Capacity Building for Sharing Success Factors of Improvement of Investment Environment

15-16 August, 2008

Investment Experts Group

November 2008

1. APEC Seminar “Capacity Building for Sharing Success Factors of Improvement of Investment Environment” was held in Lima, Peru on 15th -16th August, 2008.

2. There were 53 participants from 15 economies (Australia, Brunei, Chile, China, Indonesia, Japan, Malaysia, Mexico, Peru, The Philippines, Singapore, Chinese Taipei, Thailand, the United States, and Vietnam), ABAC and other international organizations such as UNCTAD and OECD.

3. Program of the Seminar
Day 1 (15 August, 2008)

9:30-9:50 Opening remarks
   - Mr. David Lemor, Executive Director, ProInversion
   - H. E. Mr. Shuichiro Megata, Ambassador of Japan to Peru

- Session 1: RTA/FTA, Investment Treaties
  ● Concluding RTAs/FTAs in the Asia-Pacific region
    9:50-10:10 Speaker 1
    Mr. Tetsuro Fukunaga, Director, APEC Office, Trade Policy Bureau, Ministry of Economy, Trade and Industry (METI), Japan

    (10:10-10:40 Coffee Break)

  ● Concluding investment treaties including high-level liberalization and protection provisions
    10:40-11:00 Speaker 2
    Mr. Thomas Westcott, Legal Adviser, International Arrangements Section, Division on Investment and Enterprise, UNCTAD

    11:00-11:20 Speaker 3
    Mr. Rodrigo Monardes, Legal Adviser, Department of Services, Investment and Air Transport, General Directorate, International Trade and Economic Affairs (DIRECON), Chile

    11:20-12:00 Q&A Session

    (12:00-14:00 Lunch)
- **Session 2: Investment-related Policies**
  - Promoting investment liberalization such as easing restrictions on foreign entry, prohibition of performance requirement, and relaxation of restrictions on overseas remittance
    
    14:00-14:20 Speaker 4  
    Mr. Thomas Westcott, Legal Adviser, International Arrangements Section Division on Investment and Enterprise, UNCTAD
    
    14:20-14:40 Speaker 5  
    Mr. Kenneth Waller, Senior Adviser, ABAC Australia Secretariat

  (14:40-15:00 Coffee Break)

  - Promoting proactive policy to attract foreign investment such as a special economic zone and a one-stop service for investors (manufacturing and service industries)
    
    15:00-15:20 Speaker 6  
    Mrs. Vasana Mututanont, Acting Executive Director, International Affairs Bureau, Thailand
    
    15:20-16:00 Q&A Session

Day 2 (16 August, 2008)

- **Session 3: Trade in Service**
  - Promoting liberalization of trade in service
    
    9:40-10:00 Speaker 7  
    Mr. Benjamin Chavez, Head of Services and Investment, Vice Ministry of Foreign Trade, Peru
    
    10:00-10:20 Speaker 8  
    Mr. Jai Motwane, Director for Services and Investment, Office of the U.S. Trade Representative, the United States

  - Promoting liberalization of trade in financial service and international cooperation on strengthening the foundations of international finance (financial industries)
    
    10:20-10:40 Speaker 9  
    Ms. Judit Vadasz, Lead Manager, Investment Division, Directorate for Financial and Enterprise Affairs, OECD
    
    10:40-11:00 Q&A Session
(11:00-11:20 Coffee Break)

**Session 4: Panel Discussion and Wrap-up**

11:20-12:20 Panel Discussion

- Identifying key success factors of improvement of the investment environment
- Seeking best ways to share the success factors among APEC economies
- Promoting collaborations with other capacity building projects and international organizations
- Discussing next step to identify and share the success factors of improvement of the investment environment

12:20-12:30 Closing Remarks

Mr. Tetsuro Fukunaga, Director, APEC Office, METI, Japan

4. Report on Sessions 1-3

Eight speakers shared their experiences on each topic.

- **Session 1: RTA/FTA, Investment Treaties**

  Mr. Tetsuro Fukunaga from METI, Japan explained the importance of FTAs and BITs. First he showed that the number of FTAs and BITs is increasing rapidly in the region. Then he pointed out that regional EPAs are consolidating production networks in East Asia. Lastly, he clarified the impact of BIT on FDI, showing the examples of Japan and related economies. He also elaborated Japan’s unique effort of “Improvement of the Business Environment” chapter.

  Mr. Thomas Westcott from UNCTAD informed us of the “Core Elements” project and identified APEC IIAs’s characteristics. He explained the “Core Elements” project and clarified the characteristics of APEC IIAs, such as the considerable degree of conformity between core elements and IIAs. Then he compared APEC IIAs with APEC investment instruments so as to identify the gaps between APEC principles and practice. He elaborated the importance of “Core Elements” phase 2, which aims to broaden understanding. In conclusion, he noted the necessity of responding to three challenges in negotiating APEC IIAs, such as promoting policy coherence,

  Mr. Rodrigo Monardes from Chile explained his country’s investment strategy by showing the example of Chile’s foreign trade policy. He shared the characteristics of Chile’s trade policy, as well as domestic statistics to increase the FDI. In conclusion,
he introduced the main impact of the investment negotiations such as greater transparency, stable rules, legal certainty, more liberality and a lesser burden, and regulations, rules or laws.

The sessions were followed by a Q and A period, in which active discussion occurred. Especially, Chile’s approach of a negative list and UNCTAD’s suggestion of reducing the performance requirement interested the audience.

- **Session 2: Investment-related Policies**

  Mr. Thomas Westcott from UNCTAD explained the liberalizing of IIAs, focusing on two aspects. One was ‘Admission and establishment’, especially on pre-establishment MFN and NT, while the other was ‘Host Country Operational Measures (HCOMs)’, especially on performance requirements and senior personnel. He gave the example of the Singapore-Korea FTA in 2005, and then concluded that the scope for unconditional use of HCOMs has narrowed, and careful study of the impact of HCOMs is required at the country level. Finally, a flexible approach is required for negotiating on HCOMs, especially with developing countries.

  Mr. Ken Waller from ABAC presented policies to promote the elimination of behind-the-border impediments to investment from three viewpoints. His first point was the progress in promoting investment flows. He mentioned that FDI flows tend to be stronger in more “open” investment economies. He also noted that equal treatment and national treatment will be necessary for economic integration as well as achievement of the Bogor goals. His second point was the relevance of open investment policies to APEC business. He pointed out that ABAC, with which member economies will be able to develop the policies, would be an advantage of APEC. And his last point was the importance of the openness of the service sector, despite its political sensitivity.

  Mrs. Vasana Mututanont from Thailand introduced the experiences of the Board Of Investment’s one-stop-shop service for investors. She showed that BOI also provides additional support for investment such as IEAT-free zones, customs-free zones, and bonded warehouses.

- **Session 3: Trade in Service**

  Mr. Benjamin Chavez from Peru reported the Peruvian experience in service liberalization. He introduced the historical facts of Peru’s service liberalization as well as gains and remaining issues. Then he elaborated on the effects of service liberalization policies, giving some specific areas as examples, such as transportation,
telecommunications, energy and construction.

Mr. Jai Motwane from the U.S. made a presentation regarding U.S. policy for liberalizing trade in services. He pointed out the importance of service liberalization, showing that its open investment regimes as well as FTA policies benefit economic growth and development. He explained that the U.S. advantages such as few restrictions on investment, non-discriminatory treatment, transparency, and predictability and attention are the key success factors contributing to a stronger U.S. economy, especially in order to receive global FDI.

Ms. Judit Vadasz from the OECD gave a presentation on the importance of trade in financial services. She introduced the OECD Codes and National Treatment Instrument, showing the linkage between financial liberalization and capital account liberalization. Then she presented the FDI Regulatory Restrictiveness Index and the promotion activities of OECD.

5. Report on Wrap-up session
IEG Convenor Mr. Roy Nixon moderated the session. He listed the success factors from each experience and discussed these with the speakers and participants. The following were the major areas of discussion.
- Possibility of strategic coverage of FTAs/EPAs can spread to APEC economies.
- Whether structural investment treaties in productive sectors go well in service sectors.
- FTAs’ impact on behind-the-border barriers to investment.
- How structural reform in each economy attracts FDI.

6. Next Step
Phase 2 of this project will be held in Singapore on the margins of SOM2, 2009.
Capacity Building for Sharing Success Factors of Improvement of Investment Environment

CTI32/2008T

Date: Friday 15 – Saturday 16 August, 2008
Venue: Centro Naval, Lima, Peru

Day 1 (15 August, 2008)

09:30-09:50 Opening remarks
- Mr. David Lemor, Executive Director, ProInversion
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    10:10-10:40 Coffee Break

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    Division on Investment and Enterprises, UNCTAD

    11:00-11:20 Speaker 3
    Mr. Rodrigo Monardes, Legal Adviser, Department of Services, Investment and
    Air Transport, General Directorate, International Trade and Economic Affairs
    (DIRECON), Chile

    11:20-12:00 Q&A Session

12:00-14:00 Lunch

- Session 2: Investment-related Policies
  ● Promoting investment liberalization such as easing restrictions on foreign entry, prohibition of
    performance requirement and relaxation of restrictions on overseas remittance
    14:00-14:20 Speaker 4
    Mr. Thomas Westcott, Legal Adviser, International Arrangements Section
    Division on Investment and Enterprise, UNCTAD

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    Mr. Kenneth Waller, Senior Adviser, ABAC Australia

14:40-15:00 Coffee Break
Promoting proactive policy to attract foreign investment such as a special economic zone and a one-stop service for investors

15:00-15:20 Speaker 6
Ms. Vasana Mututanont, Director, International Affairs Bureau, Thailand Board of Investment, Thailand

15:20-16:00 Q&A Session

Day 2 (16 August, 2008)

Session 3: Trade in Service

- Promoting liberalization of trade in service
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  Mr. Benjamin Chavez, Head of Services Negotiations, Vice Ministry of Foreign Trade, Peru
  10:00-10:20 Speaker 8
  Mr. Jai Motwane, Director for Services and Investment, Office of the U.S. Trade Representative, the United States

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11:20-12:20 Panel Discussion
- Identifying key success factors of improvement of investment environment
- Seeking best ways to share the success factors among APEC economies
- Promoting collaborations with other capacity building projects and international organizations
- Discussing next step to identify and share the success factors of improvement of investment environment

12:20-12:30 Closing Remarks
Mr. Tetsuro Fukunaga, Director, APEC Office, METI, Japan
Mr. Tetsuro Fukunaga has served for the Ministry of Economy, Trade and Industry (METI) of Japan from 1991. Since then he had developed his career as a government official in various divisions. Previous to his current position as Director of APEC Office of Trade Policy Bureau, he served as Director of Policy Planning and Research Division of Trade Policy Bureau. He also has experiences in Regulatory Reform of the Cabinet Councilors’ Office on Internal Affairs at the Cabinet Secretariat of Japan, and also careers in industrial finance and macro economic affairs.

