

APEC Strategy for Investment

Bearing in mind the Bogor Goals and past economic leaders' declarations, APEC economies will promote greater convergence among economies in key areas of APEC's regional economic integration (REI) agenda, including the investment sector, in order to accelerate APEC's work to strengthen REI in the Asia-Pacific.

To create broader integration within the APEC region, APEC agrees to the following strategy for its future work on investment, based on its existing confirmed principles, guidelines and practices.

Considering APEC's past aims and activities, we identify the following categories as the pillars of our work strategy: Advanced Principles and Practices, Facilitation and Promotion. Conducting activities within these three closely interlinked categories is essential to the development of the regional economy, as they form a process through which we may strengthen our mutual economic ties based on a spirit of trust and partnership, resulting in sound development for our diverse APEC economies.

Accordingly, APEC economies aspire to the following Strategy for Investment to explore building blocks toward a possible Free Trade Area of the Asia Pacific (FTAAP) in the future. We believe this progress would be further encouraged by setting a target date for our next achievement by reviewing the progress.

A. ADVANCED PRINCIPLES & PRACTICES

Investment principles have been developed in APEC and have provided predictability and stability to investors. Increasing awareness and capacity to adopt such principles in international investment agreements (IIAs) and national policy are important.

1. Endorsed Principles

APEC economies have made substantial progress in developing principles on investment. In particular, the APEC Non-binding Investment Principles (NBIP), developed in Jakarta, Indonesia in 1994, and the Investment Transparency Standards, developed in Bangkok, Thailand in 2003, are major sets of principles which were unanimously adopted by APEC. These formally adopted texts provide a common basis for the entire APEC region's international commitments, since they cover the key elements for IIAs, such as MFN, National Treatment, Prohibition of Performance Requirements, Removal of Barriers to Capital Exports, Expropriation and Compensation, Repatriation and Convertibility, Settlement of Disputes, and Transparency. In addition to those elements, the NBIP provide for regulatory principles regarding conduct in and physical entry to host economies, such as Health, Safety and Environment, Entry of Personnel, and Investor Behavior. See "ANNEX A", attached, for details of these principles.

2. Analytical Studies on Practices

The related APEC sub-fora also conducted analytical studies that indicate further possibilities for convergence on investment practices among APEC economies, reflecting the proliferation and development of IIAs and domestic legislation. Identifying Core Elements in IIAs in the APEC Region, the joint project with UNCTAD, explains how APEC economies address the legal issues of the nature and effect of the main provisions (the 'core elements') that appear in IIAs, and how they interact. It reports some of its Key Findings as follows:

- "There is a considerable degree of conformity in the core elements and provisions included in IIAs involving APEC economies.... Provisions such as national and MFN treatment for

established investments, fair and equitable treatment, guarantees of prompt, adequate and effective compensation for expropriation and of free transfers, and consent to investor-State and State-State dispute resolution all appear in the vast majority of agreements.”

- APEC IIAs substantially follow the general structure and intent of the APEC investment instruments. On the other hand, all APEC IIAs include exceptions and omissions that mean investment liberalization and protection is more limited than the best practices set down in these APEC instruments.

Through practical and objective analytical studies, APEC could further deepen our mutual understanding, especially, on IIA trends, and increase awareness and capacity. This approach would contribute to our voluntary initiatives by improving their commitments in ways compatible with APEC’s diversity. For the above reason, the following works should be encouraged.

- Additional work on the study of identifying convergences and divergences in APEC RTAs and FTAs such as; periodical update of the study; improvement of the database of the study; capacity building activities to bridge divergences.
- Continuous efforts on core IIA elements in collaboration with UNCTAD such as Core Elements Project-Moving beyond phase III.

In addition, the result of such an analysis on implementation of APEC principles and practices beyond those principles in general term could provide common basis of investment framework in this region, so as to achieve further favorable environment for investors and host economies.

B. **FACILITATION**

To harness the advantages of foreign investment, it is critical that governments ensure that their policies and actions do not unnecessarily increase the costs or risks of doing business or constrain business competition. Investment facilitation refers to measures taken by governments designed to attract (or not impede) foreign investment and to maximize its effectiveness and efficiency through all stages of the investment cycle. Facilitation is a pragmatic approach whereby each APEC economy can voluntarily improve its investment environment. Host economies can expect to receive foreign investment commensurate with their effective facilitation activities.

There is strong international consensus on the benefits of foreign direct investment (FDI), across the spectrum of its activities: from tangible assets to intellectual property. Such investment drives economic productivity, builds jobs, raises incomes, strengthens trade flows and spreads international best technologies and practices. Investment bolsters economic growth for developed and developing economies alike. Since its inception in 1989, APEC has emphasized the importance of investment facilitation. The purpose of investment facilitation is to allow investment to flow efficiently and for the greatest benefit. Transparency, simplicity and predictability are among its most important principles.

