



**Asia-Pacific
Economic Cooperation**

**Capacity Building for Sharing Success Factors
of Improvement of Investment Environment**

15-16 August, 2008

Investment Experts Group

November 2008

APEC Project CTI32/2008T

Produced By the Ministry of Economy, Trade and Industry, Japan
And The Tokyo Chamber of Commerce and Industry

for
APEC Secretariat
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Summary of the Seminar “Capacity Building for Sharing Success Factors of Improvement of Investment Environment”, 15-16 August, 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 IIA'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

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10:40-11:00 Speaker 2

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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

- Session2: Investment-related Policies

- Promoting investment liberalization such as easing restrictions on foreign entry, prohibition of performance requirement and relaxation of restrictions on overseas remittance

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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)

- Session3: Trade in Service

- Promoting liberalization of trade in service

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12:20-12:30 Closing Remarks

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

**Capacity Building for Sharing Success Factors of Improvement of Investment Environment
(CTI 32/2008T)**

Biography of Speakers



Mr. Tetsuro Fukunaga

Director, APEC Office, Trade Policy Bureau,
Ministry of Economy, Trade and Industry (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

Legal Adviser, International Arrangements Section,
Division on Investment and Enterprises, UNCTAD

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 Vignolo

Legal Adviser, Department of Services, Investment and Air Transport, General Directorate for International Trade and Economic Affairs (DIRECON), Chile

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. He 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

Senior Advisor, ABAC Australia

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

Director for Services and Investment, Office of the U.S. Trade Representative Executive, the United States

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


Lead Manager, Directorate for Financial and Enterprise Affairs, OECD

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
 CTI32/2008T
 Session 1 – Investment Treaties
 Tetsuro Fukunaga
 Director, APEC Office
 METI, Japan

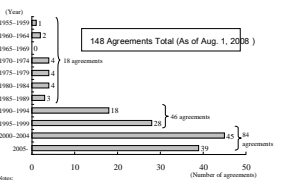

Contents

- 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:
18 (Dec.1989) → 148 (Aug. 2008)
- 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



148 Agreements Total (As of Aug. 1, 2008)

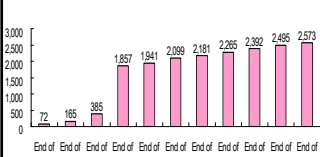
Year	Asia-Pacific	American	Asia-Pacific	Cross-regional	Total
1955-1959	1				1
1960-1964	1	1			2
1965-1969					
1970-1974	1	1		2	4
1975-1979	2		2		4
1980-1984	1	1	2		4
1985-1989				2	3
1990-1994	13	2	3		18
1995-1999	23	4	8		35
2000-2004	20	8	8	7	43
2005-2008	13	2	14	19	48
Total	75	20	29	24	148

Source: WTO website (www.wto.org/english/strat_e/region_e/region_e.htm) as of July 18, 2008


Development of BITs in the world

- Increase in the number of BITs worldwide:
385 (Dec.1989) → 2,573 (Dec. 2006)
- Japan has been involved in only 21 investment agreements (13 BITs, 8 EPAs); Germany, the UK, France and China each have over 100 BITs.

Trends in the number of BITs in the world

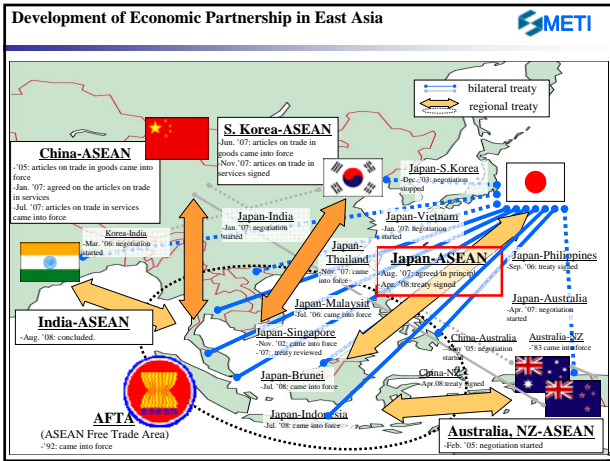


Ratified BITs of major countries (as of June 2007)

Country	Number of signed BITs
Germany	135
China	119
Switzerland	114
UK	103
Italy, Egypt	100
France	98
USA	46
Japan	21 (including EPAs)

Source: UNCTAD "Recent developments in international investment agreements (2006 – June 2007)" UNCTAD "Database on BITs"

* Both charts are excerpts from the JETRO White Paper on International Trade and Foreign Direct Investment 2008



ASEAN Free Trade Area (AFTA) and formulation of regional production network

Concession
 The following products shall enjoy tariff concessions under AFTA.