Mr Fukunaga is a graduate from University of Tokyo, and received Master of Business Administration at Goizueta Business School, Emory University in 2001 while joining METI.

Mr. Thomas Westcott is Legal Adviser with the UNCTAD Secretariat’s Division on Investment and Enterprises. He previously worked as an investment treaty negotiator with the Australian government, including on FTA investment negotiations with the United States, Thailand and Singapore. Mr. Westcott has recently prepared a report based on comparative analysis of state practice in international investment agreements concluded by APEC economies, and has published articles on international investment law, including a recent article on fair and equitable treatment.

Mr. Westcott has also worked as a senior adviser on trade issues in the Australian Prime Minister's Department. He led a team advising the Prime Minister on WTO negotiations, bilateral and regional negotiations (FTAs), APEC, and international economic and development issues. Prior to working in the public sector, he was a management consultant with PricewaterhouseCoopers’ strategy practice.

Mr. Westcott holds a Master of Laws (merit) specialising in investment and trade law (Australian National University), a Bachelor of Laws and a Bachelor of Economics with first class honours (Monash University).
Mr. Rodrigo Monardes is Legal Adviser of the Department of Services, Investment and Air Transport (Serinta), General Directorate for International Trade and Economic Affairs (DIRECON) in Chile. His responsibilities are as negotiator for investment, cross-border trade in services and temporary entry of business persons chapters with Free Trade Agreement with Australia, China, Malaysia and MERCOSUR. His is also Advisor on investor – State dispute settlement for Public agencies and Chilean Embassies, and is Chilean Representative before the WTO on cross-border trade in services negotiations. He previously focused primary in the areas of corporate law, real estate law, banking law, securities and business law at the Associate Velasco & Cia. Abogados LLP. Mr Monardes also has experience in teaching as assistant teacher for Undergraduate course on International Trade, Faculty of Law, Universidad de Chile. He holds a postgraduate degree of Laws at the same university.

Mr. Ken Waller is Advisor to ABAC Australia and until recently has been Coordinator of the ABAC Finance Working Group. He is chairman of the Australian Monash APEC Study Centre Advisory Board for Capacity Building in Financial Services and Director of the Melbourne APEC Finance Centre. For the last six years he has been Group Economic Advisor to the Commonwealth Bank of Australia on regional and global economic issues and financial regulatory matters. Prior to that he was Group Economic Advisor to the Colonial Group (1998-2000). He had an extensive career in the Australian Commonwealth Treasury. He was Assistant Secretary for Financial Institutions Division during a period of major financial reforms in the 80’s and subsequently advised on relations with the IMF, World Bank and EBRD. He was senior representative in London (1978-82) and Beijing (1994-98), and Executive Director for Australia on the Board of the ADB (1988-92). He is a graduate of London University with a B.Sc. (Econ), and honorary professor of economics at Zhongnan University of Finance and Economics, Wuhan, China.
Ms. Vasana Mututanont
Director, International Affairs Bureau
Thailand Board of Investment

Ms. Vasana Mututanont is currently Director of International Affairs Bureau of Thailand Board of Investment (BOI) which involved FDI analysis, FTA negotiation on investment, cooperation and promotion of investment in APEC, ASEAN and other regions. Prior to this position she was the Economic Counselor represented the BOI’s branch office in New York during 1999-2005. Her job were mainly to promote Thailand as an investment site to companies in the US and Canada, providing counseling services on business climate and investment opportunities including investment services support. She has been working with the BOI since 1977. Her past experiences involved mostly in investment promotion, customer services, public relation and international affairs. Her first assignment overseas was during 1982-1989 when she was posted as Assistant Economic Counselor in the BOI’s branch office in New York. Vasana was born and raised in Bangkok. She received her Bachelor of Accountancy from Chulalongkorn University and Master degree on International Economics from Long Island University, New York. She is married and has three children.

Mr. Benjamin Chavez
Head of Services Negotiations, Vice Ministry of Foreign Trade, Peru

Mr. Benjamin Chavez is Bachelor of Arts in Economics of the Universidad del Pacifico (Lima, Peru) and Head of Services Negotiations Division of the Vice Ministry of Foreign Trade since 2004. He is responsible of services negotiations under multilateral (WTO), regional (FTAA, Andean Community, etc.) and bilateral (FTA’s) basis and of trade related services activities in other forums. He has been the Services Chief Negotiator in the Peru-US FTA and in a number of other FTA’s (Thailand, Singapore, Chile, México, Canada and EFTA). Since 2007, he has been designated the Andean representative for Services, Investment, Capital Movement and E-Commerce negotiations in the Agreement of Association between European Community and Andean Countries (Bolivia, Colombia, Ecuador and Peru). He is also in charge of the implementation process of the FTA with US with respect to Peruvian services regulations and has participated in some Peru’s air transport negotiations.
Mr. Jai Motwane is Director for Services and Investment in the Office of the United States Trade Representative (USTR), where he works on WTO and APEC services issues, services and investment negotiations of U.S. FTAs, and negotiations on bilateral investment treaties. He worked previously at the United States International Trade Commission, and in the Economic Section of the American Embassy in London, U.K. Prior to joining the U.S. Government, Mr. Motwane worked for an international law firm in New York City, and for a financial services consultancy in the United Kingdom. Mr. Motwane holds a Master of Science degree from the London School of Economics and Political Science.

Ms. Judit Vadasz is currently Lead Manager of Directorate for Financial and Enterprise Affairs at OECD from May 2008. She is mainly working on Russian accession here. Prior to this position, she was a Senior Economist of Monetary and Financial Markets Department at the International Monetary Fund, and worked on financial sector and foreign exchange issues. She is currently on leave from IMF. She also had been working with National Bank of Hungary as General Manager. Ms Vadasz received her PhD from Corvinus University in Budapest, and MA in Economics from the same University.
Capacity-Building for Sharing Success Factors for Improvement of the Investment Environment

CT12/2008T
Session 1 – Investment Treaties

Tetsuro Fukunaga
Director, APEC Office
METI, Japan

Contents

• Development of FTAs and BITs throughout the world
• Regional EPAs consolidate production networks in East Asia.
• Investment Agreements leveraging FDI
  – Case studies from the experience of Japan and its partners

Development of FTAs throughout the World

- Increase in the number of FTAs worldwide:
- As well as the increase in FTAs in Asia, “cross-regional” FTAs have increased rapidly as well

NOTE that “Asia-Pacific” in the chart below is NOT same as the economies of APEC

Ratified BITs of major countries

<table>
<thead>
<tr>
<th>Country</th>
<th>Number of BITs</th>
</tr>
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<tbody>
<tr>
<td>Germany</td>
<td>135</td>
</tr>
<tr>
<td>China</td>
<td>119</td>
</tr>
<tr>
<td>Switzerland</td>
<td>119</td>
</tr>
<tr>
<td>UK</td>
<td>103</td>
</tr>
<tr>
<td>France</td>
<td>98</td>
</tr>
<tr>
<td>USA</td>
<td>46</td>
</tr>
<tr>
<td>Japan</td>
<td>21</td>
</tr>
</tbody>
</table>

Increase in the number of BITs worldwide:

Japan has been involved in only 21 investment agreements (13 BITs, 8 EPAs);
Germany, the UK, France and China each have over 100 BITs.

Development of BITs in the world

Number of signed BITs

- Increase in the number of BITs worldwide:

Trends in the number of BITs in the world

<table>
<thead>
<tr>
<th>Year</th>
<th>Germany</th>
<th>China</th>
<th>Switzerland</th>
<th>UK</th>
<th>France</th>
<th>USA</th>
<th>Japan</th>
</tr>
</thead>
<tbody>
<tr>
<td>1960</td>
<td>?</td>
<td></td>
<td>?</td>
<td>?</td>
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<td>?</td>
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<td>1990</td>
<td>?</td>
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<td>?</td>
<td>?</td>
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<td>?</td>
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</tbody>
</table>

Source: UNCTAD "Recent developments in international investment agreements (2006 – June 2007)"
Source: UNCTAD "Database on BITs"
Session 1-Mr Fukunaga

**Development of Economic Partnership in East Asia**

- **Japan-S.Korea**
  - Dec. '03: negotiation stopped

- **AFTA (ASEAN Free Trade Area)**
  - '92: came into force

- **Japan-Indonesia**
  - Jul. '08: came into force

- **Japan-Philippines**
  - Sep. '06: treaty signed

- **Japan-Brunei**
  - Jul. '08: came into force

- **Japan-Australia**
  - Apr. '07: negotiation started

- **Japan-Vietnam**
  - Jan. '07: negotiation started

- **Australia, NZ-ASEAN**
  - Feb. '05: negotiation started

- **India-ASEAN**
  - Aug. '08: concluded.

- **China-ASEAN**
  - '05: articles on trade in goods came into force
  - Jan. '07: agreed on the articles on trade in services
  - Jul. '07: articles on trade in services came into force

- **S. Korea-ASEAN**
  - Jun. '07: articles on trade in goods came into force
  - Nov.'07: artices on trade in services signed

- **Korea-India**
  - Mar. '06: negotiation started

- **Japan-Malaysia**
  - Jul. '06: came into force

- **China-NZ**
  - Apr.08: treaty signed

- **Japan-Singapore**
  - Nov. '02: came into force
  - '07: treaty reviewed

- **Japan-ASEAN**
  - Aug. '07: agreed in principle
  - Apr. '08:treaty signed

- **Japan-India**
  - Jan. '07: negotiation started

- **Japan-Thailand**
  - Nov. '07: came into force

- **Australia-NZ**
  - '83 came into force

- **China-Australia**
  - May '05: negotiation started

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**Inclusion List: Tariff Elimination**

- **Schedule**
  - ASEAN: eliminate the tariff rates by 2010 (in principle)
  - CLMV: eliminate the tariff rates by 2015 (in principle)

- **Sensitive Items (SL/HSL, GEL): Tariff Reduction/exemption**

**Accommodation**

- The AFTA-CEPT Rules of Origin enable accumulation in ASEAN for all directions of trade for all goods with added value of 40% or more within the region.

**AFTA made ASEAN as:**
- i) a large production basis without any duty,
- ii) a market with huge potential. By making use of this integrated economic area, industries have been formulating unique regional production networks.

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**Production network under ASEAN Free Trade Area**

- **Electronics parts (hard disk drive)**
  - Electronics industries have been formulating regional production networks in ASEAN.
  - For example, one high-tech company produces printed circuit boards in Viet Nam and exports them to The Philippines and Thailand, where products are finally assembled.

- **Auto and auto parts**
  - In view of global liberalization trends, the leading auto-producing countries of ASEAN recognize the need to form an integrated ASEAN market.
  - Through AFTA and EPAs with Japan, mutual complementation and large-volume production can be achieved for greater international competitiveness.
In order to supply parts/components/materials for not only domestic assemblers but also those in surrounding countries, solid supporting industries were formulated in ASEAN countries.

