region as well as appropriate ways for its implementation. The Pacific Business Forum's task was to investigate issues, the discussion of which would have been important in order to facilitate trade and investment in the region.

Finally, it is important to mention that the decision-making process within APEC is based on the principles of consensus and voluntarism, and resolutions are not binding for the member countries. Also, APEC is putting more and more emphasis on enhancing the involvement of the private business sector in its efforts.

Achievements

Since its first meeting in 1989 APEC has adopted a number of declarations of intent and it also has made some progress in the realization of the self-imposed goals.

APEC's second meeting in Singapore in 1990 set up its first seven working groups. Also, the membership of the People's Republic of China, Hong Kong, and Taiwan was discussed. Because of political reasons those countries, however, did not become APEC members until the forum's third meeting in November 1991 in Seoul. The People's Republic of China, for instance, insisted on the use of the term "Chinese Taipei" as an APEC working name for the Republic of China, which – for practical reasons – is in this study regarded to as "Taiwan". The declaration of Seoul, which was passed by that year's Ministerial Meeting, and its content were already mentioned earlier in this paper. The Fisheries Working Group was established in 1991 as well.

The fourth Ministerial Meeting in Bangkok in 1992 agreed upon the foundation of the APEC secretariat which started its operations the following year. The initiative for the secretariat's establishment came from the United States.

At the fifth meeting in Seattle in 1993 the economic leaders met for the first time, and the memberships of Mexico and Papua New Guinea were agreed upon. Possible explanations for the admittance of Mexico to APEC might be its participation in NAFTA and its character as a model for other emerging countries throughout the world.

The economic leaders' vision for the future of the Asia-Pacific region, which was expressed in Seattle, is nearly congruent with the declaration of Seoul, although it mentions for the first time that goods, services, capital, and investment should flow *freely* among member countries. Also, protection of the environment and the sustainable growth-oriented management of natural resources are envisaged for the first time. The Seattle meeting established the Committee on Trade and Investment and the Budget and Administrative Committee.

At the sixth meeting in Jakarta in 1994 Chile became the 18th member of APEC. It can be assumed that Chile, which borders the Pacific, was admitted to APEC due to its stable and strong economical development since the end of the eighties' debt crisis and the beginning of its democratization process. Today, in regard to deregulation and liberalization, Chile can be considered a pacemaker in Latin America.

At the Jakarta meeting it was also decided that no new members should be admitted to the forum for the following three years (see table 1 for current members and their date of entry). The economic leaders adopted the declaration of Bogor (Declaration

Table 1: APEC Member Countries by Date of Entry

Date of Entry	Countries
1989	Australia, Brunei Darussalam, Canada, Indonesia, Japan, Republic of Korea, Malaysia, New Zealand, Republic of the Philippines, Singapore, Thailand, United States
1991	People's Republic of China, Hong Kong, Taiwan
1993	Mexico, Papua New Guinea
1994	Chile

of Common Resolve), which mainly represents a confirmation of the goals stated in Seoul and Seattle. The new aspect, however, is the passage of a schedule for the liberalization process. APEC members agreed that the industrialized countries should achieve free and open trade and investment in the Asia-Pacific region by the year 2010, and developing economies by 2020. The differentiated approach was undertaken to take into account the differences in the stage of development among member countries. In response to this difference, members also agreed to bring developing and developed countries closer to each other. Furthermore, the Jakarta meeting initiated the work of the Economic Committee and the Policy Level Group on Small and Medium Enterprises.

After years of declaring general goals and intentions, the seventh APEC meeting in Osaka in 1995 produced results that were somewhat more concrete. The forum's members adopted the Osaka Action Agenda, a plan intended to let the visions and goals of Seattle and Bogor become reality. APEC's countries were asked to draw up detailed schedules for national liberalization measures. The schedules were to be presented at the following Ministerial Meeting. The two parts of the Action Agenda targeted an improved cooperation in all areas that were identified as of importance to the forum. The agricultural sector represented the most difficult field of negotiation. In this regard members agreed on flexibility and consideration of the different circumstances in each economy. In addition to the Action Agenda and as a sign of goodwill member countries announced planned or recently taken short-term liberalization measures. However, many

of those initiatives were based on already existing agreements within the context of GATT. The Osaka meeting also founded the APEC Business Advisory Council, the Transportation Working Group, and the Agricultural Technical Cooperation Expert's Group.

The eighth APEC meeting in Manila in 1996 adopted the Manila Action Plan for APEC. As demanded by the Osaka Action Agenda the plan included the individual plans for liberalization measures. In addition, the Action Plan contains reports on and plans for collective activities of all APEC economies.

This year's APEC meeting will take place in Vancouver. Its main topic will be to review the progress made in the individual liberalization plans and to help improve both the individual and collective plans. The starting date for the implementation of these plans was 1 January 1997.

CHAPTER THREE

APEC'S WORK ON INVESTMENT LIBERALIZATION AND FACILITATION

Investment-related Collective Initiatives

One of APEC's major goals is the facilitation and liberalization of trade *and* investment in the Asia-Pacific region. A large amount of information has been published and is available on the issue of trade. The investigation of investment-related topics, however, is not as easy to accomplish. The main reason for this is the complexity and lack of comparability of data. APEC's general approach to investment issues, can nevertheless be examined and presented.

In APEC's 1995 Osaka Action Agenda member countries agreed that free and open investment should be accomplished by a set of individual and collective measures. The individual measures mainly represent a liberalization of the countries' investment frameworks, which, for instance, includes the easing of funds' convertibility and repatriation, widening MFN treatment, and banning capital export limitations. Those factors will be examined in more detail in chapter four.

In addition to the individual measures, APEC countries plan to facilitate investment liberalization on a collective basis, utilizing cooperation and technical assistance among each other. APEC's collective investment liberalization plans target a clarification of the organization's definition of "free" investment, an investigation of

investment liberalization's importance to the region, an evaluation of the necessity of the development of APEC's own investment regime, further implementation of the results of the Uruguay Round, an active involvement of region's private business in the discussion of investment-related issues, the establishment of a discussion process with international organizations such as the OECD, the identification and elimination of difficulties in the implementation of investment objectives, and, most importantly, an improvement of the transparency of APEC investment regimes by appropriate data collection and publication.

The implementation of all measures is guided by international agreements, such as bilateral treaties or the WTO framework and by APEC's non-binding investment principles. Those principles represent an important working standard and concern international relations, conduct rules for governments and investors, and dispute settlement.

Structure and Purpose of Investment-related Groups

Within APEC there are three major groups that are related to investment issues. These are the Committee on Trade and Investment, the Trade and Investment Data Review Working Group, and the Finance Ministers Meetings.

As mentioned earlier, the major purpose of the Committee on Trade and Investment is to formulate an APEC point of view on trade and investment tasks, and to seek and coordinate trade and investment facilitation and liberalization. The committee

succeeded the Informal Group on Regional Trade Liberalization. It reports to the Senior Officials Meeting for its work. So far, investment liberalization has only been one of many topics addressed by the committee's work. In this regard, the committee's establishment of an Investment Experts Group is of major importance. The group's major purpose and most-significant accomplishment has been the formulation of the mentioned non-binding investment principles. Up to now, the main emphasis in the committee's work, however, has been on issues related to trade facilitation and liberalization, such as tariffs, non-tariff measures, and customs procedures. The committee has developed sub-groups to work on most of these areas, such as the Sub-committee on Customs Procedures and the Tariff Database Task Force.

The Trade and Investment Data Review Working Group, currently led by Australia, was launched in 1990, at the Senior Officials Meeting in Singapore. The fact that trade and investment data and statistics of the region's countries were not fully comparable or did not exist at all was the primary rationale for the group's foundation. Thus, the group's major goal is to make data and statistics regarding the member's trade and investment flows more comparable in order to improve the quantitative basis for the region's economical analysis and planning.