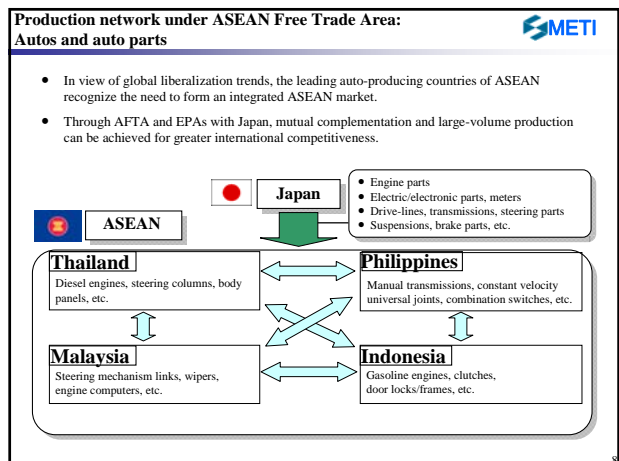
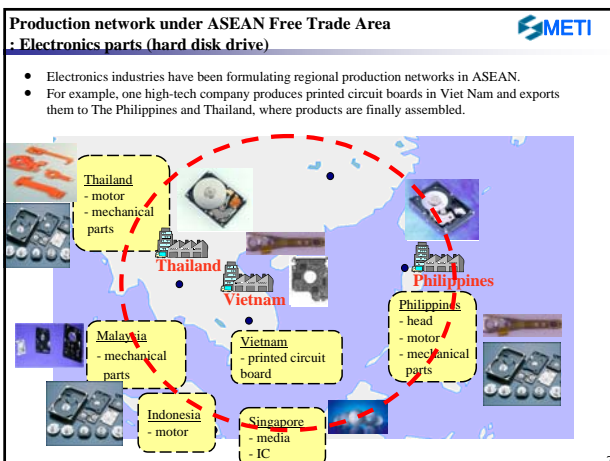
Inclusion List: Tariff Elimination

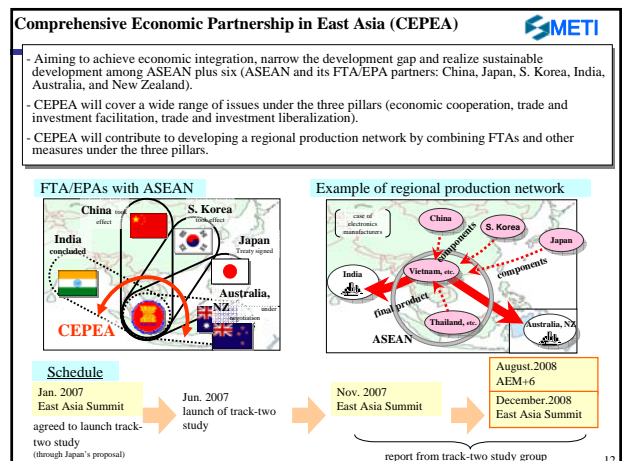
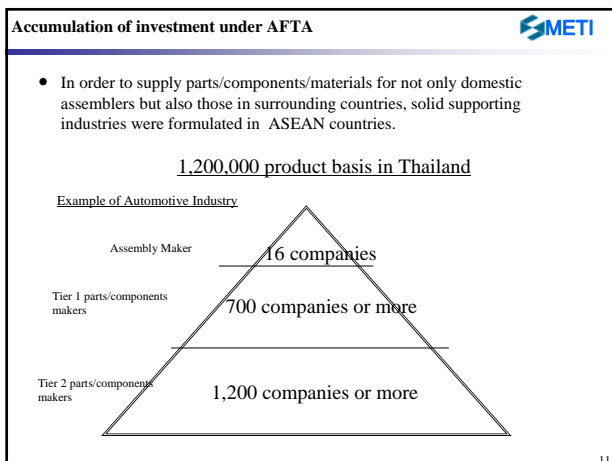
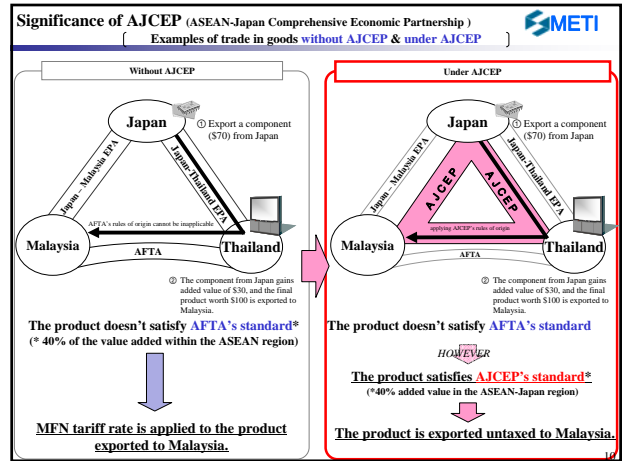
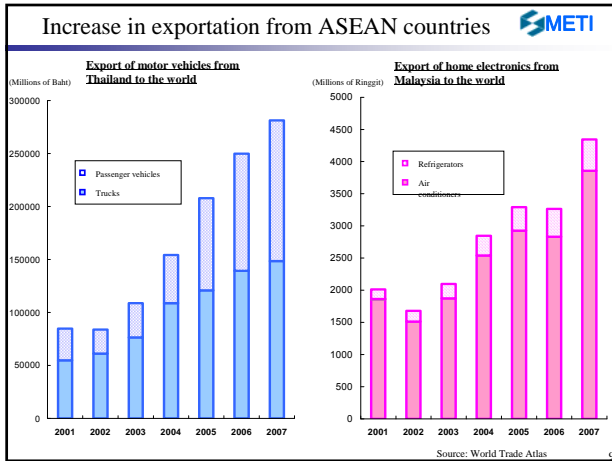
- Schedule ASEAN6: eliminate the tariff rates by 2010 (in principle)
 CLMV: eliminate the tariff rates by 2015 (in principle)

