



Asia-Pacific  
Economic Cooperation

## **ANTICORRUPTION AND TRANSPARENCY (ACT) WORKSHOP**

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### ***DENIAL OF SAFE HAVEN, ASSET RECOVERY AND EXTRADITION***

***24-26 April 2006      Shanghai, China***

***Co-sponsored by China and the United States of America***

**(Final Agenda)**

<b><i>SUNDAY 23 APRIL 2006</i></b>
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15:00-19:00	Registration ( Venue : Shanghai International Convention Center )
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<b><i>MONDAY 24 APRIL 2006</i></b>
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08:00-09:00	Registration ( Venue : Shanghai International Convention Center )
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09:00-10:00	<p>Opening Session: APEC Leadership on Anticorruption ( Venue : Section 3, Grand Ballroom, Shanghai International Convention Center )</p> <ul style="list-style-type: none"><li>• Welcoming/Keynote remarks: Mr. Li Yufu, Vice Minister of Supervision, P.R. China</li><li>• Remarks by Debra Wong Yang, United States Attorney, Central District of California, United States</li><li>• Remarks by Ambassador Wang Xuexian, Ministry of Foreign Affairs, P.R.China</li><li>• Congratulatory Speech by Mr. Feng Guoqin, Deputy Mayor, Shanghai Municipal Government, P. R. China</li><li>• Welcoming remarks by Ambassador Tran Trong Toan, Executive Director APEC Secretariat, Vietnam</li><li>• Moderator: Mr. Wang Yongjun, Director General, Foreign Affairs Department, Ministry of Supervision, P.R. China</li></ul>
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10:00-11:00	Coffee Break & Group Photo
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11:00-12:30 Session I-I: Core Elements of a Denial of Safe Haven Strategy

( Venue : Section 3, Grand Ballroom, Shanghai

International Convention Center )

- Introductory remarks by Akira Fujino, United Nations Office on Drugs and Crime
- Presentation by Wang Tie, Director General, General Office, Ministry of Supervision, P.R. China
- Presentation by Anthony Kevin Morais, Department of Public Prosecutions, Anti-Corruption Agency of Malaysia
- Presentation by Charles A. Caruso, ABA-Asia Law Initiative
- Moderator: Cyril Ramos, Deputy Ombudsman, Republic of the Philippines

12:30-14:00

Luncheon Hosted by Ministry of Supervision, P.R.China (

Venue : Section 2, Grand Ballroom, Shanghai International Convention Center )

14:00-16:00

Session I-II: Extradition & Repatriation ( Venue : Section 3, Grand Ballroom, Shanghai International Convention Center )

- Presentation by Rainer Buhrer, Senior Anticorruption Technical Advisor, INTERPOL
- Presentation by Luo Zifa, Deputy Director General, 2<sup>nd</sup> Department, Ministry of Public Security, P.R. China
- Presentation by Jeffrey Cole, Office of International Affairs, United States Department of Justice
- Moderator: Charles A. Caruso, ABA-Asia Law Initiative

16:00-16:30

Coffee Break

16:30-18:00 Session I-III: Asset Recovery/Return of Illicitly Acquired Assets

( Venue : Section 3, Grand Ballroom, Shanghai

International Convention Center )

- Presentation by Ben Wagner, Office of Overseas Prosecutorial Development, Assistance and Training, US Department of Justice
- Presentation by Ma Haibin, Deputy Director General, General Administration for Combating Embezzlement and Bribery, Supreme People's Procuratorate, P.R. China
- Presentation by Torsak Buranaruangrote, Provincial Chief Public Prosecutor, International Affairs Dept., Office of the Attorney General, Thailand

- Moderator: Sally Kuschel, Acting Principal Legal Officer, Mutual Assistance Unit, International Crime Cooperation Branch, Attorney-General's Department, Australia

19:00-21:00 Welcome Dinner Hosted by Ministry of Supervision, P.R.China  
(Venue: Shanghai Grand Theatre Multi Function Hall)

- Remarks by Mr. Li Yufu, Vice Minister of Supervision, P.R. China
- Remarks by Dr. Vu Pham Quyet Thang, Deputy Inspector General, Government Inspectorate of Vietnam / Chair ACT Task Force
- Remarks by Consul General Kenneth Jarrett, United States