1,200,000 product basis in Thailand

Assembly Maker

Tier 1 parts/components makers

Tier 2 parts/components makers

16 companies

700 companies or more

1,200 companies or more

Comprehensive Economic Partnership in East Asia (CEPEA)

Aiming to achieve economic integration, narrow the development gap and realize sustainable development among ASEAN plus six (ASEAN and its FTA/EPA partners: China, Japan, S. Korea, India, Australia, and New Zealand).

CEPEA will cover a wide range of issues under the three pillars (economic cooperation, trade and investment facilitation, trade and investment liberalization).

CEPEA will contribute to developing a regional production network by combining FTAs and other measures under the three pillars.

Accumulation of investment under AFTA

- In order to supply parts/components/materials for not only domestic assemblers but also those in surrounding countries, solid supporting industries were formulated in ASEAN countries.

Example of Automotive Industry

1,200,000 product basis in Thailand

Assembly Maker

Tier 1 parts/components makers

Tier 2 parts/components makers

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Significance of AJCEP (ASEAN-Japan Comprehensive Economic Partnership)

Examples of trade in goods without AJCEP & under AJCEP

Without AJCEP

The product doesn't satisfy AFTA's standard

(*40% added value within the ASEAN region)

MFN tariff rate is applied to the product exported to Malaysia.

Under AJCEP

The product satisfies AJCEP's standard

(*40% of the value added within the ASEAN-Japan region)

The product is exported untaxed to Malaysia.

Examples of regional production network

FTA/EPAs with ASEAN

Schedule

Jan. 2007

Oct. 2007

Dec. 2007

ASIA

China

India

Japan

S. Korea

Thailand

Vietnam

ASEAN

East Asia Summit

launch of track-two study

cooperation

report from track-two study group

Jan. 2007

Nov. 2007

Dec. 2008

East Asia Summit

agreed to launch track-two study

(through Japan's proposal)

report from track-two study group

Jan. 2007

Feb. 2008

Mar. 2008

East Asia Summit

agreed to launch track-two study

(through Japan's proposal)

report from track-two study group

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agreed to launch track-two study

(through Japan's proposal)

report from track-two study group
Session 1-Mr Fukunaga

Major FDI impediments

ABAC in 2007 identified 10 major FDI impediments. It found that the biggest impediments are lack of transparency and complicated/delayed procedures.

Investment liberalization
i. Restrictions on foreign entry
ii. Performance requirements
iii. Restrictions on overseas remittances and controls on foreign currency transactions
iv. Restrictions on the movement of people and employment requirements

Investment facilitation
v. Lack of transparency in policies and regulations concerning investment (institutional problems)
vi. Complicated and/or delayed procedures with respect to investment-related regulations (implementation problems)

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Overall Picture of Investment Issues

<table>
<thead>
<tr>
<th>Goal</th>
<th>Policy Options</th>
<th>APEC Work</th>
</tr>
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<tbody>
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</table>

Japan’s unique effort – “Improvement of the Business Environment” Chapter

The “Improvement of the Business Environment” Chapter sets up a committee to allow investors and governments to work together to improve the business environment under an EPA framework.

- Invited investors can discuss directly with the other party’s government officials various issues related to the business environment.
- Topics of discussion include the improvement of infrastructure, simplification and facilitation of administrative procedures, improvement of public safety, and protection of IPR, as well as investment-related issues.

- Sub-Committees on Improvement of the Business Environment are established under the following EPAs:
  - Mexico (came into effect in April 2005), Malaysia (July 2006), Chile (September 2007), Thailand (November 2007), Indonesia (July 2008), Brunei (July 2008)
  - The EPA with The Philippines was signed in September 2006 but has not taken effect.

“Improvement of the Business Environment” Chapter – Benefits for investors

- All actors involved in a certain issue can meet together, not just government officials and claimants.
- Industries can raise an issue collectively, when an individual company may not be inclined to raise the issue on its own.
- Governments are required (as set forth in the EPAs) to take appropriate actions on requests raised in the committee.
- Issues can be raised even if the government agency in charge is unclear, or if there are two or more agencies are involved.
Case 1: Japanese FDI into Mexico after entry into force of the Japan-Mexico EPA

- Many Japanese companies consider Mexico the main production base in the NAFTA region.
- Recent cases: after entry into force of the Japan-Mexico EPA
  - Toyota: Expanding production capacity of commercial vehicles
  - Nissan: Expanding production capacity of compact cars
  - Honda: Expanding production capacity of automobiles

Case 2: Japanese FDI into Malaysia after entry into force of the Japan-Malaysia EPA

- Japanese FDI into Malaysia in 2006 increased about six-fold compared with the previous year.
- Through the increase in large-scale investment for high-value-added FDI, such as the IT-related industry and resin production, Japan became the No. 1 FDI source for Malaysia in 2006, replacing the US.
- When Japanese companies consider their strategy for production location in the ASEAN region, Malaysia is one of the important options since the conclusion of the Japan-Malaysia EPA along with its pre-existent reputation for political stability and adequate infrastructure.

Case 3: Japanese FDI into Vietnam after entry into force of the Japan-Vietnam BIT

- In Vietnam, the recent Japan-Vietnam BIT has improved the business environment and facilitated investments from Japan.

Japanese FDI into Malaysia in 2006

<table>
<thead>
<tr>
<th>Year</th>
<th>Million $</th>
</tr>
</thead>
<tbody>
<tr>
<td>2006</td>
<td>1500</td>
</tr>
<tr>
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Japanese FDI to Vietnam

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Japanese FDI to Mexico

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Japanese FDI to Indonesia

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<td>2009</td>
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Japanese FDI to Thailand

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<th>Year</th>
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<tr>
<td>2008</td>
<td>160</td>
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<tr>
<td>2009</td>
<td>180</td>
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Recent research has shown the positive impact of BITs on FDI.

   - comparing the FDI flow in the year BIT took effect and in the following year
     - among 55 developed and developing countries
     - sampling BITs concluded between 1982 and 1997
   RESULTS: 30% increase of FDI stocks on average in the year following BIT conclusion

   - comparing FDI flows from the US into 31 developing countries
     - the same methodology as above
     - sampling BITs concluded between 1991 and 2000
   RESULTS: $1 billion increase of FDI on average in the year following BIT conclusion

   - assessing the relationship between the number of concluded BITs of a country and FDI inflows
     - sampling FDI flows from OECD members into developing countries in 1996
   RESULTS: 2-3% increase in FDI flows as a country has an additional number of BITs

   - assessing cumulative stock of FDI until 2001
     - sampling BITs concluded between 1980 and 2001
     - FDI from OECD countries into OECD economies and into Central and Eastern Europe
   RESULTS: 4.8% additional increase of FDI stocks in short run and 8.9% increase in long term

List of references


Capacity Building for Sharing Success Factors of Improvement of Investment Environment

CTI 32/2008T

Session 1 – Investment Treaties

APEC, Lima, 15 August 2008

Thomas Westcott
Legal Adviser
UNCTAD

Introduction

1. The ‘Core Elements’ project
2. Characteristics of APEC IIAs and conclusions
3. Infrastructure and energy sectors

Possible IIA objectives

Promotion
Regional Establishment
Protection
BITs
FAs
Canada, Japan, US BITs
Liberalization

Core Elements Project – Phase I

Three steps:
1. Selecting APEC IIAs and identifying core elements
   – sample of 28 APEC IIAs: 14 BITs and 14 FTA investment chapters
   – 17 core elements were identified
2. Analysing textual approaches to core elements
3. Comparing core elements with APEC investment instruments
**Core Elements Project - Phase I**

The 16 'core elements' for Phase 1:
- Coverage
- NT
- MFN
- Performance Requirements
- Standard of Treatment
- Senior Management
- Expropriation
- Compensation for losses
- Subrogation
- Transfers
- Scheduling
- Denial of benefits
- Transparency
- ISDS
- Environment
- Investment cooperation
- Promotion and facilitation

**Some characteristics of APEC IIAs**

1. There is a considerable degree of conformity concerning the core elements included in APEC IIAs.
2. On closer examination, APEC IIAs contain significant differences in their wording and details.
3. Some APEC members adopt different approaches to BITs and PTIAs whilst others are concluding BITs that pursue the same objectives as their PTIAs.

4. APEC IIAs are first and foremost protective. The vast majority of commitments are intended to protect investment flows by limiting a host country’s regulatory discretion.
5. APEC IIAs are moderately liberalizing. Nevertheless, considerably more could be done.

6. APEC IIAs are indirectly promotional. Most agreements do not contain provisions directly promoting international investment flows. Rather, promotion occurs indirectly.
7. Recent trend in growing number of APEC IIAs to include significant revisions to wording of various substantive treaty obligations:
   - more details on meaning of FET,
   - meaning of indirect expropriation, and
   - significant innovations to ISDS procedures.
Comparing APEC IIAs with APEC investment instruments:

- Non-Binding Investment Principles (NBIP)
- Menu of Options
- Investment Transparency Standards

Purpose – to identify where investment treaty practice is more advanced than in these instruments and where more needs to be done to meet APEC investment goals.

Comparison identified gaps between APEC principles and APEC practice

Four key conclusions:
1. Coverage of admission issues in half APEC IIAs and a general trend for some IIAs to favour negative lists demonstrates a moderate level of commitment to the liberalization objective.

   But, very few examples of APEC IIAs used as a way of liberalizing investment policies and laws. Partial exception is the AUSFTA.

   Thus, APEC investment instruments such as the Menu of Options encourage an approach to liberalization that is not taken up in the treaty practice of APEC economies.

2. Limited treatment in IIAs of performance requirements. Substantial gap between APEC principles and treaty practice.

   NBIPs: APEC members aspire to "minimise the use of performance requirements [...]"

   But more than half the APEC IIAs in this study do not curtail use of performance requirements (though all APEC economies are now subject to TRIMs).

3. Comprehensive treatment by APEC IIAs of APEC investment principles relating to:
   - expropriation and compensation
   - non-discriminatory protection in the event of war
   - transfers of funds
   - dispute settlement mechanisms.
**Four key conclusions**

4. Additional protections included in APEC IIAs but not included in APEC investment instruments include:
   - fair and equitable treatment standard
   - full protection and security

**However... Core Elements Phase II**

Sydney Leaders’ statement agreed to extend this study:

“to undertake a study of bilateral investment agreements and core investment-related elements of existing FTAs with a view to developing principles for investment agreements.”

Aim to broaden understanding of approaches to core elements and from this identify investment principles.

**Core Elements Phase II**

- Significantly expands process of identifying core elements
  - Quantitative: from 28 to 100 APEC IIAs
  - Qualitative: 17 elements mapped in CE I; 29 elements will be mapped in CE II
- Also considers approaches taken in other regions
  - 100 IIAs
- Synergies with UNCTAD project!