1. IFAP Follow-up

Collectively, APEC has conducted a variety of substantive works, and based on this works, formulated Investment Facilitation Action Plan (IFAP). In IFAP, member economies established a working framework of the following 8 principles for investment facilitation, government’s role, and business impact.

- Promote accessibility and transparency in the formulation and administration of investment-related policies
- Enhance stability of investment environments, security of property and protection of investments

- Enhance predictability and consistency in investment-related policies
- Improve the efficiency and effectiveness of investment procedures
- Build constructive stakeholder relationships
- Utilize new technology to improve investment environments
- Establish monitoring and review mechanisms for investment policies
- Enhance international cooperation

For each principle, IFAP identifies a menu of specific actions that an economy can choose to implement. The flexibility of implementation enables the IFAP to be used in a different way for each economy, reflecting the differences between the APEC member economies. It also complements the consensus based nature under which APEC operates.

Implementing the eight principles identified in IFAP would facilitate achievement of a preferred investment environment as articulated in the Bogor Goals. To this end, it is critical that APEC economies continue their efforts in implementing the principles identified through the IFAP process.

2. Dialogue with the Private Sector

Recognizing the importance of communication between the private sector and policymakers to build confidence and contribute to relationship-building, APEC economies will share information on bilateral dialogue mechanisms used by member economies and hold Public-Private Dialogues on investment that span the APEC region. See “ANNEX: B”, attached, for details of the dialogue.

3. Facilitation cooperation

Bearing in mind the technical aspects of investment facilitation, APEC economies will continue to cooperate with developing economies to provide effective capacity building projects, including capacity building seminars such as success factor seminars.

C. **PROMOTION**

Through the development of investment principles (Advanced Principles) and implementation of facilitation measures (Facilitation), we can create the investment friendly environment and secure the confidence in investors and related people including the host economies. However, without the increase in real investment opportunities, such efforts cannot contribute to the enhancement of further invest flow within and through APEC economies and the realization of economic development of the region.

Member economies have been taking various “promotional activities” to create investment opportunities and solicit investors. APEC should encourage such activities.

1. Increase member economies’ ability to create investment opportunities

APEC will strengthen its activities to increase member economies’ ability to create investment opportunities through such as following activities.

- Information sharing on investment opportunity regarding particular sectors e.g., seminar in the environmental sector sharing information to attract foreign direct investment

- Capacity building for investment promotion agencies (IPA) through introduction of good practices and indicators provided by international organizations
- Development of PPP methods in the APEC region (Recognizing the importance of sustainable infrastructure, APEC economies share their experiences and explore better ways to structure PPP)
- Understanding the values of enhanced investment in innovation as a key enabler of sustainable and innovative economic growth
- Exchange of good practices on how to create business linkages between SMEs and MNEs

2. Cooperation with International Fora

Recognizing the importance of corresponding with international trends, APEC economies will enhance cooperation with international fora and organizations that have sufficient knowledge and expertise on investment frameworks, such as the World Bank, ADB, UNCTAD, and OECD, so as to ensure the accurate analysis on investment environment and to strengthen the capacity of the member economies in the development of investment policies and strategies.

3. Activities of APEC as whole to create investment opportunities

As the direct actions leads to investment, APEC will conduct capacity-building on how economies can best conduct promotional activities such as “encouragement and planning of hosting / receiving investment delegations”.

ANNEX ANon-discrimination between Source Economies

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

National Treatment

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

Performance Requirements

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

Removal of Barriers to Capital Exports

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

Expropriation and Compensation

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

Repatriation and Convertibility

Member economies will further liberalise towards the goal of the free and prompt transfer of funds related to foreign investment, such as profits, dividends, royalties, loan payments and liquidations, in freely convertible currency.