In the 1995 Osaka Action Agenda APEC targeted the set-up of a Trade and Investment Data Database which would hold data related to trade and investment flows

among the forum's countries. Also, it was agreed that for the data collection the newest international standards should be applied.

The Finance Ministers Meetings were initiated by the economic leaders at their 1993 Seattle meeting. The first Finance Ministers Meeting was held in Honolulu in 1994. Since then, the meeting has taken place once a year. Sites of the second, third, and fourth meeting have been Bali/Indonesia, Kyoto/Japan, and Cebu/Philippines, respectively. At their meetings finance ministers review and discuss macroeconomic issues (including regional economic development and challenges), economic growth strategies, financial and capital markets (including regional capital flows, financial sector developments and policies, and the effects of exchange rate movements on trade and investment), and ways for financing infrastructure development. Their overall goal is to contribute to the development of a stable macroeconomic and financial environment which is part of the basis for future sustainable growth in the region.

Finance ministers are supported in their work by their deputies and report on a yearly basis to the Economic Leaders Meeting. During their second meeting in 1995 the ministers initiated the foundation of a working group. The purpose of the group is to assist in the work concerned with financial and capital markets, effects of exchange rate movements on trade and investment, and financing of infrastructure development.

Achieved Investment Liberalization Results

There are a number of accomplishments the three mentioned investment-related groups have achieved so far.

In 1994 the Investment Experts Group of the Committee on Trade and Investment drew up a draft for the previously mentioned non-binding investment principles of APEC. It was accepted at the same year's ministerial meeting in Jakarta.

Also, the Investment Experts Group was in charge of including the business sector's point of view into the proposal for the Osaka Action Agenda and Action Plan. Private businesses presented their opinion and made their recommendations at an investment symposium which was held in Bangkok shortly before the 1995 Ministerial and Economic Leaders Meeting in Osaka. Another symposium with representatives from the business community was held in the fall of 1996 in Tokyo. Its main purpose was to maintain and continue the dialogue that had begun in the previous year.

The investment-related collective initiatives on which APEC members agreed in the Osaka Action Agenda were already mentioned in the beginning of this chapter. Furthermore, the Investment Experts Group has gathered, published and updated information concerning the individual APEC investment frameworks. The group actively cooperates with other APEC institutions and exchanges information with them in order to share resources and expertise and avoid an overlap in the work done.

Finally, in 1996 the group generated matrices which present the investment-related actions agreed on in the Osaka Action Agenda. The activities are summarized into four major groups: transparency, policy dialogue, facilitation, and cooperation. In addition, all actions are classified by the time period that is envisaged for their implementation.

In its pursuit of a compilation of comparable data on trade and investment, the Trade and Investment Data Review Working Group conducted a number of surveys and organized several seminars and workshops. Both were primarily related to technical aspects of data collection, review and classification. The work resulted in the generation and implementation of a Trade and Investment Data Database system in 1996. The data in the database are open to everybody and of particular value to the business community. The Trade and Investment Data Review Working Group is updating the database data and maintaining the database system on a constant basis. The group also provided training for the use of the database to APEC's members.

Currently, the group is also exploring the potential for transferring and incorporating data on merchandise trade from a database of the United Nations. Data of other international organizations had been compared in the process of APEC's database generation in order to avoid unnecessary duplication and assure more efficient resource allocation.

The Finance Ministers Meetings' work is more general in its nature. They have not produced as many concrete results as the activities of the committees and working groups.

Aside from making general statements at their first meeting in 1994, APEC finance ministers asked the International Monetary Fund to draw up a study of cross-border portfolio flows. The interest in such a study arose from the understanding that global capital flows have grown tremendously in volume and importance over the recent past. Finance ministers were interested in the regional implications of those flows. The IMF prepared an appropriate study which was used as a discussion basis at the 1995 Finance Ministers Meeting. As a result of the meeting, ministers agreed to generate recommendations for the disclosure of economic and financial information that is of interest to financial markets.

Also, finance ministers agreed that instead of adopting one single exchange rate policy for the whole region, member economies should work toward policies that favor macroeconomic stability, thus also stabilizing the existing exchange rate system. In addition, such an approach would also be of benefit to the overall climate for worldwide capital flow.

The 1994 Finance Ministers Meeting also asked the Asian Development Bank to organize a symposium on infrastructure financing. This request expressed APEC's awareness of the great importance of infrastructure development for the region and the

necessity of generating private capital for its funding. The ADB prepared a paper which was used as a discussion basis at the 1995 Finance Ministers Meeting. One result of the meeting was the finance ministers agreed that public and private financing of infrastructure development has to be coordinated.

At their third meeting, in Japan in 1996, the finance ministers agreed on a set of general findings regarding the stage and development of financial and capital markets, including capital flows, savings rates and other factors. Ministers suggested that policy makers adopt measures which would promote an overall legal and regulatory framework favoring a stable, market-driven financial environment. In this regard, the three areas of major importance are: the promotion of macroeconomic stability (including inflation control and awareness of internal and external balances), high savings rates and limited public sector borrowing, and capital markets development in order to assure international capital flows.

At the same meeting, the finance ministers instructed their working group to work out a framework for the implementation of a computerized communication network that would allow finance ministries to exchange information. The network started its operations within the next year.

Finally, at Australia's urging, APEC, in cooperation with the OECD, organized a symposium on international business taxation issues. The symposium was held at the end

of 1996. It focused on globalization's implications for tax issues. Another symposium of the same type is planned for 1998.

At this year's Finance Ministers Meeting in the Philippines, ministers agreed on a set of voluntary principles and collaborative initiatives in support of the goals declared in previous meetings.

The voluntary principles target two areas. One is the facilitation of private sector participation in infrastructure, the other is the promotion of financial and capital market development. For the former one, the principles basically consist of a number of general declarations of intent the major purpose of which is to create a healthy macroeconomic environment, investor-protecting stable and transparent legal frameworks and regulatory systems, competition-promoting sectoral policies, and availability of long-term capital.

The first two principles are also applied to the promotion of financial and capital market development. In addition, principles are targeted at ensuring a well-developed market infrastructure, efficient financial and capital markets institutions, and a number of different financial instruments.

The collaborative initiatives, again, represent basic statements about intentions in different areas. They range from enhanced cooperation among export financing institutions to the strengthening of clearing and settlement infrastructure to a regional forum on pension fund reform.

To sum it up it can be said that, so far, APEC has expressed a large number of general goals, intentions, and visions. All of those are in accord with today's widely accepted neo-liberal views and findings on trade and investment issues. The real, practical progress made up to now, is, however, still far from the announced target. Given the size and heterogeneity of APEC and the complexity of the issues, this is not surprising. If APEC wants to be successful in the medium to long run, it, nevertheless, will have to become more concrete in its activities and more outcome-oriented in its goal setting.

CHAPTER FOUR
INVESTMENT FRAMEWORKS OF THE APEC MEMBER ECONOMIES -
A SUMMARY AND EVALUATION

Investment Approval Requirements

In the majority of APEC's member countries certain types of foreign investment are either forbidden, restricted to a certain degree, or have to get official approval. This chapter will synthesize the restrictions and requirements which are unique to foreign investment (APEC Committee on Trade and Investment, 1996).

In Hong Kong the criteria for authorization as a licensed bank are different for domestic and foreign investors. Foreign ownership in television broadcasting is limited to a maximum of 49%.

In Singapore the establishment of representative offices requires official approval. The main existing restriction for foreign investment is in the field of media where foreign ownership of more than 3% of companies in the newspaper publishing industry requires official clearance. Aside from that, some additional exceptions in other industries might apply for national security purposes.