**Infrastructure and energy sectors**

- Recent re-nationalization of certain infrastructure and energy resources in some countries has brought the expropriation provision back into the limelight
- Expropriation or national security exception?
- Changes in host countries’ laws in respect of foreign investment in infrastructure and energy may amount to a regulatory taking or indirect expropriation.
- Nowadays “fair and equitable treatment” requires that host countries do not violate the “legitimate expectations” of foreign investors – this can be particularly onerous in infrastructure and energy.
Negotiating APEC IIAs requires addressing 3 challenges:

- Promoting policy coherence
- Balancing private and public interests
- Incorporating development issues in IIAs.

**Core Elements Project Phase I**

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<th>Agreement</th>
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<tr>
<td>ASEAN Framework Agreement</td>
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CONCLUDING INVESTMENT NEGOTIATIONS
THE CASE OF CHILE
LIMA, PERU, AUGUST 15, 2008
General Directorate of International Economics Relations
Ministry of Foreign Affairs of Chile

Mr. Rodrigo Monardes Vignolo
Legal adviser
Services, Investment and Air Transport Department

FOREIGN TRADE POLICY
Chile is a small economy open to foreign trade. Trade policy based on further development of its openness (68% GDP 2006 v/s 16% 1972)

TRADE POLICY BASED ON:
• Improving and ensuring access for its goods, services & investment
• Stimulating the efficiency and competitiveness of national producers
• Stimulating domestic and foreign investment

MULTIDIMENSIONAL TRADE POLICY

TRADE POLICY:
OPENNESS

DOMESTIC ECONOMIC POLICY REFORM

GOODS

UNILATERAL OPENNESS

SERVICES & INVESTMENT

Unilateral policy
Negotiation of Bilateral Trade Agreements
Participation in regional and multilateral forums and negotiations
PILLARS OF ECONOMIC TRANSFORMATION

- Privatization of State-owned enterprises
- Regulatory reform
- FDI promotion

SECTORS INCLUDE:
- Telecommunications
- Energy
- Ports
- Mining
- Sanitary
- Financial

INVESTMENT: PRE AND POST ESTABLISHMENT OF INVESTMENTS FOR THE PRODUCTION OF GOODS AND THE PROVISION OF SERVICES

INVESTMENT STATISTICS
- High volume of FDI in relation to the size of Chile's economy
- US$ 3185 millions in 2006
  - Mainly from: Canada, European Union, USA
  - Mainly in: mining, energy and services

BILATERAL INVESTMENT TREATIES (BIT's) & FREE TRADE AGREEMENTS (FTA's)

- Bilateral Investment Treaties (BIT's):
  - Currently: 51 BIT's negotiated (37 in force)
  - 1991 Chile became a Member of ICSID

- Free Trade Agreements (FTA's):
  - Self contained chapters on investment. With ISDS
  - Pre-establishment; “seeks to invest”. Exceptions: AU & KR.
  - Broad definition of investment; “any kind of assets”
FTAS BY LIBERALIZATION APPROACH

**POSITIVE LIST** (GATS, EU, EFTA, MS)


LIBERALIZATION PROCESS

- **NEGATIVE LIST APPROACH**: All sectors included
- **STAND STILL**: Freeze actual level of liberalization
- **RACHETING EFFECT**: Captures all new unilateral liberalization
- **ANNEX II OR FUTURE EXCEPTIONS**: Flexibility

DISCIPLINES OF THE INVESTMENT CHAPTER

- **NATIONAL TREATMENT AND MFN**: Non-discrimination regarding nationals and third-party nationals
- **PERFORMANCE REQUIREMENTS**: Prohibition to impose certain requirements (i.e. export a given level; preference to goods produced in its territory)
- **SENIOR MANAGEMENT AND BOARD OF DIRECTORS**: Not require an specific nationality for senior management or the majority of the board

OTHER RULES

- **FREE TRANSFERS**: Right of the investor to transfer any kind of assets freely and without delay
- **EXPROPRIATION AND COMPENSATION**: Specific rules that regulate the process of direct and indirect expropriation and the rules of compensation
- **MINIMUM STANDARD OF TREATMENT**: Treatment in accordance with customary international law, including fair and equitable treatment and full protection and security.
Currently, in Chile, foreign investors can materialize their investments freely (subject to domestic regulations and standard tax regime).

Investments may enter under Chapter XIV of the Central Bank's Compendium of Foreign Exchange Regulation.

In Chile, there is a special and voluntary regime Decree Law 600 (Foreign Investment Statute).

**INVESTMENT REGIME**

- Greater transparency
- Stable rules
- Legal certainty
- More liberal and less burdensome regulations, rules or laws

**Thanks**

END OF PRESENTATION

Mr. Rodrigo Monardes Vignolo
Legal adviser
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General Directorate of International Economics Relations
Ministry of Foreign Affairs of Chile
ADDITIONAL RULES FOR ISDS

- PRELIMINARY OBJECTIONS
- FORK IN THE ROAD
- FRIVOLOUS CLAIMS
- TRANSPARENCY
- CONSOLIDATION

Session 1_ Mr Monardes
Session 2 – Investment-related policies
APEC, Lima, 15 August 2008

Thomas Westcott
Legal Adviser
UNCTAD

Capacity Building for Sharing Success
Factors of Improvement of Investment Environment

CTI 32/2008T

Today looking at...

1. Admission and establishment:
   - pre-establishment NT

2. Host Country Operational Measures (HCOMs):
   - performance requirements and senior personnel

Liberalising IIAs include...

- Pre-establishment MFN and NT with limited exceptions
- Broad definitions of investment and investor
- Strong transparency provision
- Limiting the use of performance requirements
- Limiting restrictions on employment of senior personnel

Admission and establishment

• Granting direct access to foreign investors:

  "Subject to the provisions of this Article, each Member State
  shall, open immediately all its industries for investments by ASEAN
  investors."

  Article 7(1) of the Framework Agreement on the ASEAN Investment Area (1998)

  • ...but subject to exceptions - temporary exclusions from
  the right of establishment.
Admission and establishment

• Granting pre-establishment MFN:
  "Each Party shall accord to investors of the other Party and to their investments treatment no less favorable than that it accords, in like circumstances, to investors of a non-Party and to their investments with respect to investment activities."

Art 90 of the Japan-Philippines EPA (signed 2006)

• ...also commonly subject to exceptions.

Exceptions to MFN:

1. The REIO exception (regional economic integration organisations)

"The provisions of this agreements shall not be construed so as to oblige one Contracting Party to extend to investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from:
(a) any customs union, free trade area, free trade agreement, common market, monetary union, or similar international agreement, to which either of the Contracting Party is or may become a party."

Article 5, Peru-Singapore BIT (signed 2003)

• Exceptions to MFN:

2. The Maffezini exception

"For greater clarity, treatment "with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments" referred to in paragraphs 1 and 2 of Article 4 does not encompass dispute resolution mechanisms, such as those in Section C, that are provided for in international treaties or trade agreements."

Annex B.4, Canada-Peru BIT (signed 2006)

• Granting pre-establishment NT:

"Each Contracting Party shall accord to investors of the other Contracting Party and to their investments treatment no less favorable than the treatment it accords, in like circumstances, to its own investors and their investments (hereinafter referred to as "national treatment") with respect to the establishment, acquisition, expansion, operation, management, maintenance, use, enjoyment, and sale or other disposal of investments."

Article 2.1 of the Japan-Republic of Korea IPPA (2003)

• Exceptions to NT: annexes - positive or negative list.
Host Country Operational Measures

- HCOMs aim to shape economic consequences of the investment
- Include various measures to influence the operations of foreign investors once inside host country’s jurisdiction
  - Local content and export requirements
  - Local equity participation requirements
  - Technology transfer and R&D requirements
  - Trade-balancing requirements, etc
- Used to influence the location and character of investment
  - eg. local content - encourage industrialisation
  - eg. technology transfer to develop industrial skills.

Intended to assist development

- Gained prominence in 1970s
- Part of the broader policy regime aimed at enhancing national welfare - used with incentives
- Where measures affect trade flows they are called TRIMs

...but in some cases negative effects

- Governments now recognise that not all HCOMs have positive effects in all circumstances
- May lead to a misallocation of resources
- Policies affecting interplay of market forces can cause distortions
- Therefore efforts to limit – but not eliminate - their use in the WTO TRIMs agreement and in bilateral IIAs.

There are 2 types of HCOMs

1. Limitations that a host country imposes on the operations of foreign investors
2. Performance requirements that firms meet certain specified goals with respect to their operations in a host country

NB: Often the results achieved by the imposition of either type of obligation are the same
...and three main categories of HCOMs

1. HCOMs explicitly prohibited at the multilateral level (WTO TRIMS Agreement) - “Red Light”
2. Additional HCOMs that are explicitly prohibited, conditioned or discouraged by interregional, regional or bilateral (but not multilateral) agreements - “Yellow Light”
3. HCOMs that are not contested - “Green Light”

HCOMs prohibited under TRIMs

TRIMs in conflict with Art. III (National Treatment):
- Specifying that particular products of domestic origin must be purchased or used by an enterprise, or
- Specifying that a particular volume or value of some products of domestic origin must be purchased or used by an enterprise, or
- Specifying that an enterprise must purchase or use domestic products at least up to a particular proportion of the volume or value of the local production of the enterprise, or
- Restricting the purchase or use of an imported product by an enterprise to an amount related to the consumption of its (the enterprise) local production.

TRIMs in conflict with Art. XI (Elimination of Quantitative Restrictions):
- Imposing a general restriction on the import of inputs by an enterprise or restricting the import of inputs to an amount related to the export of its local production,
- Restricting the foreign exchange for the import of inputs by an enterprise to an amount related to the foreign exchange inflow attributable to the enterprise,
- Restricting export by an enterprise by specifying the products so restricted, the volume or value of products so restricted, or the proportion of its local production so restricted.