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

Accumulation
 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, and ii) a market with huge potential. By making use of this integrated economic area, industries have been formulating unique regional production networks.



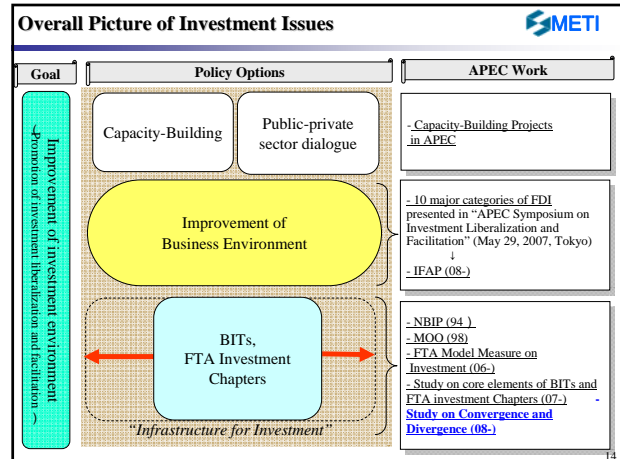



Major FDI impediments 

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)
 - vii. Insufficient protection of intellectual property rights
 - viii. Labor regulations and related practices excessively favorable to workers
 - ix. Underdeveloped infrastructure, shortages of human resources, and insufficient investment incentives
 - x. Restricted competition and price controls

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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.