The United States generally does not have a screening process for foreign investment, although, as is the case with Singapore, there are exceptions when it comes to national security. The sectors in which exceptions are made involve air and maritime

transport, nuclear energy and telecommunications. Also, foreign companies might face difficulties engaging in projects which involve classified information and therefore require security clearances.

Hong Kong and Singapore, and to a certain degree the United States are the three APEC members which can be classified as the most-open in regard to specific requirements and restrictions of foreign investment. All other participating countries have a number of limitations to foreign investment. For a more clear overview, those restrictions will be grouped by sectors, industries, and entry modes rather than countries.

In international trade liberalization negotiations, such as GATT, agriculture “classically” has been a difficult topic to reach agreement on. This is not different when it comes to rules and regulations pertaining to agriculture-related foreign investment in APEC countries. Table 2 gives an overview of individual restrictions in this sector. Restrictions in the mining sector, which are fewer, are listed as well.

It is obvious that almost all APEC members have restrictions to foreign investment in the primary sector, including the areas of agriculture, fishery, forestry, and mining. The emphasis, however, appears to be in the fishery sector. Taking into account that most industries in the primary sector deal with the exploitation of either partly or completely non-renewable resources, the restrictions to foreign investment in this sector are understandable.

Table 2: Restrictions on Foreign Investment (FI) in the Primary Sector

Country	Field of Activity	Type of Restrictions
Australia	fishery	in Western Australia: FI in rock lobster processing limited to 20%
Brunei	agriculture	FI subject to screening; local participation expected
	fishery, forestry	FI subject to screening
Canada	fishery	no commercial fishing licenses granted to fish processing companies with foreign ownership > 50%
	mining	FI in 1 st production stage for uranium limited to 49%
Chile	fishery	max. foreign ownership in fishing ship businesses: 49.9% (exceptions: reciprocity principle); fishing in domestic waters: open only to Chilean vessels
China	fishery	FI forbidden
	forestry	FI in raw-wood processing and export forbidden
	mining	FI in exploration and exploitation of rare or valuable minerals and earth, as well as cooking coal, restricted
Indonesia	agriculture, fishery, forestry, food industry	FI in number of selected areas either forbidden or tied to fulfillment of certain conditions; often: FI reserved for small businesses
	mining	FI tied to certain types of cooperation contracts with the government
Japan	agriculture, fishery, forestry, mining	FI requires prior notification; ownership of mining rights tied to citizenship/residence requirements
Korea	cattle farming	FI limited to 49.9% (not valid after 1999)
	agriculture, fishery, food production	FI in large number of business lines either fully restricted or requires official approval
Malaysia	mining	FI in greenfield projects: max. 100%, depending on different factors, e.g., investment size, export quantity
Mexico	fishery	FI limited to 49% (exceptions in high sea fishing: if official approval obtained)
	mining	FI in radioactive minerals industry restricted
New Zealand	fishery	allocation of fishing quotas to foreign investors forbidden (exemptions can be made)
Philippines	agriculture	if business on public land: FI limited to 40%
Taiwan	most agricultural business lines, fishery, forestry	FI forbidden (may be open to overseas Chinese); additionally: FI in agricultural wholesale market and in production of agricultural chemicals forbidden
Thailand	agriculture, fishery, forestry, mining	FI limited to 49.9% (exceptions: special permissions or in cases of granted investment promotion)
United States	fishery	foreign access to certain fishing operations restricted; FI in US fishing business vessels limited to 49.9%

Countries fear foreign control of those parts of their economy that build the basis for the supply of foodstuff and the manufacturing industry's supply with raw materials. Certain natural resources are also considered to have some sort of strategic character, being mainly of importance to the defense industry. Furthermore, agriculture and fishery are in many countries traditionally industries in which family-run, small, or medium

businesses are in the majority. Foreign investment in those areas, therefore, could not only mean a potential threat to thousands of jobs but also to the social structure of those countries.

Nevertheless, it has to be asked if the different areas mentioned have to be restricted to foreign investment in the current manner. Instead of denying foreign access, it would, for instance, be possible to tie the investment process to the fulfillment of certain conditions which often would not even have to be different than laws applying to the domestic businesses.

In order to not destroy the historical social structure in the areas of agriculture and fishery, foreign investment in those areas could be limited by total size rather than by relative participation. Investment in areas such as forestry and fishery with resources which are not, or are only in the long run renewable could be allowed if the resources are protected through quotas, export restrictions, laws requiring reforestation, and similar measures. In this regard, the legal framework can, or actually should, be the same for domestic and foreign investment. Such an approach would, on the basis of fair and equal treatment of domestic and foreign investment, help the different countries to enjoy the benefits of foreign investment while protecting traditional social structures and natural resources. The only exception in this regard should, for "real" strategic and security reasons, be the uranium mining and processing industry.

It would help the APEC investment liberalization process in the aforementioned areas if the forum would cooperate in the management and preservation of natural resources, in the implementation of a legal framework appropriate in this regard, and in the promotion of small and medium businesses. With the establishment and work of the Fisheries Working Group, the Marine Resource Conservation Working Group, the Policy Level Group on Small and Medium Enterprises, and the discussion of sustainable development APEC is already making the first steps in the right direction. Its long-term success will, nevertheless, depend to a high degree on the quality of those groups' work and their cooperation with the groups in charge of investment liberalization.

Restrictions to foreign investment in the manufacturing sector are summarized in table 3. It is apparent that the secondary sector is also subject to a number of restrictions

Table 3: Restrictions on Foreign Investment (FI) in the Secondary Sector

Country	Field of Activity	Type of Restrictions
Brunei	all manufacturing	FI subject to screening
China	automotive	state's involvement required in FI made in production of motor vehicles and engines thereof
Indonesia	printing of valuable paper, production of explosives, fireworks, ethyl alcohol, aircraft	FI allowed only under certain conditions
	veneer production, manufacturing of certain environmentally hazardous chemicals, environmentally unfriendly production processes	FI forbidden
	textile industry and certain of its production methods, raw-rattan processing, manufacturing of certain ceramic goods, tools, musical instruments, handicrafts	FI reserved for small-scale businesses
Japan	petroleum/oil, leather, space, aircraft industry, production of arms, explosives, vaccines	FI requires prior notification
Korea	production of biological products, ethyl alcohol, explosives, pyrotechnics, some foods	approval necessary
Mexico	petrochemical / petroleum industry	FI restricted
Thailand	textiles, 1 st stage of raw-material processing	FI limited to 49.9% (exceptions: special permissions or in cases of granted investment promotion)

to foreign investment. In their evaluation exist some similarities but also differences compared to the primary sector. It, again, makes sense to protect for social and cultural reasons areas in which family, small or medium businesses prevail. The textile industry or industries related to the manufacturing of country-typical handicrafts and artifacts are examples.

It is not clear why foreign investment should be restricted in areas such as explosives, pyrotechnical products, vaccines, environmentally hazardous chemicals, or environmentally unfriendly production processes. In all those and similar areas foreign investment should be treated as domestic investment. Standardized laws and regulations should apply to *both* types of investments, ensuring the necessary manufacturing process and product safety as well as the protection of the environment. In this regard, there is no reason why domestic and foreign investments should be measured by different standards.

Investments in such areas as motor vehicle production, which are not unique to a certain country and which are also not characterized by a certain social or cultural structure, should, if at all, only be restricted because of the infant industry argument. But even in such a case, the positive effect of the measure is often more than questionable. Investment restrictions based on the infant industry argument should be restricted in time in order to exercise the pressure necessary on the particular industry for it to become internationally competitive.

There is also no good reason why the state or government has to be involved in projects financed by foreign investment. In order to ensure efficiency in the factor allocation process, governments should, as much as possible, let the market balance itself.