Settlement of Disputes

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

Transparency

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

Investment Incentives

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

Entry and Sojourn of Personnel

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

Investor Behaviour

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

Transparency Standards on Investment

1. Each Economy will ensure that its investment laws, regulations, and progressively procedures and administrative rulings of general application ("investment measures") are promptly published or otherwise made available in such a manner as to enable interested persons and other economies to become acquainted with them.
2. Each Economy will, to the extent possible, publish in advance any investment measures proposed for adoption and provide a reasonable opportunity for public comment.
3. Upon request from an interested person or another Economy, each Economy will:
 - (a) endeavor to promptly provide information and respond to questions pertaining to any actual or proposed investment measures referred to in paragraph 1 above; and
 - (b) provide contact points for the office or official responsible for the subject matter of the questions and assist, as necessary, in facilitating communications with the requesting economy.
4. Where warranted, each Economy will ensure that appropriate domestic procedures are in place to enable prompt review and correction of final administrative actions, other than those taken for sensitive prudential reasons, regarding investment matters covered by these standards, that:
 - (a) provide for tribunals or panels that are impartial and independent of any office or authority entrusted with administrative enforcement and have no substantial interest in the outcome of the investment matter;
 - (b) provide parties to any proceeding with a reasonable opportunity to present their respective positions;
 - (c) provide parties to any proceeding with a decision based on the evidence and submissions of record or, where required by domestic law, the record compiled by the administrative authority; and
 - (d) ensure subject to appeal or further review under domestic law, that such decisions will be implemented by, and govern the practice of, the offices or authorities regarding the administrative action at issue.
5. If screening of investments is used based on guidelines for evaluating projects for approval and for scoring such projects if scoring is used, in accordance with paragraph 1 of the Leaders' Statement each Economy will publish and/or make publicly available through other means those guidelines.
6. Each Economy will maintain clear procedures regarding application, registration, and government licensing of investments by:
 - (a) publishing and/or making available clear and simple instructions, and an explanation of the process (the steps) involved in applying/government licensing/registering; and
 - (b) publishing and/or making available definitions of criteria for assessment of investment proposals.
7. Where prior authorization requirement procedures exist, each Economy will conduct reviews at the appropriate time to ensure that such procedures are simple and transparent.

8. Each Economy will make available to investors all rules and other appropriate information relating to investment promotion programs.
9. When negotiating regional trade agreements and free trade agreements that contain provisions with an investor/state dispute settlement mechanism, each Economy should consider whether or not to include transparency provisions.
10. Each Economy will participate fully in APEC-wide efforts to update the APEC Investment Guidebook.

ANNEX B

The APEC Public-Private Dialogue on Investment (DRAFT)

The concept of continuous face to face communication between the private sector and policymakers was welcomed by member economies and representative from ABAC, and sharing information on dialogue mechanisms used by member economies was also welcomed at IEG2. Furthermore, the following constructive proposals for more effective execution of the APEC Public-Private Dialogue on Investment were made:

- To hold the Dialogue on an ad hoc basis, not institutionally, as an APEC activity so as to avoid overlapping with various existing dialogues considering the needs of the business sector
- To deal with shared regional agenda items which are important issues for the direction of APEC's activities on investment, not issues which may have been already discussed bilaterally
- To discuss issues affecting investment climates, but neither to raise specific bilateral issues nor to seek solutions for specific cases

1. Introduction

The APEC Investment Facilitation Action Plan (IFAP) defines “[building] constructive stakeholder relationships” as one of the APEC’s investment facilitation principles, and asks governments to “maintain mechanisms for regular consultation and dialogue with interested parties including investors” and “provide [a] framework to identify and address problems encountered by investors” to effectuate this principle.

Continuous face to face communication between the private sector and policymakers would build confidence among stakeholders, contribute to relationship-building between investors and policymakers. Through this communication, investors will have opportunities to raise their concerns related to the investment environment in the APEC region. At the same time, policymakers will have opportunities to receive valuable input for their policy making.

2. Public-Private Dialogue

(1) Sharing Information on Dialogue Mechanisms used by Member Economies

Some economies have implemented practices and mechanisms (including through provisions in their RTAs/FTAs) to encourage dialogue between investors and policymakers on the investment climate. It would be useful for APEC to share information on these mechanisms and discuss them continuously to increase member economies’ collective understanding of how member economies are all working to promote greater cooperation between stakeholders and investors on investment issues. At IEG meetings, member economies and ABAC or invited guests will make presentations on their experiences.

(2) Holding an APEC-wide Public-Private Dialogue on Investment

The primary objective of the APEC-wide Public-Private Dialogue on Investment is to communicate among investors and policymakers on common issues pertaining to the investment environment in the APEC region. This dialogue will help indicate future direction for APEC’s activities on investment, and its results may be incorporated into future APEC activities. In addition, by sharing information regarding the challenges they face and the practices to address these challenges, economies can deepen their understanding of such issues and develop ways to effectively deal with them.

Detailed contents of the Dialogue are as follows:

i. Host and Meeting Arrangements

- To be held on an ad hoc basis on the margin of CTI/IEG with the cooperation of other relevant fora [First session to be held in 2011]

ii. Participants

- CTI and IEG members and other relevant representatives from member economies
- Private sector participants including ABAC nominated by APEC economies
- Other participants admitted by CTI and IEG members

iii. Theme

- To be set by the CTI and IEG based on input from private sector organizations of APEC member economies together with the interest of the member economies.
- For a holistic approach to the discussion, topics selected would be widely shared by the region and important issues for the direction of APEC, which need cooperation from both home and host economies (e.g. developing infrastructure, developing human resources, providing administrative information, transfer pricing taxation, and so on). The discussion should be focused on investment environment.

iv. Objective

- To exchange information and opinions about the theme to promote mutual understanding among home and host economies and the private sector
- To bring about future mutual cooperation among home and host economies and the private sector and provide insight into new directions for APEC