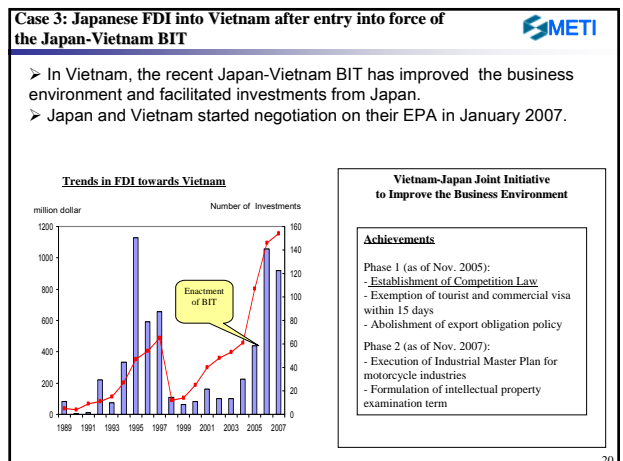
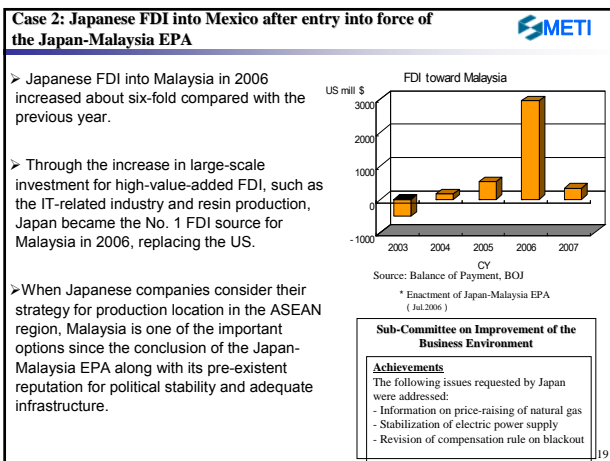
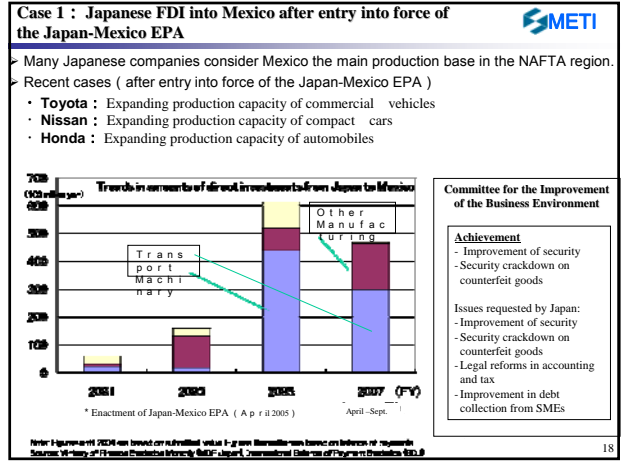
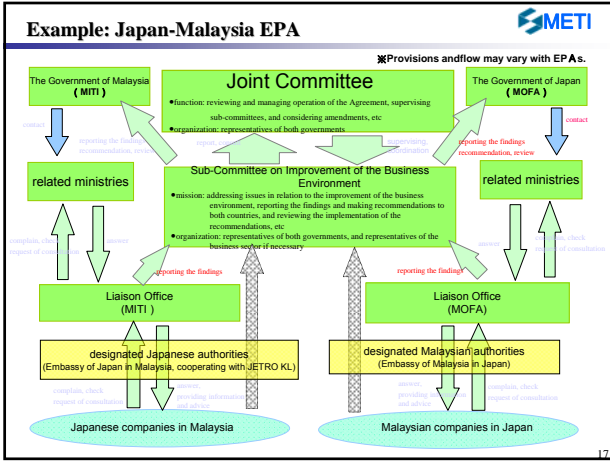
• **Sub-Committees on Improvement of the Business Environment** are established under the following EPAs.
 Mexico (came into effect in April 2005), Malaysia (July 2006), Chile (September 2007), Thailand (November 2007), Indonesia (July 2008), Brunei (July 2008)
 ※The EPA with The Philippines was signed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

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"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.

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Impact of BITs on FDI



• Recent research has shown the positive impact of BITs on FDI.

1. Peter Egger and Michael Pfaffermayr (2004)

- 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**

2. Jeswald Salacuse and Nicholas Sullivan (2005)

- assessing FDI flows from the U.S. 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**

3. Eric Neumayer and Laura Spess (2005)

- 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**

4. Peter Egger and Valeria Merlo (2007)

- 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**

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List of references



1. Peter Egger and Michael Pfaffermayr (2004), *"The Impact of Bilateral Investment Treaties on Foreign Direct Investment"*, Journal of Comparative Economics 32
2. Jeswald Salacuse and Nicholas Sullivan (2005), *"Do BITs Really Work?: An Evaluation of Bilateral Investment Treaties and Their Grand Bargain"*, Harvard International Law Journal
3. Eric Neumayer and Laura Spess (2005), *"Do Bilateral Investment Treaties Increase Foreign Direct Investment to Developing Countries?"*, World Development, Vol. 33
4. Peter Egger and Valeria Merlo (2007), *"The Impact of Bilateral Investment Treaties on FDI Dynamics"*, The World Economy

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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

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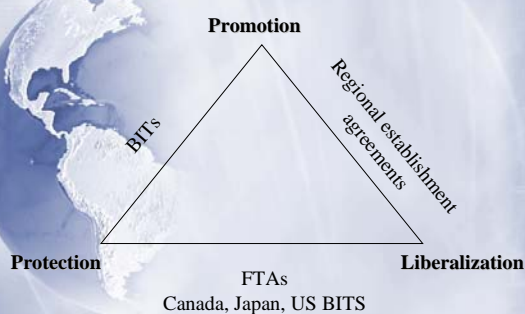
Introduction

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

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2

Possible IIA objectives



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3

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

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4

Core Elements Project – Phase I

The 16 'core elements' for Phase 1:

- | | |
|--------------------------|----------------------------|
| Coverage | Transfers |
| NT | Scheduling |
| MFN | Denial of benefits |
| Performance Requirements | Transparency |
| Standard of Treatment | ISDS |
| Senior Management | Environment |
| Expropriation | Investment cooperation |
| Compensation for losses | Promotion and facilitation |
| Subrogation | |

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.