For APEC's further investment liberalization process in the manufacturing sector it would be advantageous to reach an agreement among the members which establishes time frames for the abolition of existing investment restrictions. Ongoing liberalization efforts already include those kinds of considerations. In addition, it would be more than useful if APEC's members would negotiate and reach agreement on a common legal framework for manufacturing process and product safety. However, there are currently no efforts in this direction.

There are also many rules and regulations that apply to foreign investment in the service sector, including the utility area. Restrictions to foreign investment in the tertiary sector are summarized in table 4. It is easy to see that, from all sectors, the tertiary sector is the one with the most restrictions. In many areas it is not clear why foreign investment has to be restricted. Safety considerations might play a role in the transportation and infrastructure industries. But as mentioned earlier, an appropriate legal framework should establish a basis that allows domestic and foreign investors an equal and fair market access. The same should be valid for the telecommunications industry which, together with the infrastructure industry, is probably regarded by some countries as of importance

Table 4: Restrictions on Foreign Investment (FI) in the Tertiary Sector

Country	Field of Activity	Type of Restrictions
Australia	developed residential real estate	FI restricted in most cases
	banking	FI requires authorization (tied to fulfillment of certain conditions)
	civil aviation	allowed FI proportion dependent on type of services and type of foreign investor
	ship registration	FI limited to 49.9%
	media	FI subject to prior approval
	newspaper publishing	FI limited to 30% and subject to case-by-case examination
	land ownership	small restrictions in some states
	gaming industry	FI in some states restricted to certain percentage
	maritime tourism	in Queensland: FI limited to 49.9% (for reasons of environmental protection)
	commercial TV broadcasting	FI limited to 20% and subject to case-by-case examination
Brunei	telecommunications	constraints on FI (depending on particular company)
	tourism, real estate	FI subject to screening
Canada	car dealership	FI limited to 50%
	business services	in some of them: citizenship/residency requirements
	media	FI in some areas forbidden, in some others restricted to joint ventures
	domestic air and maritime transport	FI tied to citizenship/residency requirements
Chile	broadcasting, telecommunications	FI limited to 20%; citizenship/residency requirements for issue of necessary licenses
	domestic maritime transport and trade	open only to Chilean ships (exceptions apply)
	print media	citizenship/residency requirements for ownership and management of new agencies and businesses
	real estate in coastal and border areas, insurance/reinsurance	FI forbidden
China	broadcasting	FI tied to citizenship/residency requirements (exceptions apply)
	finance, insurance, some other business services, luxurious real estate projects, printing, vehicle cross-border transportation, tourism, trade, education	FI restrained
China	air transport	FI limited to 34.9%
	maritime transport	FI limited to 48.9%
	telecommunications	FI restrained
	air transportation, some infrastructure and utilities areas	state's involvement required
Indonesia	some infrastructure projects	FI limited to less than 100%
	air / maritime / public railway transport, energy, port construction / operation, water supply construction / operation, telecommunication, toll road construction	FI restricted to joint ventures
	ferry operation, taxi / bus transport, local shipping, retail trade, domestic trade services, all mass media, casino operation	FI forbidden
Japan	domestic / int'l. shipping, real estate	certain conditions apply
	media, maritime / air transport, security guard services, real estate for commercial purposes, energy, telecommunications	FI requires prior notification
	air transport	citizenship/residency requirements for issue of operation license; limited to national airlines
	domestic maritime transport	limited to Japanese ships (foreign ownership only through Japanese companies possible)
Korea	telecommunications, broadcasting	citizenship/residency requirements for issue of operation license (exceptions apply)
	large number of business lines	FI either forbidden (e.g., water supply, broad-casting) or subject to approval (e.g., electric power generation, telecommunications, wire broadcasting)

Table 4: Restrictions on Foreign Investment (FI) in the Tertiary Sector (continued)

Mexico	operation of ports/airports/heliports, retail trade in gas, credit unions, development banking institutions, certain professional/technical services	FI restricted; exceptions: in finance and banking with countries where special agreements exist (FI up to 49% allowed)
	domestic surface transport	FI limited to 49% (up to 51% starting year 2001, up to 100% starting year 2004)
	international maritime transport	if FI in Mexico-based company which operates foreign-flagged vessels > 49%: approval required
	electricity generation, mail service, broadcasting services	FI forbidden (exception: cable television)
	telecommunications	FI limited to 49% (cellular telephony is open)
	construction, building, installation of public works	FI of more than 49% requires approval (area completely open starting 1999)
New Zealand	national airline	FI limited to 35%
	real estate	FI reviewed if land ownership / control => 25% and only if property > 5 ha or > \$10 million
	telecommunications	FI in national company limited to 49.9%
Philippines	media	FI forbidden
	transport, real estate, telecommunications	FI limited to 40%
Taiwan	movie industry, publishing, finance, freight transportation, broadcasting, insurance	permission for FI tied to fulfillment of certain requirements
	real estate	FI only allowed on basis of reciprocity
	transportation infrastructure, public utilities	FI requires approval
	telecommunications	in some parts: FI limited to 20%
Thailand	transportation, business services, construction, land trade, some tourism business lines, retail / wholesale trade, few other services	FI limited to 49.9%
	media, telecommunications	certain conditions apply (depending on media type / telecommunications' subsector)
United States	insurance	some states do not issue licenses to companies owned / controlled by foreign governments

to national security. Control over activities in such industries should, however, not be exercised through the restriction of foreign investment but through independent institutions watching for the companies' compliance with legal standards. This consideration can also be applied to finance, insurance, real estate, wholesale and retail, and gaming business as well as to business services.

Areas in which it might make sense to restrict foreign investment to a certain degree are the media, including broadcasting, and education. Those areas are more easily to be infiltrated due to their vulnerable nature and the subjectivity of statements made in

them. In a democratic society there should, however, exist appropriate control mechanisms which, in the consequence, make fair competition between domestic and foreign investment possible and do not allow for the justification of any discrimination between them.

APEC's further investment liberalization approach in the tertiary sector should be guided by the same ideas mentioned in regard to the primary and secondary sector. So far, APEC has working groups in transportation and telecommunications. It appears useful to intensify the cooperation in the fields of media and infrastructure. Most importantly, the overall cooperation between the individual working groups and the institutions in charge of investment liberalization should be intensified.

In addition to restrictions to foreign investment by industry sector and branch most countries restrict foreign engagement also by mode of entry, as can be seen in table 5. Aside of that, some countries have also set up general guidelines which can be summarized as follows in table 6. The rules and regulations pertaining to the mode of entry and also the general restrictions applied in some countries do not require a broad discussion as the ideas mentioned in regard to sectoral restrictions also apply to those cases.

A comparison of the processing time of investment applications and notifications shows that Korea needs only three hours to handle a notification but investment approval

Table 5: Restrictions on Foreign Investment (FI) by Mode of Entry

Country	Mode of Entry	Type of Restrictions
Brunei	greenfield investment, joint venture	FI subject to screening if dependent on loan or governmental promotion/assistance
	merger, acquisition	requires notification / approval
Canada	merger, acquisition	may be subject to review
China	joint venture	compliance with guidelines for FI necessary
	acquisition	official assessment and confirmation necessary
Indonesia	joint venture	in infrastructure: Indonesian equity portion of at least 5% required
	merger, acquisition	allowed only in businesses open to FI
Korea	greenfield investment, joint venture	requires prior notification to / acceptance by authorities
	merger, acquisition	forbidden if Korean company involved, in case of foreign invested companies: allowed but notification and approval necessary
Malaysia	greenfield investment (in manufacturing)	allowed foreign equity ratio dependent on a number of factors, e.g., export quantity
	joint venture	in businesses for some supporting parts / components: FI limited to 30 – 60% (stimulation of local involvement)
	merger, acquisition	net economic benefit to Malaysia has to be proven, e.g., by effects on employment, export
Mexico	acquisition	needs approval if FI > 49% or if certain amount of total asset value involved is exceeded
New Zealand	greenfield investment, acquisition	FI > \$10 million subject to review
	joint venture, merger	FI subject to review if > \$10 million and if > 25%
Philippines	merger, acquisition	has to comply with certain legal requirements
	acquisition	FI subject to restrictions
Taiwan	greenfield investment, joint venture	requires approval
	merger, acquisition	requires approval if certain market shares / turnover levels are exceeded
Thailand	greenfield investment, joint venture, merger, acquisition	conditions for FI depend on business line
	joint venture	FI subject to screening if dependent on loan or governmental promotion/assistance
United States	merger, acquisition	prohibited if national security threatened

in China takes three months. The Philippines processes foreign investment applications anywhere between two days and four weeks depending on the legal status of the corporation, the applicable law, and the equity ratio. Taiwan and Thailand need between one and three weeks, Chile one to six weeks, Japan two weeks, New Zealand two weeks or less, Australia two to three weeks, Mexico three weeks, Indonesia four to six weeks, Canada six weeks, and Papua New Guinea seven weeks. Together with China, Singapore