• WTO TRIMS Agreement only applies to investment measures related to trade in goods (not services).
• It bans not only TRIMS that are obligatory in nature, but also those where compliance is necessary in order to obtain an advantage.
• And the prohibition applies to measures applied both at the time of entry of the investment as well as any applied after establishment.
Approach to HCOMs in some bilateral IIA
ts
• Some confirm the prohibition of those measures in TRIMs:
  
  “For the purposes of this Chapter, the Annex to the Agreement on Trade-Related Investment Measures in Annex 1A to the WTO Agreement, as may be amended, is incorporated into and forms part of this Agreement, mutatis mutandis…”
  
  Article 79, Japan-Malaysia EPA (2006)

• NAFTA and other IIA go beyond TRIMs
• NAFTA prohibits performance requirements being imposed subsequent to establishment (not just on establishment)
• Prohibition also imposed on investments of non-parties

HCOMs prohibited in other IIA

A. Prohibited measures going beyond those mentioned in the illustrative list of the TRIMS Agreement
  • Requirements to establish a JV with domestic participation
  • Requirements for minimum level of domestic equity participation
  • Requirements to locate headquarters for a specific region or the world market
  • Employment performance requirements
  • Export performance requirements
  • Restrictions on sales of goods or services in the territory where they are produced or provided
  • Requirements to transfer technology, production processes or other proprietary knowledge
  • R&D requirements
  • Measures contrary to the principle of fair and equitable treatment

B. Restricted discretion to impose operational measures (i.e. measures are allowed provided they meet certain requirements)
  • As a condition for the receipt or continued receipt of an advantage (quid pro quo for investment) (e.g. 1990 Charter on a Regime of Multinational Industrial Enterprise in the PTA for Eastern and Southern African States; NAFTA Art. 1106(4))
  • As a part of Government economic development programmes (e.g. Energy Charter Treaty, WB Guidelines on the Treatment of FDI)

C. The “best efforts” approach (e.g. US-DRC, US-Turkey, Malaysia-UAE)

Related issue - key personnel

• Appointments to senior management positions
• Majority of the board of directors
• Entry of key personnel/technical experts.
Key personnel

Singapore-Republic of Korea FTA 2005, Article 10.08:

1. Neither Party may require that an enterprise of that Party that is an investment of an investor of the other Party appoint to senior management positions individuals of any particular nationality.

2. A Party may require that a majority of the board of directors, or any committee thereof, of an enterprise of that Party that is an investment of an investor of the other Party, be of a particular nationality, or resident in the territory of the Party, provided that the requirement does not materially impair the ability of the investor to exercise control over its investment.

Final remarks

1. Scope for unconditional use of HCOMs has narrowed
2. Careful study of the impact of HCOMs is required at the country level
3. Flexible approach required for negotiating on HCOMs—especially with developing countries.
I am honoured to be invited to speak at this seminar and I thank the Ministry of
Economy, Trade and Industry (METI) Japan and the Tokyo Chamber of Commerce and
Industry (TCCI) and our APEC colleagues from Peru for inviting me. I am very pleased
to speak on behalf of ABAC, the APEC Business Advisory Council, on the important
topic of measures to improve investment environments in the APEC region.

The subject of this session covers policies to promote investment liberalisation in
manufacturing and services sectors. Before addressing those matters I would like to l
discuss policies generally to do with facilitating investment. By that, I mean policies to
promote the elimination of behind the border impediments to investment.

I will discuss these matters under three main headings:

- Progress in APEC in promoting investment flows

- the relevance of open investment policies to APEC businesses.

- are different policies relevant for promoting investment in manufacturing and in
services?

Progress in APEC in promoting investment flows

In a report commissioned by the APEC Investment Experts Group in 2006 – stage 1 of a
2 part report – “Reducing barriers to investment across APEC to lift growth and lower
poverty” – the report drew heavily on the World Bank’s 2005 Development report which noted studies showing strong positive links between increasing income and lowering poverty and the growth of investment. The same World Bank report asserted that the investment climate is central to growth and poverty reduction.

Investment is sourced from three main areas: public and private domestic savings; foreign direct investment and foreign portfolio investment. The majority of investment in APEC economies is from domestic sources; 88% in the period 2002-04 for lower income economies and 74% for all APEC economies. FDI flows in that period represented 5% of investment in all APEC economies and 8% in the lower income economies. Portfolio flows were relatively much higher than FDI flows in all APEC economies (21%) but only 4% in lower income economies.

Between 1989 to 2004 gdp growth increased by 218% in low income APEC economies and by 55% across APEC as a whole. There was a significant reduction in the numbers of people in poverty - living on less that $US 1 a day. On the basis of these relationships and the figures just quoted it is reasonable to conclude that significant progress is being made in the APEC region in promoting investment growth.

Other important points:

- the largest FDI flows were to the largest economies, the US and China
- the US, Japan and Canada were the largest sources of FDI of the APEC economies
- since 2002, capital flows have been on a strong upward trend worldwide (although this will have sharply reduced as a consequence of recent global financial turmoil)
- investment in developing Asia – including China and India – has risen by 8 percentage points of GDP in the current decade – nearly 3 percentage points above the 1997 crisis level
- in some other developing Asia (Thailand, Indonesia and Philippines) the decline in investment since the 1997 crisis has not been reversed – and in general remains weak
- Asian NIEs and South East Asian economies have become net capital exporters to developed economies
- increased financial market integration means that capital inflows are often matched by emerging capital market outward investment – and this is occurring in Latin America and in Asia.

The points just made are relevant in informing APEC’s work on investment.

The stronger upward trend worldwide in foreign capital flows (until the recent global liquidity crisis) suggests that investment regimes generally have been increasingly accommodating to foreign investors. Another interpretation could however be that in the recent era of high liquidity investors were willing to take on higher level risk.

Of concern is the relatively low level of pick up in domestic investment in emerging Asian economies (other than China and Vietnam). And that while savings have generally grown at stronger rates than the rate of investment, the surpluses in some Asian economies have been invested in foreign reserves.

APEC’s Bogor goals are interpreted as promoting investment and trade liberalisation at the border. Recently, APEC has adopted a comprehensive plan to encourage reforms to facilitate investment “behind the border” – through the Investment Facilitation Action Plan. IFAP is a major institutional development in APEC and one that is strongly commended and supported by the regional business community. The act of bringing together a comprehensive plan to facilitate investment growth marks a serious commitment by APEC economies to further develop the strategic framework for growth and integration in the region.
One final point concerns the relationship between facilitation and liberalisation of investment. They are in my view inseparable parts of the whole. While it is important to develop and promote measures to enhance domestic investment flows, the benefits that deeper and broader investment can bring in the context of regional economic integration can only be fully realized when investment at the border is also liberalised. This is clearly recognized in the IFAP.

To give effect to the goal of economic integration and to the Bogor goals, economies will be obliged to apply the concept of equal treatment and national treatment to foreign investment as well as to domestic investors. These concepts are well known and are fundamental to progressive international investment policies.

**The relevance of open investment policies to APEC businesses**

Treating foreign investors equally with each other and with domestic investors in an economy is fundamental to progressive international investment policies. Businesses in the region will naturally seek to exploit local advantages in their investment decisions. Advantages may be reflected in the prices of materials, labour, energy and capital. And as businesses increasingly seek to benefit by outsourcing, or through supply chain management, open investment policies will tend to promote investment flows; closed or restrictive policies tend to inhibit flows.

Agreement to measures to promote regional integration and to adopt the IFAP reinforce the Bogor goals for open investment in the region. The central question now to be addressed in the IFAP is how to facilitate domestic investment flows in the region’s economies. This is a highly positive and extremely important challenge. For some or most economies, progress will involve reforms to the regulatory, financial and investment policy framework and it may well necessitate reforms to competition policies and other micro reforms. In short, investment policies and structural reforms are closely interrelated.
Business is about risk taking and profit maximization. Growing economies encourage both risk taking and contribute to business profitability and those forces provide a continuing momentum for economic growth, job creation and deeper social opportunities for communities. Risk can be better analysed and profits maximized where the investment environment is predictable, transparent and where legal contracts are enforceable under law and where the economic, commercial and political environment is stable. Of major importance to business is a fair and open market based environment and one where the regulatory framework is conducive to risk taking and innovation.

Assuming the right legal and policy environment, investment intentions are likely to be influenced into actual flows by the quality of the governance arrangements that confront a potential investor – whether foreign or domestic. Good, reliable and ethical governance must be reflected in all facets of the public sector that an investor has to deal with and in the private market mechanisms.

I noted earlier the importance of the openness of markets. If new domestic investors are precluded from competing in existing markets in an economy, prima facie the economy is unlikely to gain the full benefits that competitive markets offer. Savers and financial institutions will have limits placed on the range of investment options and financial innovation and consumer choice will similarly be limited. There are rarely compelling economic reasons to support investment restrictions and certainly for economies seeking to move to a higher growth path that kind of impediment is almost certain to conflict with that higher goal. People in poverty are more likely to remain in poverty and the jobless remain jobless. None of this is good for business. Some business sectors may prefer to be protected from competitive forces but rarely if ever is that good national policy.

Similarly, the logic of excluding foreign entry into domestic markets is a policy inimical to growth and development. For these reasons, ABAC is strongly supportive of open markets for investment and for reducing and eliminating barriers to access at the border.
And as business move to integrate production and distribution processes, and to establish global and regional supply chains, barriers to open investment become serious impediments and where they exist they will tend to deflect investment to economies where foreign participation is welcome. The massive rise in foreign direct investment flows into China over the last decade or so and the growth in flows into Vietnam over the last few years attest to the relevance of open investment policies at the border to business decision making.

I note here the strong correlation between the work of the IEG, the Economic Committee, the Senior Finance Officials’ Meeting and the recently concluded APEC Ministerial Meeting on Structural Reform. All are strongly focused on promoting the policy framework within APEC to promote reforms that will encourage competition and investment flows.

It is pleasing to note that ABAC is involved in these APEC fora and is involved in developing APEC policies aimed at enhancing investment and structural reforms. ABAC is also committed to support capacity building initiatives aimed at sharing experiences within the APEC community. One aspect of ABAC’s support in investment matters will be the provision of a range of key performance indicators to measure the pace of change that will inevitably be required in APEC economies in pursuit of reforms aimed at encouraging deeper and broader investment flows. ABAC will also identify good reforms as seen from a business perspective.

**Are different policies relevant in promoting investment in manufacturing and in services?**

Ideally, investment policies for manufacturing and services sectors ought both to be open and, to avoid distortions in the allocation of resources in an economy, ought to be based on the same principles. A quick glance at the investment commitments made under the WTO GATs on services point to a high degree of selectivity by economies in the way...
they treat investment in services, and in particular in financial services. The reasons for this are clear enough. There is often political sensitivity to controlling the degree of foreign participation in an economy’s banking, media, communications, distributive and in other services sectors.

Sensitivity about foreign ownership in some sectors is a political economy reality. Concerns about ownership often over-ride rational economic analysis. Nonetheless, it is useful if policy makers bring economic analysis to the fore in shaping investment policies for the services sectors. Arguably, given the leading role that financial services play in supporting economic efficiency and productivity for the economy as a whole, there are particularly strong economic arguments for ensuring that investment in services are open and transparent.

As regards work in APEC, given the range and complexity of political economy barriers erected against the entry of foreign service providers, greater attention is justified in reducing or eliminating those barriers. A broad objective should be to bring any barriers or restrictions in line with those applying to non-service sectors and, ultimately, if the region is to successfully integrate, to open markets to investment in all sectors.

Significant work is being undertaken in the APEC IEG and the Economic Committee in promoting measures to help economies develop the economic and political structures that would assist communities better understand the impact of restrictive investment policies and to build the political momentum to tackle their removal.