Some characteristics of APEC IIAs

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.

Some characteristics of APEC IIAs

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 in those 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.

Four key conclusions

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).

Four key conclusions

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.

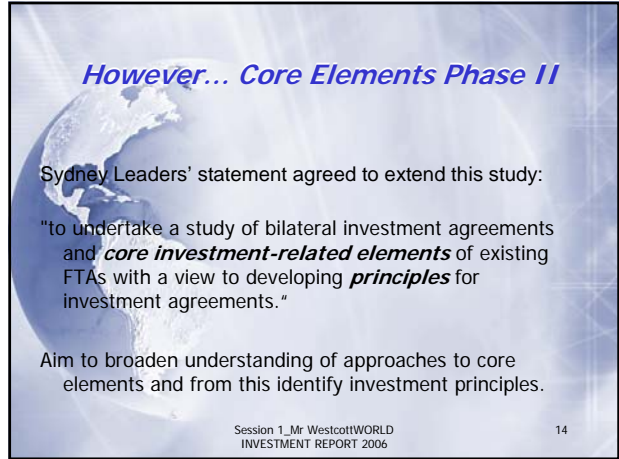


Four key conclusions

4. Additional protections included in APEC IIAs but not included in APEC investment instruments include

- fair and equitable treatment standard
- full protection and security

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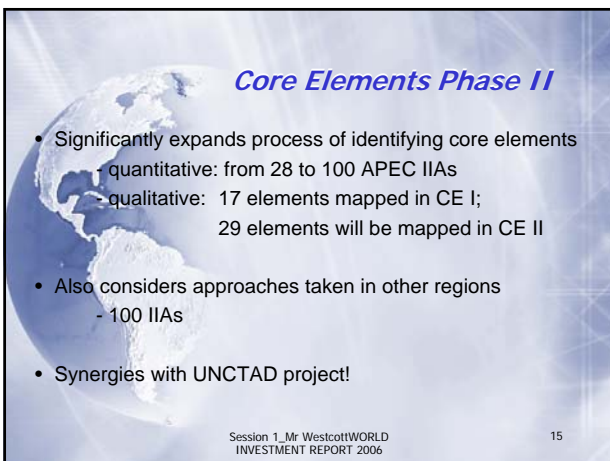
However... Core Elements Phase II

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.

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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!

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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.

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Conclusion

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

ASEAN Framework Agreement	Japan-Mexico EPA
Australia-Mexico IPPA	Japan-Philippines EPA
Australia-Thailand FTA	Japan-Republic of Korea IPPA
Australia-United States FTA	Japan-Singapore EPA
Canada-Chile FTA	Japan-Viet Nam IPPA
Canada-Peru FIPA	Lebanon-Malaysia IPPA
Chile-Peru ALC	Malaysia-Viet Nam IPPA
Chile-Republic of Korea FTA	New Zealand-Singapore CEP
China-Germany BIT	North American FTA
Germany-Philippines BIT	Peru-Singapore IPPA
Hong Kong, China-Thailand IPPA	Russia-Thailand BIT
Iceland-Mexico BIT	Singapore-Australia FTA
India-Indonesia IPPA	Thailand-New Zealand CEP
Japan-Malaysia EPA	United States-Uruguay BIT

CONCLUDING INVESTMENT NEGOTIATIONS THE CASE OF CHILE

LIMA, PERU, AUGUST 15, 2008

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

General Directorate of International Economics Relations
Ministry of Foreign Affairs of Chile

FOREIGN TRADE POLICY

Chile is a small economy open to foreign trade. Trade policy based in 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

Unilateral policy

Negotiation of Bilateral
Trade Agreements

Participation in regional
and multilateral forums
and negotiations

UNILATERAL OPENNESS

DOMESTIC ECONOMIC
POLICY REFORM

GOODS

FOREIGN POLICY
REFORM

SERVICES & INVESTMENT

PILLARS OF ECONOMIC TRANSFORMATION

Privatization of State-owned enterprises

Regulatory reform

FDI promotion

SECTORS INCLUDE:
TELECOMMUNICATIONS,
ENERGY, PORTS, MINING,
SANITARY, FINANCIAL, ETC.