Table 6: General Restrictions on Foreign Investment (FI)

Country	Type of Restrictions
Canada	FI subject to simple notification if not made in reviewable sector federally-incorporated companies: composition of board of directors dependent on citizenship/residency, handling of shares may be restricted to meet required equity ratios certain agricultural loans are not granted to foreign investors
Chile	official agreement of Foreign Investment Committee required for FI > \$5 million (for FI < \$5 million: simple approval)
China	FI prohibited/restricted if it threatens "national interests" or interferes with state's economical activity FI restricted where existing facilities can satisfy domestic demand / where production technology/process is unique to Chinese market
Indonesia	foreign-invested companies required to hire local personnel if possible / to train Indonesians in order to replace foreign employees
Japan	FI in sectors not earlier mentioned: subject to report within 15 days after investment is made
Malaysia	approval required for Malaysian manufacturing companies interested in cooperation with foreign investor
PNG	FI in natural resources has to adhere to laws of individual government department in charge
United States	foreign investors' access to different governmental programs for loans / financial assistance restricted (however: technology assistance programs on reciprocity principle exist)

which needs one to three months, Malaysia which needs two months, and Brunei which needs two to three months, represent the slowest countries.

The investment applications and notifications processing times in most of the different APEC countries appear reasonable. It would, nevertheless, be of advantage to foreign investors if these processing times could be further cut down, especially where it takes longer than two months. Although a standardization of the application and notification process appears not realistic at the current stage, it would be of benefit to both investors and application processing authorities to consider such an approach in the long run.

Most-Favored-Nation Treatment

A summary shows that most member economies of APEC do not discriminate foreign investment by its country of origin and provide for most-favored-nation treatment (APEC Committee on Trade and Investment, 1996). Exceptions to this are usually only made towards countries with which common agreements for the establishment of a customs union, a free trade area or an economic union exist. Other exceptions are double taxation agreements and bilateral investment treaties. As mentioned earlier, in some cases investment permission is granted on the basis of the reciprocity principle. In this sense, Chile permits foreign investment in the international maritime freight transportation and in air transport services depending on the rights that the investor's home country is granting Chilean investors in the same business field. Japan permits foreign investment in the banking and securities business and in international freight forwarding services on a reciprocity basis. The reciprocity principle is also applied by Thailand to foreign investment in certain business lines of the service sector. Taiwan makes exceptions to the most-favored-nation treatment for political reasons, granting it to Chinese investors on a case-by-case basis after approval of their individual investment. The United States applies the reciprocity principle to maritime shipping, air freight forwarding and charter activities as well as to the designation of primary dealers in the finance sector.

Today the application of the most-favored-nation treatment is a wide-spread principle among APEC members and rather the rule than the exception. APEC should maintain this procedure and promote its application.

The use of the reciprocity principle offers an effective way to access industry areas which, under the usual regulations, would be restricted for foreign investment. The application of this principle should, nevertheless, always be viewed as a last resort. Instead, it is preferable to base the issue of investment liberalization on a broad discussion so that all APEC members, and not only two countries, benefit from the process.

Repatriation and Convertibility of Funds

Most members of APEC do not put any restrictions on foreign investors regarding the repatriation of capital and earnings (APEC Committee on Trade and Investment, 1996). The convertibility of currencies for their transfer overseas is mainly also not restricted. Nevertheless, a few limitations exist with some countries. The foreign exchange regime and the policies applied to it differ widely among APEC countries.

The repatriation of funds related to foreign investment is not restricted by Australia, Brunei, Canada, Hong Kong, Indonesia, Japan, Korea, Mexico, New Zealand, Singapore, and Thailand. The repatriation of invested capital from Chile depends on the law under which the investment was made. Invested capital can be repatriated either one

or five years after the investment was made. China does not restrict the repatriation of funds related to foreign investment but requires proof of the distribution of the company's profits. In Malaysia, funds invested by foreigners can be repatriated without restrictions, except for transfers to Israel, Montenegro, and Serbia. Papua New Guinea requires the presentation of a taxation clearance certificate for the transfer of funds larger than \$50,000. In the Philippines funds transfers related to foreign investment are not restricted as long as the investment has been registered with the central bank of the Philippines. All remittance activities performed through the banking system have to be registered/notified. In Taiwan foreign investment funds and earnings out of them can be transferred overseas one year after the investment has been made. The United States generally does not restrict the repatriation of funds but makes certain exceptions related to payment transfers to nationals or governments of Angola, Colombia, Cuba, Iran, Iraq, Libya, and North Korea.

The convertibility of currencies for the overseas transfer of funds is not restricted by Australia, Brunei, Canada, Chile, Hong Kong, Indonesia, Japan, Mexico, New Zealand, the Philippines, Singapore, and Thailand. In some cases, China applies a review and approval process before funds are cleared for exchange in foreign currency for the purpose of overseas transfer. The exchange can only be performed with banks authorized for this purpose. Companies situated in China wanting to engage in foreign investment have to provide proof of the source of their foreign exchange holdings to the official authorities. In Korea the convertibility of currencies is regulated. A number of restrictions

apply depending on the transfer type, the amount and the currency involved. Some transactions are not restricted whereas others require either notification or some type of approval, permission or authorization. However, most transactions that are of importance to foreign investors are basically performable. In addition to the restriction on the repatriation of funds to Israel, Montenegro, and Serbia, Malaysia also does not permit the transfer of payments in the currencies of those countries. All other payments are basically not restricted although some fund transfers by residents to non-residents have to be approved. Payments exceeding a certain amount are subject to report for statistical purposes. There are no restrictions to funds convertibility in Papua New Guinea, although the same clearance requirements for taxation purposes apply as mentioned earlier. In Taiwan currencies can be freely exchanged if they pertain to approved investments and are in conformity with all regulations related to foreign investment. There are, however, certain ceiling amounts which can be exchanged by resident and non-resident individuals and corporations during a given year. In the United States the same restrictions that were mentioned in regard to funds repatriation apply to the convertibility of currencies.

The currencies of Australia, Canada, Hong Kong, Indonesia, New Zealand, and Singapore, are floating free. Mexico, the Philippines, and the United States apply a managed float to their currencies.

A fixed exchange rate system is applied to the currencies of Brunei, and China. Two legal exchange markets exist for the Chilean currency. Banking institutions

represent the formal market, all other market participants constitute the informal market. The country's central bank may restrict or limit activities in the formal market or impose an approval requirement on them. It can also require that transfers related to foreign investment be made through the formal market. Transactions realized with Chile's central bank are executed at an exchange rate that is officially established by the bank. Nevertheless, Chile is not applying a fixed exchange rate system. Korea generates the exchange rate for the US dollar by computing a weighted average of all transactions in US dollar from the previous trading day. The established rate serves as a basis for the banks' individual rates. The exchange rates for currencies other than the US dollar are determined via cross rates. Malaysia is planning to completely liberalize its flexible exchange rate system. The exchange rate for Thailand's currency is computed through a basket of currencies of the country's major trading partners.