<p><b><i>TUESDAY 25 APRIL 2006</i></b></p>
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09:00-10:45 Session II-I - Mutual Legal Assistance/International Cooperation  
( Venue : Section 3, Grand Ballroom, Shanghai International Convention Center )

- Presentation by Sally Kuschel, Acting Principal Legal Officer, Mutual Assistance Unit, International Crime Cooperation Branch, Attorney-General's Department, Australia
- Presentation by Mr. Brian Pearce, Office of Overseas Prosecutorial Development, Assistance and Training, US Department of Justice
- Presentation by Zhang Xiaoming, Director, Department of Judicial Assistance and Foreign Affairs, Ministry of Justice, P.R.China
- Moderator: Ron Cheng, Office of Overseas Prosecutorial Development, Assistance and Training, US Department of Justice

10:45-11:00 Coffee Break

11:00-12:45 Session II-II: Anti-Money Laundering Measures ( Venue :  
Section 3, Grand Ballroom, Shanghai International Convention Center )

- Presentation by Anne Wallwork, Deputy Director for Strategic Policy, Terrorist Financing and Financial Crime, Office of Terrorism and Financial Intelligence (TFI), U.S. Department of The Treasury
- Presentation by Wang Yanzhi, Deputy Director General, Anti-Money Laundering Bureau, People's Bank, P.R. China
- Presentation by Indonesia Junus Husein, Head of Anti-Money Laundering, Indonesia
- Moderator: Arun Kendall, Executive Officer, Asia/Pacific Group on Money Laundering

12:45-14:00 Luncheon Hosted by Ministry of Supervision, P.R.China  
( Venue : Section 2, Grand Ballroom, Shanghai International Convention Center )

14:00-15:45 Session II-III: Anti-Bribery Measures ( Venue : Section 3, Grand Ballroom, Shanghai International Convention Center )

- Presentation by Zhao Xiangjun, Deputy Director General, Department of Policies, Laws and Regulations, Ministry of Supervision, P.R. China
- Presentation by Kathryn Nickerson, Senior Counsel, Office of the Chief Counsel for International Commerce U.S. Department of Commerce
- Presentation by Veronica Torres, General Internal Audit Council of the Government, Chile
- Presentation by Nancy Boswell, Transparency International
- Moderator: Patrick Moulette, OECD, Director Anti-Corruption Division, Paris

15:45-16:00 Coffee Break

16:00-17:00 Concluding Session: Chairs' Reports ( Venue : Section 3, Grand Ballroom, Shanghai International Convention Center )

- Concluding Remarks/Farewell by Mr. Wang Yongjun, Director General, Foreign Affairs Department, Ministry of Supervision, P.R. China
- Moderator: David M. Luna, Director for Anticorruption & Governance Initiatives/INL, U.S. Department of State

18:00-19:30 Dinner Hosted by Shanghai Municipal Government, P.R.China  
( Venue : Shanghai International Convention Center )

- Remarks by Mr. Feng Guoqin, Deputy Mayor, Shanghai Municipal Government, P. R. China
- Remarks by Ambassador Capunay, Peru

20:00-21:00 Night Cruise on the Huangpu River

***WEDNESDAY 26 APRIL 2006***

9:00-11:00 Friends of the ACT Task Force Chair and Donors' Meeting

( Venue : Section 3, Grand Ballroom, Shanghai International  
Convention Center )

- Remarks by HE Dr. VU Pham Quyet Thang, Vice Minister, Deputy Inspector General of the GI, ACT Task Force Chair (APEC 2006 ACT Task Force Work Program and Road Map)
- Follow-up to SOM I: FOTC work on cataloging ACT TF Capacity Building Projects and Each Economy's Successes on Implementation of commitments related to the ACT Course of Action, Busan Declaration
- Strengthening APEC Cooperation and Donor Coordination on ACT projects with other regional anticorruption efforts in the Asia Pacific region
- Development of Practical ACT TF Tools and Training Projects  
Moderator: David M. Luna (US), Director for Anticorruption & Governance Initiatives/INL, U.S. Department of State  
Coordinator for FOTC