INVESTMENT MAIN COVERAGE FEATURES

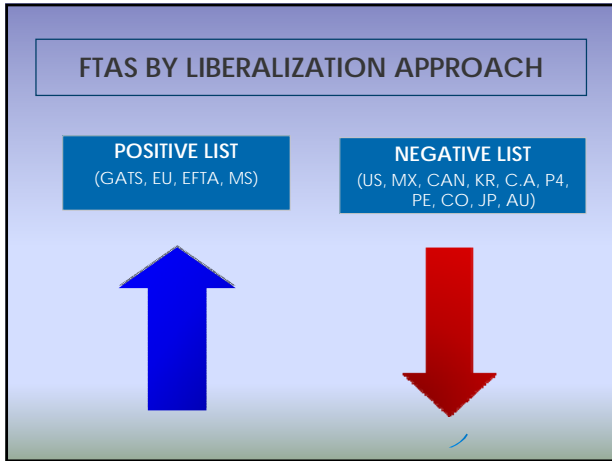
INVESTMENT: *PRE* AND *POST*
ESTABLISHMENT OF INVESTMENTS FOR
THE PRODUCTION OF *GOODS* AND
THE PROVISION OF *SERVICES*

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)

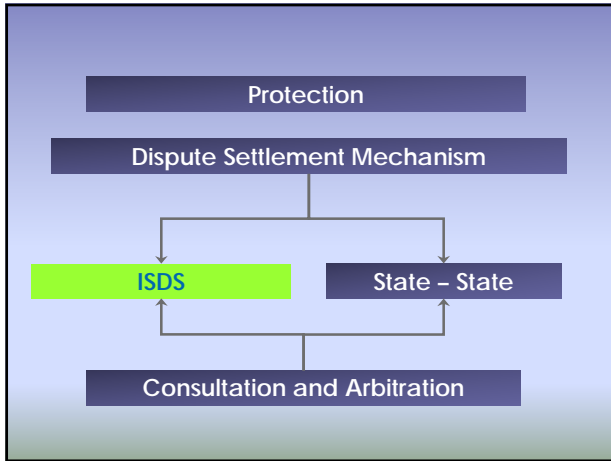
- ▶ Bilateral Investments Treaties (BIT's):
 - ◻ Currently: 51 BIT's negotiated (37 in force)
 - ◻ 1991 Chile became a Member of ICSID
- ▶ Free Trade Agreements (FTA's):
 - ◻ Self contained chapters on investment. With ISDS
 - ◻ Pre-establishment; "*seeks to invest*". Exceptions: AU & KR.
 - ◻ Broad definition of investment; "*any kind of assets*"



- ### 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 a 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.




INVESTMENT REGIME

- 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)

MAIN IMPACT OF THE INVESTMENT NEGOTIATIONS


- ☑ 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
Services, Investment and Air Transport Department
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



Capacity Building for Sharing Success Factors of Improvement of Investment Environment

CTI 32/2008T

Session 2 – Investment-related policies

APEC, Lima, 15 August 2008



Thomas Westcott
Legal Adviser
UNCTAD

1

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

2

Today looking at...

1. Admission and establishment:
 - pre-establishment NT
2. Host Country Operational Measures (HCOMs):
 - performance requirements and senior personnel

3

Admission and establishment

- Granting direct access to foreign investors:

"[s]ubject 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.

4

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.

5

Admission and establishment

- 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)

6

Admission and establishment

- 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)

7

Admission and establishment

- Granting pre-establishment NT:

"Each Contracting Party shall...accord to investors of the other Contracting Party and to their investments treatment no less favourable 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.

8

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.

9

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

10

...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.

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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

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...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"

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HCOMs prohibited under TRIMs

WTO TRIMS Article 2 prohibits any TRIM that is inconsistent with GATT Articles III or XI

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 export of its (the enterprise) local production

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HCOMs prohibited under TRIMs

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.

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HCOMs prohibited under TRIMs

- 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 whose 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

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Approach to HCOMs in some bilateral IIAs

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

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HCOMs prohibited in other IIAs

- 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

HCOMs prohibited in some bilateral IIAs

- 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)

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Related issue - key personnel

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

20

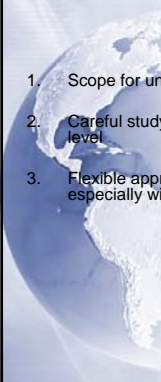


Key personnel

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.*

21



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.

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CAPACITY BUILDING FOR SHARING SUCCESS FACTORS OF IMPROVEMENT OF INVESTMENT ENVIRONMENTS

APEC SEMINAR, LIMA, PERU, 15/16TH AUGUST 2008.