The current standing of APEC's members in regard to the repatriation and convertibility of foreign investment-related funds is relatively open and liberal. Nevertheless APEC should pursue a liberalization of the few remaining regulated areas. Especially, time constraints for the repatriation of funds, as applied by Chile and Taiwan, should be abolished in order to give investors the necessary freedom for their decision-making process. This stimulates the free cross-border flow of funds and optimal factor allocation. The same is true for the free convertibility of currencies which, therefore, should also be promoted.

Things are more difficult when it comes to the exchange rate regime. The European Union, with its planned monetary union, so far effectively demonstrates how difficult it is to coordinate the economic, fiscal, and financial policy of countries even so similar in their stage of economic development as those of Western Europe. Taking this into consideration and having the heterogeneity of the APEC economies in mind, it does not seem too realistic to expect any agreement about a common policy in this area even in the long run. But APEC itself is aware of its heterogeneity and has, therefore, never targeted any goals in that field. This realistic approach should be the basis of an otherwise intensive cooperation in the exchange of information about the development of financial markets with the goal to prevent major disturbances in them.

Taxation

Although tax types and rates vary between APEC's members, the basic underlying principles of taxation are similar (APEC Committee on Trade and Investment, 1996). Mostly, foreign investors are subject to the same tax regulations as domestic investors. In regard to income tax, residents and resident companies usually are taxed on their worldwide income whereas non-residents and non-resident companies are taxed on their income from domestic sources. Normally, the individual income can be reduced by deductions before a tax is levied on it. Some countries do not tax individual income under a certain minimum amount. In many cases depreciation and capital expenditures are

allowable expenses in the determination of corporate profits. Sometimes, specific deductions are permitted as well. Also, losses incurred by the company can usually be carried forward for a number of years whereas a carry-back represents an exception. Virtually all countries have a substantial number of double taxation agreements in force in order to avoid double taxation on international income. Those agreements are useful to both foreign investors and tax levying authorities as they promote the international flow of investment funds and also help to prevent tax evasion. In the following tables, a summary will be given of the countries' major tax types and the applicable rates. Certain special rules or regulations will be mentioned as well.

Table 7: Tax on Corporate Income

Country	Tax Rate	Remarks
Australia	36%	income losses transferable to another company as long as ownership is completely the same
Brunei	30%	depreciation not an allowable expense – replacing capital allowance on capital expenditure can be claimed; losses can be carried back one year
Chile	15% (unfixed) or 42% (fixed for 10 years)	partnership income: taxed at scaled rate from 5% to 50%; income remittance abroad: additional 35% - in both cases: payer entitled to credit equivalent to corporate income tax paid; premiums of foreign insurance/reinsurance companies: taxed at 20%/2%
China	40%	includes a 10% additional local tax
Hong Kong	16.5%	
Indonesia	10, 15, 30% (progressive)	
Japan	37.5%	
Korea	17.6, 30.8% (progressive)	additionally: 2% special tax to incomes exceeding certain limits
Malaysia	30%	in petroleum exploration: 40%
Mexico	34%	
New Zealand	33%	
Papua New Guinea		resident companies: in mining: 35%, in petroleum business: 50%, in remaining businesses: 25%; non-resident companies: 48%, 50%, 48% respectively
Philippines	35%	a few exceptions for some business lines apply
Singapore	26%	
Thailand	30%	exceptions to: foundations, associations, inter-national transportation businesses
United States	max. 35% (progressive)	

In respect to foreign investment, different types of withholding taxes, applied to payments of interest, dividends, royalties, etc. to non-residents are of relevance.

Table 8: Withholding Taxes on Payments to Non-Residents

Country	Tax Type	Tax Rate	Remarks
Australia	dividends to non-residents out of untaxed corporate income	30%	if DTA: 15%; dividends out of taxed corporate income are tax free
	interest to non-residents	10%	
	royalties to non-residents	30%	if DTA: 10%
Brunei	interest to non-residents	20%	dividends included in taxable income
Chile	dividends and interest on foreign loans	35%	if loan is obtained from financial institution registered with Chilean Central Bank: only 4%
China	dividends, interest, royalties	20%	rate different for DTAs
Hong Kong			interest included in taxable income
Indonesia	dividends, interest, royalties to residents/non-residents	15/20%	if DTA: reduction possible
Japan	dividends	20%	if DTA: reduction possible
	interest	15%	if DTA: reduction possible
Malaysia	interest to non-residents	15%	
	royalties	10%	
	payments for contract services	20%	
Mexico			dividend income taxed only at corporate level
	interest	15/35%	rate applied depends on type of financial tool used; if DTA: 4.9% possible
	royalties	15/35%	rate applied depends on type of work performed and type of right used
	payments for leases	5 - 35%	rate depends on type of lease
	sale of shares of Mexican companies; financial derivative transactions	20%	tax-free if transaction performed at Mexican Stock Exchange
	sale of real estate; debt for equity swaps	20%	
New Zealand	dividends to non-residents	30%	if DTA: 15% possible; also: tax credit available
	interest, royalties to non-residents	15%	if DTA: 10% possible
PNG	royalties to non-residents		10% of gross profit or 48% of net profit (rate freely chooseable)
Philippines	dividends, interest, royalties	30%	
Taiwan	dividends to non-resident individuals/corporations from non-approved investments	35/25%	
	dividends, interest, royalties from approved investments	20%	if DTA: reduction to 5 – 10%
Thailand	dividends, interest		tax-free
	corporate income transferred abroad	10%	
United States	dividends, interest, royalties, rent to non-residents	30%	
	interest by US branches of foreign corporations	30%	
	dividend equivalent of after-tax profits of US branches of foreign corporations	30%	

In addition to the tax types mentioned so far, there are a number of different other taxes that directly or indirectly affect foreign business activities. Those taxes include capital gains tax, real estate tax, stamp tax, payroll tax, and some other special types of taxes.

Table 9: Additional Taxes Affecting Foreign Business Activities

Country	Tax Type	Tax Rate	Remarks
Australia	capital gains	36%	in addition: state taxes on certain financial transactions
Brunei	stamp duty on a number of documents	Rate dependent on type of document and amount involved.	
Chile	real estate	2%	tax is credited against corporate income tax; no tax on agricultural properties and selected low-value non-agricultural properties
	stamp tax	0.1 - 1.2%	applied on individual basis to documents which pertain to money loans operations, exception: loans from multilateral financial institutions
China	business tax	9 different tax lines with rates 3 – 20% on provision of wide array of services, transfer of intangible assets, and sale of real estate	
	house property	1.2% on price or 18% on rent	
			additional taxes: stamp, resource, land appreciation, and slaughter tax
Hong Kong	real estate rental	15%	exemption: if tax on rental income is paid
Indonesia	real estate	0.1%	
Korea	transfer of land and other assets	Rate dependent on: type of asset, time period asset has been held, realized profit, other factors	
Malaysia	sale of real estate/ interest/rights in real estate	30%	rate for residents different, but same max. rate for residents and non-residents
Mexico	asset tax	1.8% of average value of assets used in a business; paid only if greater than income tax	
			businesses generally required to distribute 10% of taxable income to their employees
Philippines	sale of real estate	5%	
Singapore			1% of the overall payroll for employees earning \$1,000 per month or less for training

Individuals usually have to spend more than half a year in one of the countries in order to be required to pay individual income tax in that country. There are, however, exceptions to the rule.