11:20-12:30 Sightseeing in Shanghai

12:30-13:30 Luncheon Hosted by Shanghai Municipal Government, P.R.China  
(Venue: The Revolving Restaurant of Oriental Pearl Tower)

13:30-18:00 Sightseeing in Shanghai

## PROGRAM GOALS, METHODOLOGY & MODULE CONTENT

### Program Goals:

It must be fully acknowledged the UN Convention Against Corruption (UNCAC) constitutes a new and valuable agreed standard around which the international community and the APEC economies can build and augment anti-corruption programs tailored to meet the specific needs of its members. It is equally apparent that the UNCAC has as one of its primary objectives the prevention of the looting of public coffers and, failing prevention, a clearly designed structure mandating the identification and return of stolen assets and the rendition to aggrieved States Parties of those responsible. The repatriation of assets stolen from Economy coffers and the punishment of the authors of that theft are inextricably intertwined in the philosophy underpinning the UNCAC's denial of safe haven philosophy.

Thus it is the goal of the program to build on the strong commitment of APEC Leaders, as expressed in the *Santiago Commitment on Fighting Transparency and Ensuring Transparency* and the *Busan Declaration*, "to intensify regional cooperation to deny a safe haven to officials and individuals guilty of corruption, those who corrupt them and their illicitly-acquired assets." It is also one of the primary objectives of the United Nations Convention Against Corruption (UNCAC), which APEC Leaders have committed to implement in order to advance their "commitment towards a cleaner and more honest and transparent community in the Asia-Pacific region." (*Busan Declaration*).

In order to provide APEC member economies with information and capacity to develop a sound strategy and efficient tactical mechanisms to implement their Leaders' commitment to deny safe haven to corrupt officials and secure the return of illegally-acquired assets, amongst the goals of this program will be:

- to allow participants to share information on best practices and successful measures for denial of safe haven which can then be employed by individual member economies to revise and improve their own systems;
- to increase the capacity of member economies to formulate effective and efficient programs for the denial of safe haven;
- to acquaint participants with the specific characteristics of the denial of safe haven regimens of other member economies in an effort to allow a better understanding of and cooperation in specific cases;
- to insure that member economies recognize the need for and value of efficient, effective, and continuing international cooperation in the denial of safe haven strategies.

## Methodology:

The workshop will be conducted in English, and all written materials will be in English. The program will address six substantive topics, each of which directly relates either to a denial of safe haven strategy (*i.e.*, denial of safe haven as a legal construct; asset recovery; extradition) or to a topic closely related to the efficacy of any such strategy (*i.e.*, money laundering, anti-bribery measures, mutual legal assistance).

The program itself will consist of six separate panel discussions each dealing with one of the topics mentioned above. Each panel discussion period will consist of three, 20-minute presentations by experts in the field, each of whom will be from a different APEC economy, and familiar with the practical application of this subject in his/her native country.

Following the presentations, the panel moderator (or co-moderators) will lead an active discussion amongst the panelists and the audience analyzing how the particular topic relates to the situation in individual economies. It thus is imperative in this format that participants who attend the panel discussions be prepared to express their views and opinions and, to the extent possible, the official position of their particular economy as to the topic under discussion.

All member economies are encouraged to submit papers on any or all of the above topics. In order allow for timely distribution and thus encourage comment by participants, such papers should be submitted to the Chinese organizers, Mr. Victor Cai at: [caiwei666@hotmail.com](mailto:caiwei666@hotmail.com) no later than 14 April, 2006. Following the close of the panel discussions, the panel moderators will present each panel's findings as to conclusions and recommendations to be drawn from the session.

The final day of the program will feature an intercessional ACT Task Force meeting between the Friends of the Chair and donors. The purposes of this meeting are as noted above. During the course of this discussion the active participation of all member economies is encouraged.

## Session Content:

### Session I-I Core Elements of a Denial of Safe Haven Strategy

In developing a strategy for denial of safe haven to government officials who have stolen public assets, injured nations attempt to accomplish one of the core purposes of the UNCAC, *i.e.*, “To promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery...” In substance, such a program recognizes the indispensable place of international cooperation in discovering, identifying, and seeking the return of misappropriated public assets while simultaneously seeking the capture and punishment of corrupt officials who have sought refuge in a foreign country where they can safely enjoy the proceeds of their illegal conduct.