SESSION 2: INVESTMENT RELATED POLICIES – PRESENTATION BY KEN WALLER, SENIOR ADVISOR, ABAC AUSTRALIA SECRETARIAT

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 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.

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Capacity Building for Sharing Success Factors of Investment Environment

Lima, Peru
15-16 August 2008

BOI Thailand: Ready to Serve, Ready to Lead
Mrs. Vasana Mututanont
Director, International Affairs Bureau

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Competition for FDI is Fierce

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New York Times Article

Aug 3, 2008

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-pound 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 near 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."

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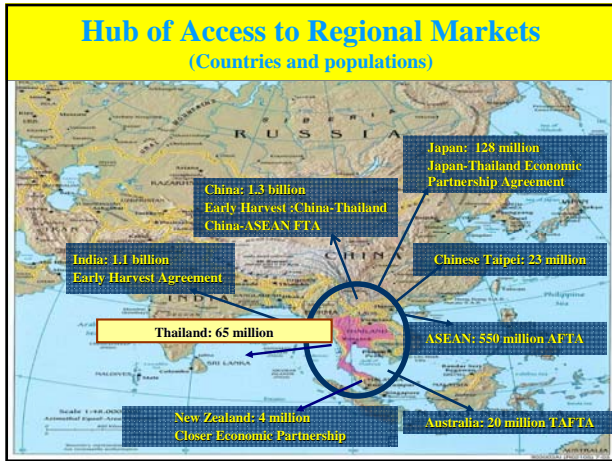
THAILAND INVESTING YEAR 2008-2009

What do Investors Want?

One-Stop-Shop

Value Added

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THAILAND INVESTING YEAR 2008-2009

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**
 - UNCTAD World investment Prospects Survey, 2007-2009

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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.

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BOI Support Services

Sectional divisions to guide you through the process



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

8

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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**

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Recent Enhancements

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

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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

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Additional Support for Investment

- IEAT Free Zones
- Customs Free Zones
- Bonded Warehouses

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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

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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

Source: Industrial Estate Authority of Thailand

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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

Source: Industrial Estate Authority of Thailand

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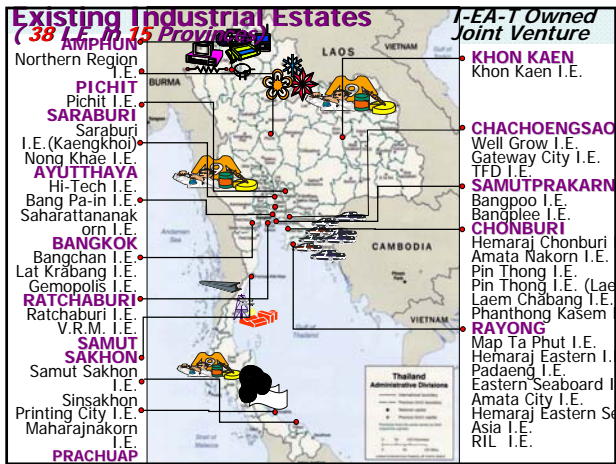
THAILAND INVESTING YEAR 2008-2009

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.

Source: Industrial Estate Authority of Thailand

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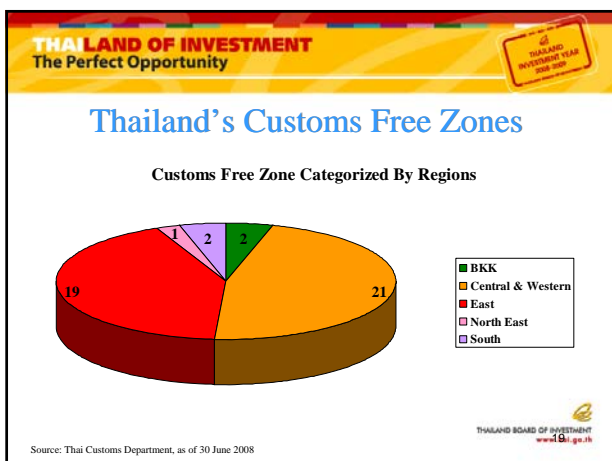
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Customs Free Zones