ABAC has provided detailed advice to regional economies on the policy options that ought to be considered in opening services markets, particularly financial services, both at the border to foreign investors and behind the border to domestic investors. The Finance and Economic Working Group will this year propose measures to promote investment in securities service markets in the region. This work is closely allied to work also being undertaken by ABAC and the Advisory Group on APEC financial system capacity building aimed at promoting bond markets in the region’s economies and
in promoting private pensions systems. To realise full benefits of bond markets and private pensions, funds need to be managed effectively, prudently and competitively. Open investment policies to allow competition from local and foreign investors are highly relevant.

**Summarising**

A great challenge for APEC is to create the conditions which encourage domestic and foreign investment flows in the region – to promote economic growth, jobs and to reduce poverty.

Domestic investment is significantly more important in total investment terms in the region than is foreign investment and so measures to promote investment “behind the border” is a particularly worthy objective of APEC.

FDI flows are strongest among the “open” investment economies but major emerging markets are now attracting very large capital inflows. (Some are also becoming major capital exporters).

There are a number of smaller but important emerging economies whose investment levels have not risen above the levels apparent before the Asian financial crisis of a decade ago.

There are compelling economic reasons to raise investment levels and to open markets to both domestic and foreign competition. Business in the region is already deeply involved in supply chain processes for both manufacturing and distribution. Open investment policies reduce risk taking and support profit maximization, further investment and job creation.

APEC’s approaches to helping economies develop sound investment policies are moving purposefully and progressively through work in IEG and the Economic Committee.
IFAP is a major development and strongly supported by business as a comprehensive approach to facilitating investment flows. Open investment policies which are transparent, predictable and supported by sound governance systems are critical to the achievement of regional economic integration.

The political economy barriers to investment in services and in “sensitive sectors” creates major challenges and where those constraints exist they may well limit competition and efficiencies in certain sectors and to the economy overall. There are solid economic arguments for tackling those barriers and APEC is well placed to develop frameworks aimed at reducing or eliminating them.

Thank you.
When Tesla Motors, a pioneer in electric-powered cars, set out to make a luxury roadster for the American market, it had the global supply chain in mind. Tesla planned to manufacture 1,000 battery packs in Thailand, ship them to Britain for installation, then bring the mostly assembled cars back to the United States.

But when it began production this spring, the company decided to make the batteries and assemble the cars at its home base in California, cutting more than 5,000 miles from the shipping bill for each vehicle.

“It was kind of a no-brain decision for us,” said Darryl Siry, the company’s senior vice president of global sales, marketing and service. “A major reason was to avoid the transportation costs, which are terrible.”
**Hub of Access to Regional Markets**

(Countries and populations)

- **Japan**: 128 million
- **China**: 1.3 billion
- **India**: 1.1 billion
- **New Zealand**: 4 million

**Early Harvest:**
- **China**—Thailand
- **Japan**—Thailand Economic Partnership Agreement

**BOI - Ready to Serve, Ready to Lead**

- The BOI offers a wide range of attractive tax incentives
- However, we recognize that investors do not live by tax incentives alone
- With all the competition for FDI, we have placed great emphasis on providing investment services—before, during, and after the investment application process.

**We All Have Something to Boast About**

- **Bangkok Best City in the World**
  - Voted by Travel & Leisure magazine readers based on sights, culture/arts, restaurants/food, people, shopping, value
- **Ease of Doing Business** - **Thailand #15 in the world**
  - World Bank Study: Doing Business 2008
- **Most Attractive FDI Locations** – **Thailand #11 in the World**

**BOI Support Services**

- **Investment Matchmaker Program**
- One-stop for visas & work permits: work permits in 3 hours
- **Industrial Subcontracting Services**
- **Vendors and customers program (BUILD Unit)**
- **ASEAN Supporting Industry Database**
- Interaction with other govt. agencies on behalf of investors
- **Country desks**
- **Overseas offices**
Investment Services Center

Scope of Services
- Provide consultancy services to investors and other interested persons pertaining to investment and related law and regulation in Thailand
- Brief outgoing and incoming business missions
- Organize exhibitions on investment in Thailand and publicize BOI services
- Arrange business meetings and appointments, cooperate and coordinate with both private and public sectors, as per investors’ request
- Provide information via www.boi.go.th
- Administer the BOI Information Center providing material on investment in Thailand, economic statistics, etc.
- One Stop Service for Visas and Work Permits
- Match Making Service

BOI, Ready to serve, Ready to lead

Recent Enhancements
- Reduce Approval Time to 15 Working Days
- Fast-Tracked Arrivals at Suvarnabhumi Airport

Investor Feedback
- Annually Conduct Foreign Investor Confidence Survey
- Continuously Conduct Customer Satisfaction Surveys
- Meet with Joint Foreign Chambers of Commerce in Thailand on a Regular Basis

Additional Support for Investment
- IEAT Free Zones
- Customs Free Zones
- Bonded Warehouses
Industrial Estate Authority of Thailand (I-EA-T)

- Operate 38 industrial estates in Thailand, 26 of which are joint ventures with private sector
- Nine out of the 38 industrial estates offer Free Zones

General Privileges for investors in GIZ and I-EA-T Free Zone

- Right to own land in an industrial estate
- Right to bring in foreign technicians and experts to work in Thailand
- Right to bring in foreign technicians’ and expert’s spouses or dependents to stay in the country
- Right to remit foreign currency out of the country
- Right to operate service and trading businesses

Privileges for investors in the I-EA-T Free Zone

1. General Privileges
2. Tax Privileges
   - Exemption of import/export taxes and duties
   - Exemption of excise taxes on machinery, equipment, components, raw materials, and supplies used for the production of goods, and other merchandise

More Convenience in I-EA-T Free Zone

- Operators in the I-EA-T Free Zone are afforded the same privileges to bring in items or raw materials as in the Customs Free Zone.
- Permission to import into Thailand or bring into the I-EA-T Free Zone, merchandise and raw materials for production, trading or service offering, without requiring that importation of such material is restricted to only business operators.
- Import/export goods are exempted of standard and quality control requirements under any other laws – except the customs law.
- Relief of tax burdens for products taken out of I-EA-T Free Zone for domestic use or consumption.
**Customs Free Zones**

- Relief from Import and Internal Taxes/Duties
- Relief from Export Duty on Re-Exports
- Relief from Standard/Quality Control Requirements
- Duty Exemption on Waste, Scrap, and Yield Loss
- Eligible for Export Tax Refund/Exemption Schemes

**Bonded Warehouse under Customs Act**

Various types of bonded warehouses under Customs Act include:

- Bonded Warehouse of Manufacturing Type
- Bonded Warehouse for Vessel Repair or Construction
- Bonded Warehouse of General Type
- Bonded Warehouse of General Type for Goods Demonstration or Exhibition
- Bonded Warehouse of General Type for Oil Storage
- Bonded Warehouse of Duty Free Shop Type
- Duty Free Shop Type for Goods Demonstration and Distribution
- Bonded Warehouse for Free Trade
**Bonded Warehouse Summary**

<table>
<thead>
<tr>
<th>Manufacturing Type</th>
<th>General Type</th>
<th>Duty Free Shop Type</th>
<th>Duty Free Shop for Goods</th>
<th>Demonstration and Exhibition</th>
<th>Vessel Repair or Construction</th>
<th>Free Trade Type</th>
</tr>
</thead>
<tbody>
<tr>
<td>14</td>
<td>3</td>
<td>6</td>
<td>20</td>
<td>13</td>
<td>17</td>
<td>39</td>
</tr>
</tbody>
</table>

Source: Bonded Warehouse Office, Customs Department as of June 2008

**BOI Offices Around the World**

Overseas Offices

- Europe: Frankfurt, Paris
- Asia: Tokyo, Osaka, Shanghai
- North America: New York and Los Angeles
- Coming soon: Seoul, Taipei, Beijing, Guangzhou, Sydney, Stockholm

**Ready to Serve, Ready to Lead**

Help Desk at BOI Headquarters
- 555 Vibhavadi-Rangsit Road
  Chatuchak, Bangkok 10900 Thailand
- Telephone: +66 (0) 2537-8111
- Email: head@boi.go.th

**Thank You**
Services Liberalization and Negotiations in Peru
Experience, gains, homework and sectorial performance

Benjamín Chávez
Head of Services Negotiations
Vice Ministry of Foreign Trade
Lima - Perú
August 15, 2008

The starting point (1992): Reforms and Liberalization
- Structural Reforms (Washington Consensus)
  - Liberalization of Goods’ Market
  - Liberalization of Services’ Market (including the liberalization of financial market)
  - Liberalization of the capital Market
  - Flexibilization of Labour Market
  - Public administration reform
  - Privatization and Concession processes (liquidation of states monopolies)

The first steps I (WTO)
- Uruguay Round (1995)
  - First agreement negotiated in services
  - Schedules of commitments for market access and national treatment (first intention to bind the liberalization process mainly in telecommunications and financial services)
  - Specific commitments/annexes on air services, financial services, telecommunications/reference paper.

Contents
- Starting point (1992): Reforms and Liberalization
- Building Process
  - The first steps (WTO and FTAA)
    - Peru’s Regional Integration in Services
    - The FTAs in Services
  - Gains and Homework
  - Sectorial Performance (Transport, Telecommunications, Energy and Construction)
The first steps I (WTO)

- Doha Round (2001)
  - Market access negotiations (positive approach)
  - Bilateral and plurilateral requests / Peru’s initial and revised offers
  - Sectoral commitments: professional services, CRS, OBS, distribution, tourism, etc.
  - Commitments for temporary movement of natural persons (mode 4)
  - Commitments for outsourcing activities (mode 1)
  - Text negotiations (Peru’s interests)
    - Domestic regulation
    - Subsidies
- July Failure (2008)
  - Which shall be the next steps?

The first steps II (FTAA)

- Group of Negotiations on Services
- Two different approaches
  - GATS approach (leading by Brazil)
  - NAFTA approach (leading by USA)
- Text proposals including sectoral developments on:
  - Telecommunications
  - Financial services
  - Temporary movement of natural persons
  - Professional services
- The FTAA fails... but it was a great exercise of negotiations which allow us to strength and develop technical capacity on trade negotiations.
- In the case of Peru’s services negotiators, the FTAA participation allow us to familiarize to NAFTA approach for forthcoming negotiations.