It is an indisputable fact that corrupt public officials, highly placed within their respective governments, oftentimes have access to international mechanisms and contacts that enable them to disguise and launder illicitly obtained funds, and thereafter transfer such funds to foreign jurisdictions. Alternately, it is frequently the case that illegally obtained funds are transferred to foreign jurisdictions where they are laundered and subsequently returned to the aggrieved jurisdiction in the form of the private property of the corrupt government official.

As such, successfully discovering and combating this behavior requires international cooperation on many levels, some of which go beyond the public sphere. In order to facilitate an effective response, such cooperation should meld the available law enforcement tools into an organized program of international investigative and judicial cooperation, *e.g.*, mutual legal assistance and extradition procedures. While the former is designed to secure the production of evidence and the identification of the stolen assets, the latter ensures the rendition of the errant public official. Together and often joined with other legal implementation, these mechanisms can be combined to form an effective plan to deny safe haven to corrupt public officials and the return of stolen public funds.

Topics to be discussed during this Session will include, *inter alia*:

- the statutory schemes underlying and supporting denial of safe haven strategies;
- the place and perceived importance of international extradition in the denial of safe haven;
- the identification of particular forms of mutual legal assistance of import to the denial of safe haven;
- the importance of anti-money laundering legislation and regulation in the denial of safe haven;
- the use of immigration law to bolster the denial of safe haven strategy.



## Session I-II Extradition and Repatriation

Extradition, the formal process by which a fugitive from one jurisdiction (the requesting state) is surrendered to another (the requested state) based upon treaty, reciprocity or comity, is one of the most important elements of international cooperation identified by the UNCAC, and is an indispensable element in any strategy to deny safe haven to corrupt public officials. Because of its strategic as well as tactical importance, this portion of the program will consist of presentations outlining the practical application of the extradition process in the criminal justice systems by select member economies and related entities.

Topics to be addressed during this Session will include, *inter alia*:

- the structure and function of offices or bodies authorized to receive and process extradition requests. The discussion may include difficulties commonly encountered by such authorities in processing such requests as well as solutions derived to deal with these problems. Additionally, the panelists will address the documentary evidence requirements often imposed by Requested States on Requesting States seeking the return of fugitives.
- a brief overview of the current national law dealing with extradition and the various grounds for granting extradition (*i.e.*, treaty, reciprocity, comity, etc.);
- provisional arrest versus arrest pursuant to formal request;
- an analysis of the relationship between asylum and extradition and the extent to which they are complementary to or conflict with one other;
- the relationship between the judicial and executive authorities as regards extradition;
- a description of the judicial or ‘in court’ process leading to the denial or granting of extradition including necessary filings, hearings, the rules of evidence and procedure employed, authentication, use and effect of documentary evidence, challenges to evidence available to the subject of the hearings, etc;
- grounds for denying extradition and/or defenses to the process under the UNCAC and in general (*e.g.*, the political offense exception, exceptions to the doctrine of political offenses, politically motivated prosecutions, statute of limitations, etc.);
- the doctrines of dual criminality, specialty, and extraditable offences;
- irregular rendition, and the Rule of Non-Inquiry, its current status and its evolution;
- appeals from and available review of extradition decisions;

As in all sessions, the audience will be expected to comment upon or augment the remarks of the presenters with a discussion of the above topics as relates to their individual economies.

## Session I-III Asset Recovery and Return of Illicitly Acquired Assets

Recognizing that cases of corruption that involve vast quantities of assets, may constitute a substantial proportion of the resources of Member Economies and that the illicit acquisition of personal wealth can be particularly damaging to the rule of law, the UNCAC created the opportunity for dealing with the phenomenon by enacting Chapter V and providing for the implementation of asset recovery mechanisms. Accepting the accuracy of the conclusions arrived at by the UNCAC drafters, it is equally obvious that asset recovery must be regarded as a cornerstone of any denial of safe haven strategy. As such it must be recognized as an imperative of the initiative approved by the APEC economies to effectively fight corruption in the Asia Pacific region.