Table 10: Details about Individual Income Taxation

Country	Tax Rate	Remarks
Brunei		no tax on individual income levied
China	max. 40% (progressive)	certain minimum income is tax-exempt; 50% tax reduction in force since 10 years
Hong Kong	2 – 20% (sliding)	
Indonesia	10 – 30% (progressive)	
Korea	10 – 40% (progressive)	includes dividend and interest payments
Malaysia	2 – 30% (graduated)	certain minimum income is tax-exempt
Mexico	max. 35% (graduated)	rate for wages and salaries: 30%
Philippines	1 – 35%	
United States	max. 39.6% (progressive)	

Finally, there is the group of taxes imposed on the purchase of goods and services, including sales taxes, value added taxes, consumption taxes, import duties, and others. Dependent on the type of tax, both corporations and individuals are affected by them.

Table 11: Details about Different Types of VATs, GSTs, Consumption Taxes etc.

Country	Applied Tax Type
Australia	wholesale sales tax, excise and import duties
Brunei	duties on certain imports
Chile	flat-rate ad valorem import duty of 11%; VAT of 18%
China	VAT on sale and import of goods: 13% on goods for basic needs, 17% on all other products, incl. services; consumption tax on production and import of alcohol, tobacco, cosmetics, luxury items
Indonesia	VAT of 10% on sale and importation of goods and sale of most services; additional tax of 10 – 35% on luxury items
Japan	consumption tax of 5%
Korea	VAT of 10% on sale and import of goods and sale of services (lower rates for basic needs)
Malaysia	sales and service tax of 5 – 10% on sale and import of certain goods and services
Mexico	VAT of 15% on sale and import of goods and services (10% in border zones; medicines and basic food products are VAT-free)
New Zealand	GST of 12.5%
PNG	sales taxes of 1.5 – 2.5% (vary between provinces)
Singapore	GST of 3% (also on importation of goods); 20% tax on water consumption
Thailand	VAT of 7% (in finance, insurance, real estate: 3% business tax instead of VAT)

Not too much can be said in regard to taxation. This is a field in which most countries make their autonomous decisions. Differences in the taxation levels and regulations provide for economic competition.

The countries, nevertheless, have to be aware of the negative effect which too high taxes and a too complicated tax legislation have on the business climate in general and on foreign investment in particular. Furthermore, it would be of benefit to the whole investment liberalization process in the area, if APEC's economies would make an effort to have a multilateral taxation agreement signed among all members. That would provide investors with clarity for their investment planning process and thus stimulate international investment flows.

Performance Requirements

Most members of APEC do not impose any performance requirements on foreign investment (APEC Committee on Trade and Investment, 1996). If there are exceptions, they are mainly related to local content requirements.

Performance requirements are not established by Australia, Brunei, Hong Kong, Japan, Korea, Mexico, New Zealand, and Singapore. The same is basically valid for the United States although a few exceptions exist. Papua New Guinea does not have performance requirements although it is encouraging the use of material that is locally available. Local content requirements exist for some industries in China. Indonesia,

Malaysia, the Philippines, and Taiwan have local content requirements in force which pertain to the production of motor vehicles. Usually, the use of locally manufactured parts and components is required in this area in order to promote the development of the domestic automotive industry. In the case of Indonesia, a high local content of parts and components lowers the duties on the import of such items by the local company. The Philippines requires local manufacturers of parts and components to actively engage in export in order to derive foreign exchange earnings from which imports of other parts and components are to be financed. Thailand has been abolishing local content requirements for many products and will phase out the remaining requirements of this type by the year 2000. In order to receive investment promotion, joint ventures in Thailand's manufacturing sector are required to export a certain percentage of their production based on the foreign ownership proportion. Chile requires 40% of all television broadcasts to be Chilean productions. Companies in Chile's copper mining industry which mine more than a certain amount of copper a year are also subject to some performance requirements. In addition to the mentioned performance requirements in the automotive industry, Indonesia regulates the supply of soy bean cake through a ratio which determines how much soy bean cake can be imported by cattle feed processing companies per unit of locally produced soy bean cake.

Although performance requirements are not too numerous, APEC should strictly pursue their abolishment. The same considerations apply to such restrictions as the local

content requirements as do to the infant industry argument. As long as the requirement is time-wise restricted and will be gradually phased out, its application might be of some use to the development of the particular industry.

Capital Export Limitations

Some details pertaining to capital exports have already been mentioned in earlier sections. Although there are some different regulations for outward foreign investment, most APEC members do not impose restrictions on the export of capital or the outflow of foreign investment (APEC Committee on Trade and Investment, 1996). Those countries include Brunei, Canada, Hong Kong, Indonesia, Malaysia, Mexico, New Zealand, the Philippines, and Singapore. Australia only requires that amounts larger than \$100,000 are not carried in person out of the country but transferred through a bank. Outward foreign investment from Chile is subject to prior approval. If the funds for the investment are exchanged through the informal market, the country's central bank has to be notified about the investment. Once the investment is terminated, the investor is required to return profits and the invested capital to Chile. Chinese outward foreign investment is also subject to official approval. Japanese outward foreign investment requires notification of the authorities in charge. Korean businesses are basically allowed to engage in outward foreign investment. Three business lines in the area of real estate are, however, not entitled to do so. Furthermore, outflowing investment is subject to either validation,

notification or permission, depending on the amount involved in the transaction. In order to purchase foreign currency in Papua New Guinea, an investor has to file an application with either an authorized dealer or the country's central bank, depending on the amount. Capital flowing out of Taiwan for the purpose of corporate foreign investment has either to be reported or approved, depending on the amount. Foreign investment flowing out of Thailand requires prior authorization if it exceeds an amount of \$10 million a year. The restrictions mentioned in an earlier section apply to the United States.

As in every business transaction, foreign investment is a two-way process. It is, therefore, not only important to facilitate the inflow of foreign capital but also the outflow of domestic capital as it constitutes foreign investment to other countries. Consequently, APEC should put more emphasis not only on the liberalization of inward-oriented investment flows but also on capital flowing out of the economies. This would help to provide for a more balanced capital market and thus for more stability in the overall economic environment.

Expropriation and Compensation

There is a high similarity among countries in the laws and regulations pertaining to expropriation and compensation of foreign investment, as long as there are such legal measures existing at all (APEC Committee on Trade and Investment, 1996). Hong Kong,

for instance, has no special regulations, and New Zealand has only special agreements with China and Hong Kong relating to the subject.

In most cases, the individual country's legislation stipulates that expropriation can only occur for certain purposes, in accordance with existing law, and subject to compensation. Expropriation is usually justified for the purpose of public use, social or national interest, which is mostly related to security, safety, and defense issues. Normally, the expropriated party has the right to a legal review of its case before the courts in charge. The compensation for the expropriation is either mutually agreed on or it is determined by the courts in charge, especially in cases where no mutual agreement can be reached. Those basic laws and regulations pertaining to expropriation and compensation are to a high degree similar among the countries of Canada, Chile, China, Indonesia, Malaysia, Mexico, the Philippines, Singapore, Taiwan, and the United States, although some of them do not explicitly mention the right to appeal to court.

Aside from those similarities in the handling of the issue, there are also characteristics that are unique to each of the countries. Some, such as Canada and the United States explicitly express that compensation should be based on market value, whereas other countries, such as China, just state that compensation should be appropriate. Furthermore, the terms of the compensation payment itself differ among countries. Chile requires that the payment of the compensation is made before the material possession of the expropriated property takes place. Mexico, in contrast, allows

payment of the compensation up to one year after the expropriation has been officially declared. If, in the United States, there is a time gap between the expropriation and the compensation payment, the owner of the expropriated property is entitled to an interest payment for the compensation of opportunity costs arising from the delay. In Indonesia the government explicitly guarantees the compensation payment transfer. The Philippines explicitly states the right to remit the compensation payment in the currency of the original investment. Taiwan does not expropriate for twenty years in cases where foreign investment in a company is 45% or more. This proportion has to be held by the foreign investor for the whole mentioned time period in order to be protected against expropriation. In Thailand laws do not only protect certain foreign investments against expropriation but also against a number of other governmental measures which might threaten the market position of the particular company. The United States does not only consider tangible property as property that can be expropriated but also intangible property, such as patents. The countries' domestic legislation in regard to expropriation and compensation is often also backed by bilateral agreements, such as bilateral investment guarantee agreements and bilateral investment protection agreements.