Regional Integration (Andean Community)

- Cartagena Agreement (mandate of negotiations)
- Decision 439 (1998)
  - Framework for services liberalization inside Andean C.
  - Negative list approach (in a peculiar manner)
  - Phase out – in principle 2005
  - Possibility to develop sectorial liberalization and some exceptions
- Decision 510 (non conforming measures)
  - Peru (22), Bolivia (55), Colombia (95), Ecuador (95)

Regional Integration (Andean Community)

- Decision 659
  - Implementation of the services liberalization established in D. 439.
  - It states some sectorial-based and measures-based specific treatment
- Sectoral decisions
  - Telecommunications, tourism, energy services, land and maritime transport.
  - Financial services, Professional services, screen quotas (in process of negotiations)
FTA’s I: Peru – US FTA (an emblematic process)

- NAFTA APPROACH
- Cross Border Trade in Services (modes 1, 2 and 4) and Investment (mode 3+)
- Exclusions
  - Air services, subsidies, denial of benefits
- Negative list approach
  - Current non conforming measures (Annex I)
  - Future reservations (Annex II)
- Other obligations
  - Transparency (strong commitments)
  - Domestic regulation (best endeavour commitments)
  - Free transfers and payments
- Sectorial chapters
  - Telecommunications, financial services, e-commerce
- The great absent: Temporary movement of business persons

FTA’s II: Other FTA’s

FTA’s - NAFTA Approach
CLOSED (but not in force)
- FTA Peru – Chile
- FTA Peru – Singapore
- FTA Peru – Canada
- IN PROCESS OF NEGOTIATIONS
  - FTA Peru – Mexico

FTA’s – GATS Approach
IN PROCESS OF NEGOTIATIONS
- FTA EC – Andean C. (Mix approach)
- FTA Peru – China
- IN PROCESS OF NEGOTIATIONS
  - FTA Peru – Thailand (not defined)

Peru strongly prefers the NAFTA approach; however, depending of the importance of the trade partner, there has been applied some exceptions.

Services Liberalization / Negotiations: Which have been the main gains for Peru?

- Efficiency gains
- Productivity gains
- Employment-creation
- Increases in capital to finance growth
- Increases in savings and investment
- Transfer of technology
- Building human capacities
- Dynamic gains from competitive infrastructural services
- Security and predictability of market access

Gains from Mode 1 and Mode 4: What could Peru Gain (more)?

- Gains from liberalizing movement of people (mode 4)
  - Remittances
  - New investments (savings)
  - Encourages entrepreneurship
  - Investment in human capital, among others.
- Gains from outsourcing (Mode 1)
  - Host economies (Peru)
    - Employment creation
    - Diversification towards services exports (one possibility)
    - Higher wage rates and higher taxation
    - Increases possibilities for strategic investments (local subsidiaries, joint ventures, establishment of R&D centers)
  - other spillover benefits
Is Peru doing its Policy Homework?

Homework done
- Economic policy
- Educational reform
- Infrastructure
- Policy Coherence
- Competition Policy
- Support for MYPES
- Export friendly environment
- Regional Markets

Pending Issues
- Health Services
- Research and Development
- Infrastructure (a big GAP)
- Arising national standards
- Promotion of Services Exports (regional markets)


<table>
<thead>
<tr>
<th>Year</th>
<th>Telecommunications</th>
<th>Transport</th>
<th>Energy</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1995</td>
<td>805.3</td>
<td>408</td>
<td>295</td>
<td>1508</td>
</tr>
<tr>
<td>2000</td>
<td>550.4</td>
<td>285.2</td>
<td>659</td>
<td>1504</td>
</tr>
<tr>
<td>2005</td>
<td>421.3</td>
<td>381.5</td>
<td>393.7</td>
<td>1196</td>
</tr>
<tr>
<td>2006</td>
<td>486.7</td>
<td>700</td>
<td>480.16</td>
<td>1666.86</td>
</tr>
<tr>
<td>2007</td>
<td>487.4</td>
<td>800</td>
<td>485.94</td>
<td>1773.34</td>
</tr>
<tr>
<td>2008 (*)</td>
<td>488.45</td>
<td>900</td>
<td>495.02</td>
<td>1883.47</td>
</tr>
</tbody>
</table>

(*) Forecasted
**Transport I (main investments committed)**

- Lima Airport Partners [LAP] "Jorge Chavez Airport"
  - Enterprise: Flughafen Frankfurt Main AG
  - Concession features:
    - Investment: US$ 1,214'000,000
    - Timeframe: 30 years
    - Type of contract: BOT
- "South Dock" – Callao Port
  - Enterprise: Dubai Ports Internacional
  - Concession features:
    - Investment: US$ 617'000,000
    - Timeframe: 30 years
    - Kind of contract: DBFOT (Design, Build, Finance, Operate and Transfer)

**Transport II (main investments committed)**

- Inter-Oceanic Road (stretches 2,3&4)
  - Concession features:
    - Investment: US$ 810'000,000
    - Timeframe: 25 years
    - Kind of contract: BOT
- Inter-oceanic Road (stretches 1 & 5)
  - Enterprise: Graña & Montero and Hidalgo & Hidalgo

**Transport: Concessions Granted**

<table>
<thead>
<tr>
<th>Year</th>
<th>Sector</th>
<th>Enterprise/Project</th>
<th>Transaction (US$ MM)</th>
<th>Investment committed (US$ MM)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1994</td>
<td>Lima</td>
<td>Airports Corpac – Airport Jorge Chavez Parking</td>
<td>12.0</td>
<td>0.5</td>
</tr>
<tr>
<td>1994</td>
<td>Lima</td>
<td>Airports Corpac – Duty Free</td>
<td>8.7</td>
<td>5.0</td>
</tr>
<tr>
<td>2000</td>
<td>Terrestrial</td>
<td>Railway System (South, Center and South-Orient)</td>
<td>157.0</td>
<td>82.0</td>
</tr>
<tr>
<td>2000</td>
<td>Terrestrial</td>
<td>International Airport Jorge Chavez / LAP</td>
<td>617.0</td>
<td>334.0</td>
</tr>
<tr>
<td>2001</td>
<td>Terrestrial</td>
<td>Inter-Oceanic South Road: Stretches 1 &amp; 4</td>
<td>220.0</td>
<td>220.0</td>
</tr>
<tr>
<td>2001</td>
<td>Terrestrial</td>
<td>Inter-Oceanic South Road: Stretches 4 &amp; 5</td>
<td>610.0</td>
<td>610.0</td>
</tr>
<tr>
<td>2001</td>
<td>Terrestrial</td>
<td>Inter-Oceanic South Road: Stretches 5 &amp; 6</td>
<td>120.0</td>
<td>120.0</td>
</tr>
<tr>
<td>2002</td>
<td>Lima</td>
<td>Ports Terminal &quot;Dock South&quot; – Callao Port</td>
<td>617.0</td>
<td>617.0</td>
</tr>
<tr>
<td>2002</td>
<td>Lima</td>
<td>Regional Airport</td>
<td>192.0</td>
<td>192.0</td>
</tr>
<tr>
<td>2002</td>
<td>Terrestrial</td>
<td>Inter-Oceanic South Road: Stretches 1 &amp; 5</td>
<td>220.0</td>
<td>220.0</td>
</tr>
<tr>
<td>2002</td>
<td>Terrestrial</td>
<td>Inter-Oceanic South Road: Stretches 6 &amp; 7</td>
<td>320.0</td>
<td>320.0</td>
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<tr>
<td><strong>TOTAL</strong></td>
<td></td>
<td></td>
<td><strong>316</strong></td>
<td><strong>3,720.8</strong></td>
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</table>
### Telecommunications

#### Fixed Phones

<table>
<thead>
<tr>
<th>Year</th>
<th>Nº of lines in service</th>
<th>Density</th>
<th>Nº of service suppliers</th>
</tr>
</thead>
<tbody>
<tr>
<td>1994</td>
<td>758,191</td>
<td>3.2</td>
<td>1</td>
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<tr>
<td>2007</td>
<td>2,672,678</td>
<td>9.64</td>
<td>8</td>
</tr>
</tbody>
</table>

#### Mobile phones

<table>
<thead>
<tr>
<th>Year</th>
<th>Nº of lines in service</th>
<th>Density</th>
<th>Nº of service suppliers</th>
</tr>
</thead>
<tbody>
<tr>
<td>1994</td>
<td>52,000</td>
<td>0.2</td>
<td>2</td>
</tr>
<tr>
<td>2007</td>
<td>15,417,368</td>
<td>55.63</td>
<td>4</td>
</tr>
</tbody>
</table>

### Telecom Suppliers in Peru

- Telefónica del Perú
- Telefonica Movil
- América Movil (Claro)
- Movistar
- Telmex Perú
- Telcel
- Movil
- America Movil

### Sectorial Stock of FDI, 2008

- Comunicaciones 32%
- Energía 11%
- Industria 25%
- Minería 19%
- Finanzas 12%
- Comercio 8%
- Otros 12%

Source: PROINVERSION
Evolution of Investments in Electricity Sector (I)

Evolution of Investments in Electricity Sector (II)

Forecast of the Electrification Coverage

Construction

The construction sector is registering the highest growth in GDP 2008. In April 2008 this sector expands in 33.9%.

Source: Central Bank, BCRP
The construction of infrastructure, malls, hotels and apartment buildings explains the growth in the construction sector. Peru is experimenting a real "Construction Boom".
Promoting Liberalization of Trade in Services: Experience of the United States

Jai Motwane
Office of the U.S. Trade Representative
Components of U.S. GDP growth
U.S. services trade balance

U.S. Services Trade Policy Framework

Liberalized services sector benefits economic growth and development:

- Services constitute the “infrastructure” modern economies: transport, telecommunications, distribution, express delivery, etc.
- Liberalized services regimes attracts investment, increases competition, spurs innovation, raises productivity, and lowers costs while increasing choice for consumers.
- Competitive services sectors reduce costs and increase efficiency and productivity throughout all sectors of the economy.
- The United States pursues investment liberalization unilaterally, bilaterally, and multilaterally.

United States maintains an open investment regime, with few sectors closed to investment or subject to equity limitations:

- Investors of FTA partner economies provided treatment no less favorable than that provided to U.S. investors with respect to establishment.
- Limitations to national treatment limited, narrowly defined, and scheduled on a negative-list basis.
- Investment provisions of U.S. FTAs apply across sectors, including services sectors.
- Market access investment provisions complemented with national treatment provisions with respect to cross-border services.
### U.S. Services Trade Policy Framework

United States GATS commitments among best in WTO:

<table>
<thead>
<tr>
<th>Service</th>
<th>Communication</th>
<th>Construction</th>
<th>Distribution</th>
<th>Environment</th>
<th>Transport</th>
</tr>
</thead>
<tbody>
<tr>
<td>United States</td>
<td>1</td>
<td>15</td>
<td>1</td>
<td>1</td>
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<tr>
<td>China</td>
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<td>29</td>
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<tr>
<td>Japan</td>
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<td>32</td>
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<td>9</td>
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<td>Korea</td>
<td>77</td>
<td>28</td>
<td>42</td>
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<td>China</td>
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<tr>
<td>Switzerland</td>
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<td>62</td>
<td>35</td>
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<tr>
<td>Hong Kong, China</td>
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<td>74</td>
<td>20</td>
<td>60</td>
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<tr>
<td>Canada</td>
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<td>75</td>
<td>55</td>
<td>60</td>
<td>55</td>
<td>91</td>
</tr>
</tbody>
</table>

World Bank, World Trade Indicators 2008

### Impact of Open Investment

United States is largest recipient of global FDI:

Inward FDI stock, 2006

**Impact of Open Investment**

United States leading recipient of inward investment flows:

<table>
<thead>
<tr>
<th>Country</th>
<th>2002</th>
<th>2003</th>
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**Services Component of U.S. FDI**

Services account for majority of FDI in the United States:

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UNCTAD FDI-STAT Database (2006)
Benefits of FDI in Services

"The international competitiveness of traditional sectors of developing economies is heavily dependent on access to services at world prices. The best guarantee that services will be supplied at world prices is to open an economy to the pressures and opportunities of international competition or trade and investment liberalization."