Asset recovery is however not a one-dimensional concept. The concept requires the understanding and implementation of other investigative and judicial disciplines before implementation can occur. Thus, any thought of a successful asset recovery program must be coordinated with and supported by anti-money laundering, forensic accounting and mutual legal assistance policies of the respective parties. Additionally, because asset recovery is integrally related to a globalization of criminal activity the concept itself must grow beyond the bounds and regulations of the intra-national strategies in which it has been employed and accordingly adjusted to meet the international requirements of a denial of safe haven strategy.

The topics to be dealt with may include, *inter alia*:

- identifying mechanisms for locating and confiscating the proceeds of official public corruption within an Economy.
- asset recovery as a mechanism for preventing the proceeds of corruption from entering the underground financial world and thus becoming available for the financing of other illegal activities within the affected Economy.
- the availability of confiscation based upon foreign orders in national courts
- measures available for the identification, tracing and freezing of assets within the territory of the particular Economy.
- Article 55 legislation enacted in contemplation of UNCAC ratification.
- measures in place to provide for the return or disposal of confiscated assets.
- the need for the creation financial intelligence units to facilitate inter-state cooperation
- arrangements considered in regards to 'sharing' in proceeds of recovery versus reimbursement for procedural costs

## Session II-I Mutual Legal Assistance/International Cooperation

“*Convinced* that corruption is no longer a local matter but a transnational phenomenon that affects all societies and economies...” the Preamble to the UNCAC further recognizes that international cooperation is “essential” to controlling it. That being the said, the launching point of this session will be the Chapter IV, Article 46 of the UNCAC and how the national laws of the contributing economies are implementing the requirements of that document.

Given the relatively recent realization that corruption must be seen as transnational in nature, it is obvious that in the investigation and prosecution of corruption cases, international legal assistance is one of the key components of success. It is equally true that this area of law enforcement at the international level, is particularly besieged with cross border problems: disharmony between legal systems, disagreement between nations as to what constitutes a workable balance between law enforcement concerns and human rights priorities, internecine disputes between law enforcement officials of different states, etc. Thus a clear understanding of the legal framework, processes and peculiarities, both formal and informal, through which economies accomplish international legal assistance is a necessary component of any denial of safe haven strategy.

However, more than a comparative study of national laws, this session will concentrate on the measures and procedures individual economies have taken to strengthen, broaden and/or augment their mutual legal assistance regimens. In that regard, of particular interest will be those innovative and new arrangements, formal and informal, which have been undertaken in the area of mutual legal assistance with a particular view towards a denial of safe haven strategy.

Amongst those topics which may be considered are:

- methods of transmission of requests, direct or formal diplomatic channel requests;
- dealing with delays in responses to requests and the particular problems such delays engender in cases where denial of safe haven issues are in play;
- obstacles to MLA compliance, i.e., death penalty matters, dual criminality, specialty;
- expediting requests in urgent situations;
- assistance in the prevention of the removal of assets;
- bank secrecy and the request for financial information;
- right of the subject to object to and appeal rulings of the courts regarding mutual legal assistance requests.

## Session II-II: Anti-Money Laundering Measures

Money laundering, most simply described as a transaction or series of transactions designed to disguise the source, nature and ownership of funds illicitly obtained, can be accurately characterized as an essential element of all forms of criminal activity. Unless one has the ability to sanitize the 'dirty' proceeds of unlawful ventures, be they complicated stock frauds or the simple thefts, there is little point in committing the crime. If we assume that most, if not all crime where monetary advantages are the object, are committed for the purpose of enjoying the proceeds at a later date, we can further assume that those proceeds must be converted into a form where their use will not draw attention to the manner in which they were obtained. This is never more obvious than in the cases of those who have purloined funds entrusted to them, moved the funds in a disguised form to a place they believe to be a safe haven and thereafter fled the scene of their crimes hoping to be able to take advantage of their ill-gotten gains – out of the reach of prosecution.