Many APEC countries have, from a legal point of view, already mastered the problem of expropriation and compensation. There are, however, still a number of countries which have not taken appropriate measures. Therefore it is recommended that APEC provides its members with all the needed support for the realization of the

necessary legislative process. It would be even better if, in the long run, APEC would be able to harmonize the legislation related to expropriation and compensation. In addition, as many APEC members as possible should sign bilateral agreements on the issue, helping to deepen mutual confidence.

In summary it can be said that, within APEC, a wide variety of rules and regulations affect and also restrict not only foreign investment but also the activities supporting it, such as currency exchange. Some countries, such as Singapore and Hong Kong, put only few restrictions on foreign investment, whereas other countries, such as China and Indonesia, restrict foreign investment more heavily. Restrictions are most numerous in the tertiary sector and least numerous in the secondary sector. Foreign investment is subject to a number of taxes which strongly differ from country to country and which – in a few cases – also effect only foreign but not domestic investment.

One commonality among all countries is that they heavily differ in their rules and regulations pertaining to foreign investment. Only the approaches to the application of the Most-Favored-Nation Treatment and the laws regarding expropriation and compensation show to a certain degree similarity. Therefore, it is important that APEC pursues the implementation of a more standardized approach to rules and regulations affecting the admission of foreign investment. This goal can only be reached if APEC continues work on the path it has chosen – strong cooperation in each field commonly agreed on.

CHAPTER FIVE

SUMMARY AND CONCLUSIONS

Since its initiation eight years ago APEC has come a long way. It developed from an informal discussion forum to an 18-member organization with more institutionalized character, although this was not the original intention of the forum. Today APEC has a variety of meetings, working groups, committees, and other types of sub-groups which examine developments in a number of different areas, research fields for cooperation, make proposals to decision makers, and implement projects commonly agreed on.

Critics may say that APEC, so far, has in its work been too general and not concrete enough. Considering however the forum's working principles of voluntarism and consensus-based decision making as well as its strong heterogeneity, it also has to be acknowledged that APEC has made significant progress. In economic cooperation APEC has become an important force in the Asia-Pacific region.

APEC still has not reached its declared goal of free, open trade and investment among its members. Nevertheless, the prospects for the realization of the goal of free investment look good.

The current stage of the countries' individual laws and regulations affecting foreign investment can be characterized as relatively liberal, although there remain a variety of areas in which foreign participation is restricted in some form. The restrictions

in some sectors are unique to a single country whereas other sectors are restricted in a number of countries.

Limitations to foreign engagement occur in virtually every sector. However, the areas that are more heavily affected are fishery in the primary sector and most areas in the tertiary sector. Restrictions in the manufacturing sector are mainly related to hazardous or environmentally polluting products and production processes. But, similar to fisheries and agriculture, they are also related to industries in which small and medium-scale businesses prevail and where certain social and cultural structures have grown. Foreign access to those areas should not be generally restricted. Natural resources and traditional employment structures do not have to be threatened if foreign investment is limited in size and subject to legal conditions that apply to *both* domestic and foreign investors. By doing so, the countries would be able to enjoy the benefits of foreign investment while protecting traditional social structures and natural resources.

For some industries, such as motor vehicle production, the infant industry argument might be used to justify their restriction to foreign investment. Nevertheless, it is questionable if the intention behind this argument can always be fulfilled. In every case, those kinds of protection should be limited in time and gradually abolished.

It is relatively easy to develop an understanding for restriction of foreign participation in the fields of media and education. In both fields, due to their “soft” character, it is difficult to determine influence that does not meet legal requirements.

APEC should, nevertheless, promote the implementation of independent control institutions monitoring companies' compliance with legal standards in such "sensitive" areas.

Foreign investment is not only restricted by industry sector but also by mode of entry. As already mentioned in regard to restrictions by industry sector, foreign investment should be subject to legal conditions that apply to *both* domestic and foreign investors. Such an approach should provide for fair and equal competition between all investors participating in a certain market. Therefore, not only restrictions to foreign investment by industry sector should be abolished but also limitations to the mode of entry.

APEC countries make broad use of the most-favored-nation principle as well as of the reciprocity principle. The repatriation and convertibility of foreign investment-related funds is handled relatively liberally. Foreign investment in APEC countries is often affected by similar tax types and taxation principles. The forum's members primarily use double taxation agreements in order to avoid double taxation of international income.

Performance requirements in APEC countries are only a few and pertain mainly to local content requirements. As is the case with the infant industry argument, it is questionable if the intention behind such requirements – to stimulate the development of domestic production in the particular field – can be fulfilled. In order for performance requirements and the infant industry argument to be useful and make sense, it would be

necessary to restrict them in time. Such an approach would put the domestic industry under pressure to become competitive in a certain field while still offering it sufficient time to do so. In the long run the more the different economies approach each other in their developmental stage, the elimination of these limitations should be pursued.

In regard to expropriation and compensation most APEC members, but not all, have already adequate laws in force. Nevertheless, APEC should in the interest of a positive investment climate promote the implementation of related legislation in all participating economies.

Based on the foregoing analysis the following recommendations are made to help APEC become more successful in its attempt to further liberalize foreign investment (FI).

APEC should in regard to:

- Investment Approval Requirements:

- Agree on abolition of existing investment restrictions within an appropriate time frame
- Tie FI to fulfillment of conditions which are not different than laws applying to domestic businesses in order to provide for equal and fair competition, product and manufacturing process safety, and protection of natural resources / the environment
- Limit FI by total size, not by equity ratio, in order to protect certain sectors of the economy for social or cultural reasons (family businesses, etc.)

- Most-Favored-Nation Treatment:
 - Maintain and promote application of MFN treatment but not use it as a substitute for further investment liberalization
- Repatriation and Convertibility of Funds:
 - Abolish time constraints for repatriation of funds / promote free currency convertibility in order to stimulate FI and optimal factor allocation
 - Exchange information among members about development of financial markets in order to prevent major disturbances in them
- Taxation:
 - Promote double taxation agreements / initiate negotiation of and agreement on a multilateral taxation agreement among all members
- Performance requirements:
 - Agree on cases and timeframes in which the infant industry argument may be used and performance requirements may be applied (pursue their abolishment in the long run)
- Capital Export Limitations:
 - Promote liberalization of outward-oriented investment flows in order to provide for a more balanced capital market and thus for more stability

- Expropriation and Compensation:

- Support members in the set-up of a legal framework on expropriation / compensation issues and promote signing of bilateral investment protection agreements / harmonize in the long run legislation on expropriation / compensation

- Legal / General Investment Liberalization Issues:

- Cooperate in management and preservation of natural resources, including implementation of an appropriate legal framework, and in promotion of small and medium businesses
- Promote the implementation of independent control institutions to monitor companies' compliance with legal standards in "sensitive" areas, such as media, education, etc.
- Intensify cooperation between its individual working groups and institutions in charge of investment liberalization
- Standardize in the long run the FI application and notification process.

The implementation of only a few measures in each of the aforementioned areas would provide for substantial progress in the common effort to further liberalize foreign investment. Until such measures can be implemented, however, it is most important to constantly exchange appropriate data and information and cooperate in each functional

area in order to build confidence, facilitate foreign investment, and avoid any type of market disturbances. If APEC continues on the path it has entered, the goal of investment liberalization should be realized within the time frame the forum has set for itself.

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