Benefits of FDI in Services

High level of FDI in services makes the U.S. economy more competitive:
- Reduction of price to consumers
- Reduction of costs to businesses
- Increased competitiveness of U.S. service providers
- Stronger performance of U.S. services sector

Costs for infrastructure services in the U.S. at global low:

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<th>Economy</th>
<th>Planning</th>
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UNCTAD, Study Series No. 16, 2002
Benefits of FDI in Services

... particularly in comparison with developing economies:

UNCTAD, Study Series No. 19, 2002

Benefits of FDI in Services

U.S. telecommunications tariffs are amongst the lowest in the world:

OECD Communications Outlook 2007

Benefits of FDI in Services

U.S. services companies are world leaders:

USITC, Recent Trends in Services, 2008
Benefits of FDI in Services

Foreign firms contribute stronger U.S. economy:

- In 2005, affiliates of foreign services companies contributed $274 billion to U.S. gross product.
- These firms spent $10 billion on research and development in the United States.
- Affiliates of foreign services companies employ 3 million workers in the United States.
- These companies paid employee compensation of $178 billion in 2005.

United States is a Services Economy

A robust and competitive services sector is essential to U.S. economic growth and employment:

- Foreign firms contribute stronger U.S. economy:
- U.S. private sector GDP, by industry, 2006
- U.S. private sector employment, by industry, 2006

United States is a Services Economy

... and to U.S. export performance:

- Share of world cross-border services exports, 2006
- Services trade balance of leading exporters, 2007

Key Success Factors

United States has maintained a consistent environment favorable to investment in services:

- Few restrictions to investment
- Non-discriminatory treatment
- Transparency and predictability
- Attention to key infrastructure services
PROMOTING LIBERALIZATION OF TRADE IN FINANCIAL SERVICES AND INTERNATIONAL COOPERATION ON STRENGTHENING OF THE FOUNDATIONS OF INTERNATIONAL FINANCE (FINANCIAL INDUSTRIES)

Judit Vadasz
OECD, Directorate for Financial and Enterprise Affairs
Investment Division

Content

• Importance of trade in financial services
• Why OECD Codes/National Treatment Instrument matter?
• OECD Codes and NTI
  – General Overview
  – How obligations are adhered to?
  – Code of Liberalisation of Current Invisible Operations
  – Code of Liberalisation of Capital Movements/NTI
• Other OECD: Financial Affairs Division
• Other international organisations:
  – WB
  – IMF
  – BIS, IOSCO, IAIS

Importance of trade in financial services

• Role of trade in financial services:
  – Potential to enhance capital market efficiency;
  – Improve the quality, availability and pricing of financial services;
  – Stimulate innovation through the dissemination of new technologies, know-how, and skills; and
  – Promote the use of international good practices in areas such as accounting, risk management, and disclosure of financial information.
• Notwithstanding these benefits, weaknesses in regulation and supervision, especially if combined with poor macroeconomic management, can expose financial systems to risks following liberalization, such as increased volatility of capital flows and financial instability.

Why OECD Codes/NTI Matter?

• Current Invisible Code directly covers the issue.
• Financial liberalization and capital account liberalization are often synonymous because:
  ➢ foreign capital is often the only source, and
  ➢ a financial system operating on market terms needs capital account transactions to manage its risks.
• In practice countries that open the capital account are more likely to liberalize financial services trade and promote competition.
• Some capital account liberalization measures directly correspond to financial liberalization.
OECD Codes and NTI

General Overview

• Codes of Liberalisation and the National Treatment Instrument
  – Reasons for existence
  – Unconditional liberalisation obligation
    ➢ Difference with WTO and GATS negotiations
    ➢ Standstill
    ➢ Rollback
    ➢ “Ratchet effect”
    ➢ MFN and national treatment
  – All WTO modes of trade in financial services, except self-employed persons.
  – List of reservations and exceptions.

How obligations are adhered to?

• Prudential issues in the Instruments
  Is there a carve-out?
  The problems arise when controls are imposed or measures are taken beyond normal prudential regulations or what may be considered necessary to meet certain situations and which affect the business of foreign financial service suppliers in that country. There is a blurring of difference between prudential measures and measures that can be considered as violating obligations under the Agreement. Such measures may be temporary and often depend on country-specific circumstances.

• Role of the Investment Committee
  Peer examinations
    ➢ Role of like-mindedness
    ➢ Peer examination through horizontal reviews

Code of Liberalisation of Current Invisible Operations

• List D and E: liberalisation of underlying transactions
  – Insurance and Banking
    ➢ Broad range of services
    ➢ Operations in the country concerned and consumption abroad
  – Covers also:
    ➢ Setting up of branches and representative offices.
    ➢ Access to associations and self-regulatory bodies.

Code of Liberalisation of Capital Movements/National Treatment Instrument

• What the Code/NTI cover in FDI?
  ✓ Cross-border establishment, establishment by foreign-owned companies.
  ✓ Freedom of choosing the form of establishment.
  ✓ Reciprocity measures.
  – Practical importance: more than half of OECD’s FDI inflow is in financial services.

• Other capital movements
  – Some cannot be separated from trade in financial services (e.g. deposits)
OECD’s FDI Regulatory Restrictiveness Index: Revision and Extension to More Economies
Working Paper on International Investment, 2006/4
Covers 42 countries

OECD/DAF: Financial Affairs Division

- Promotion of trade in financial services through focussing on:
  - Financial Markets
    - Trends and developments
    - Risks
  - Financial institutions and instruments
  - Supervision of financial institutions
    - Organisation
    - Cross-border cooperation
  - Financial education

Other International Organisations

- IMF
  - Macroeconomic analysis, within which macroprudential risks.
  - More focus on financial issues
- WB
  - Financial subsectoral analyses.
  - Joint FSAPs with the IMF
- BIS, IOSCO, IAIS
  - Standards and codes.
Success factors

- **RTA/FTA Investment Treaties**
  - Strategic coverage of FTAs/EPAs and BITs and regional production centres in manufacturing eg AFTA, AJCEP
  - “Improvement of the Business Environment Chapter” used by Japan in its various EPAs to establish formal public private dialogue
  - Standstill effect of IIA commitments increase liberalisation
  - IIAs prevent policy reversals

Questions for discussion:
- Can we replicate success of manufacturing industry liberalisation in services?
- Can we transplant the Japanese idea of public private dialogue into more APEC IIAs? Would this be useful?
Success factors

- Investment related policies
  - Increasing scope of IIAs and spread of non-discrimination principle has led to significant border barrier reductions
  - Proactive investment promotion strategies
  - Improved understanding of investment barriers and the need for structural reform
  - Prohibition of host country operational measures (e.g., performance requirements) extended under some IIAs

Questions for discussion:
- Can FTAs tackle behind the border barriers to investment?
- Do we know enough about country level impacts of performance requirements or is there a case for more study?
- Have we done enough to explain the benefits of reform to our communities?
Success factors

- Trade in services
  - Flexible negotiating approach promotes liberalisation
  - Liberalised services sector increases competitiveness, investment and growth (US)
  - Successful T & I Policy framework comprises predictable open access for services especially infrastructure services
  - Peer examinations have led to significant liberalisation

Questions for discussion:

- Has “hybrid” approach to FTA services negotiations produced more liberalisation?
- How important is raising national standards to international level in the provision of key infrastructure services?
- Should APEC consider more specific peer examination in the area of services and investment?
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<th>Position</th>
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Questnaire Survey Results
APEC Seminar for Capacity Building for Sharing Success Factors of Improvement of Investment Environment
Lima, Peru, 15th-16th August 2008

Number of respondents was 18 among 53 participants.

Question (a): How have you or your economy benefited from the project?
- We learned broad views from experts and economies on investment elements.
- It was a great seminar that allowed us to see a better scope of the negotiations and their impact on our economies.
- Learned about experiences of other economies in liberalizing their investment and service regimes.
- It identified success factors for our economy to consider.
- Positive impact of liberalization of trade in services.
- Got comparative knowledge throughout Asia.

Question (b): What new skills, knowledge, or value have you gained?
- The practices of other economies to deal with investment issues.
- Gained more knowledge about the Institute of Internal Auditors (IIA), especially in the APEC region. (3)
- Trade and liberalization issues
- Knowledge of the impact of investment treaty provisions.
- The benefit of accepting Foreign Direct Investment.

Question (c): What, if any, changes do you plan to pursue in your home economy as a result of the project?
- Promote more about foreign direct investment (FDI).
- Consideration of the impact of bilateral treaty provisions on competitive environments.
- More efforts on structural reforms on related issues
- Identify strategic services sectors which are “ready” for liberalization and be focused comprehensive.

Question (d): What needs to be done next? How should the project be built upon?
- Further analyze the reasons behind the divergence of investment agreements.
Linkage with structural reform.
Track on each economies’ experiences after learning something from this seminar.
Raising the awareness of people who involve the process of investment permission about the importance of investment environment for the economy.

Question (e): Is there any plan to link the project’s outcomes to subsequent collective actions by fora or individual actions by economies?
- Yes, especially with SELI and structural reform of APEC economies.
- FDI and IIA towards strengthening increase domestic capabilities behind the borders.
- Not at the moment. (4)
- The RTA with Singapore and Canada.

Question (f): Please use the same scale to rate the project on an overall basis.
- 5 (good): 12 (66.7%)
- 4: 4 (22.2%)
- 3: 2 (11.1%)
- 2: 0 (0%)
- 1 (poor): 0 (0%)
Average: 4.6

Question (g): What is your assessment of the overall effectiveness of the project?
- Very high level dialogue.
- Good/Excellent (6)
- Effective.

Question (h): Was the project content: (Check One):
- Just Right (15) (83.3%)
- Too Detailed (0) (0%)
- Not Detailed Enough (3) (16.7%)

Question (i): Next year’s theme will be Trade Facilitation, Intellectual Property Rights and Structural Reform and Strengthening Economic Infrastructure. Please tell us your expectancy, if any.
- Expect for great speakers
- I expect to know more about trade facilitation and investment.
Case studies or experience sharing particularly on political commitment toward “structural reform”

Broad conception of infrastructure.

Question (j): Please provide any additional comments. How to improve the project, if any?

- More case studies especially on liberalization.
- Time provided for each topic or session should be longer.
- Must have more participants.