Money laundering can take the form of a simple fraud or forgery: a person purchasing an automobile with the proceeds of crime and registering the vehicle in a fictitious name. Conversely, it can take the form of a complicated Internet sales canard wherein a shell corporation is set up to provide nonexistent services in order to receive payment through credit card accounts controlled by the authors of complex frauds. Add to this the complication of bank secrecy laws, the ability of criminals to devise more sophisticated methods of concealing the nature of illicit proceeds, the use of currency exchanges, brokerage houses, casinos, automobile dealerships and insurance companies as laundering facilities and the magnitude of the problem becomes obvious. Thus the necessity of understanding the various means and methods available to those who would misappropriate funds, disguise and transport them to a safe haven and later convert them into usable assets becomes crucial in any denial of safe haven strategy.

In this session, possible issues to be discussed will include:

- the basis of the laundering process: placement, layering and integration;
- electronic transportation of funds;
- the role of attorneys, accountants, finance managers, etc, in laundering activities;
- the role of bank secrecy in money laundering schemes;
- structuring transactions to avoid reporting requirements;
- Article 14 of the UNCAC;
- innovative methods of mutual legal assistance to thwart money laundering activities;
- online banking and Internet banking as money laundering tools;
- the role of banks and bankers in disabling money laundering schemes in legitimate financial institutions;
- proactive investigative techniques in combating money laundering;
- asset tracing and forensic accounting;
- the crime of Illicit Enrichment and money laundering in the fight against corruption.

## Session II-III Anti-Bribery Measures

Led by a strong desire to comply with the requirements of Chapter III of the UNCAC and those measures necessary to implement the mandated criminalization, international efforts to outlaw corrupt business practices are at the forefront of the struggle against corruption.

Legislation such as the Federal Corrupt Practices Act, statutes growing out of the regional anti-corruption conventions such as the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and national anti-corruption laws have done much in the way of curtailing the concept that bribery of national or foreign public officials is a necessary and therefore accepted business practice. Where before the laws of most nations outlawed the bribery of national public officials, the recent practice has substantially expanded that sphere to include foreign officials as well. With the ratification of the UNCAC, economies are mandated to outlaw the practice, thus leveling the business playing field and encouraging an eventual end of the practice.

This session may involve the discussion of:

- national legislation addressing the practices described in Articles 15 through 27 of the UNCAC;
- a review of particular policies, laws and regulations enacted to meet UNCAC mandates and support national anti-bribery legislation;
- regional efforts to harmonize anti-bribery measures to further cooperation between national governments
- the utilization of the concept of illicit enrichment to combat bribery in the public sector;
- the relationship between the implementation of Article 12 of the UNCAC and efforts to combat bribery in the public sector;
- public education and civil society as components of the anti-bribery measures regimen;
- the role of internal audits, public auditing institutions and legislation mandating audits in anti-bribery measures

## Session III-I Intercessional Friends of the ACT Task Force Chair and Donors

### Meeting

This session has been organized for the benefit of the ACT Friends of the Chair and other invited participants in an effort to assist the ACT Chair concentrate, on an intercessional basis, on the tasks of the ACT Task Force discussed during SOM I. The session will primarily focus on the Korea-Australia Proposal (as defined at the Anti –Corruption and Transparency Task Force meeting held in Hanoi, February, 2006) which called for the identification and cataloguing of capacity building initiatives developed by donors for use in the APEC framework as well as requests for a more systemic compilation of successes by each APEC economy related to the APEC Santiago Commitment and ACT Course of Action, Busan Declaration and The 2006 Work Program. During this session particular emphasis will be placed upon developing a more concrete effort between donors, APEC and other relevant regional initiatives to coordinate their various capacity building programs and proposals to insure:

- adequately addressing the stated practical needs of the various Economies;
- the maximum possible coordination between donor organizations and groups in providing capacity building programs;
- accurately assessing the collective efforts of the various donor organizations and groups to insure that all areas of the anti-corruption initiative of APEC are satisfactorily addressed;
- developing methods to insure the maximum cooperation and coordination with other relevant initiatives in the region;
- the production of a mechanism whereby capacity building events will be scheduled to provide maximum efficiency.
- a menu of options on possible follow-up training activities to the APEC ACT Shanghai Workshop

The Friends of the ACT TF Chair will discuss possible identification and cataloguing ideas and matrices for developing a more comprehensive compilation of successes by each APEC Economy related to the APEC Santiago Commitment and ACT Course of Action, Busan Declaration, and 2006 Work Program.

It is expected that representatives of all of the Economies, relevant donors, and invited participants will be in attendance.