- 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

Source: Thai Customs Department

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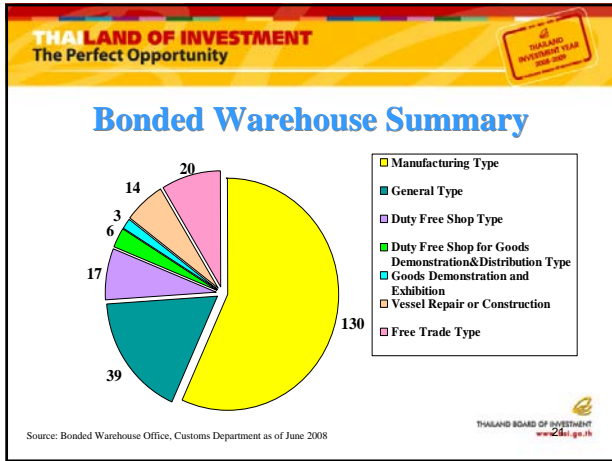
Bonded Warehouse under Customs Act

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

Source: Thai Customs Department

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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

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- Telephone: +66 (0) 2537-8111
- Email: head@boi.go.th

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Thank You

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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

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)

2

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)

3

The first steps I (WTO)

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

4

The first steps I (WTO)

- Doha Round (2001)
 - Market access negotiations (positive approach)
 - Bilateral and plurilateral requests / Peru's initial and revised offers
 - Sectorial 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?

5

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 sectorial 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.

6

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 (35), Colombia (95), Ecuador (95)

7

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
- Sectorial decisions
 - Telecommunications, tourism, energy services, land and maritime transport.
 - Financial services, Professional services, screen quotas (in process of negotiations)

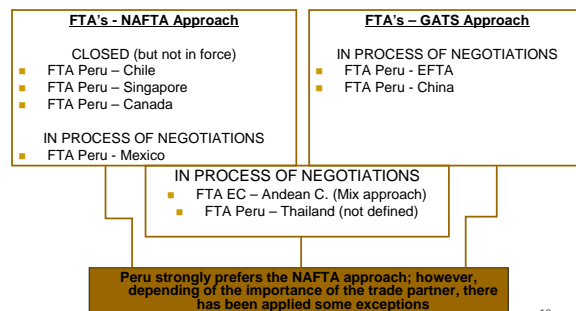
8

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

9

FTA's II: Other FTA's



10

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

11

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

12

Policy Homework

- Appropriate macro-economic policies
- Leveraging/Valuing Human Resources and Technological capacity
 - Educational reform
 - Improving the health service and coverage
 - Public investment in Research and Development
- Infrastructure building (transport, logistic, energy and telecommunications)
- Coherent domestic policy & regulatory framework
- Measures to discipline anti-competitive behaviour
- Adoption of a coherent strategy for raising the profile of services industries and exports in domestic economy.
- Establishment of inter/intra-institutional coordination and structures (Public and Private Sector)

13

Policy Homework

- Support for SMEs
 - Special regimes for the formalization of MYPES.
 - Access to financing and market information and managerial skills
- Export friendly environment
 - Reduction of bureaucratic restrictions
 - Trade facilitation (logistic chain, migratory reform, etc.)
- Identifying and developing regional markets
 - Most of the traditional and non traditional Peruvian services exports are traded in the Andean region, rest of South America, Central America, Mexico and US.
- Arising national standards to international level.
 - Improving the quality of national services through use of ISO
 - Concluding mutual recognition agreements and alliances
 - Reforming sectorial domestic regulations

14

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

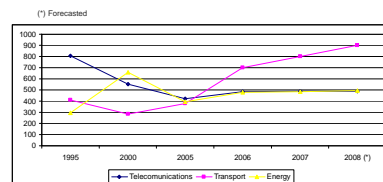
Pending Issues

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

15

PERU : Investment in Infrastructure Public Utility (1995-2008) - (millones de US\$)

Year	Telecommunications	Transport	Energy
1995	805.3	408	295
2000	550.4	285.2	659
2005	421.3	381.5	393.7
2006	486	700	480.16
2007	487.4	800	485.94
2008 (*)	488.45	900	495.02



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
 - Type of contract: DBFOT (Design, Build, Finance, Operate and Transfer)



Transport II (main investments committed)

- Inter-Oceanic Road (stretches 2,3&4)
 - Enterprise: Andrade Gutiérrez, Norberto Odebrecht and Graña & Montero.
 - 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 II (main investments committed)

- Concession features:
 - Investment: US\$ 282'000,000
 - Timeframe: 25 years
 - Kind of contract: BOT
- Multimodal Axis – North Amazonas
- Enterprise: Andrade Gutiérrez, Norberto Odebrecht and Graña & Montero.
- Concession features:
 - Investment: US\$ 223'000,000
 - Timeframe: 25 years
 - Kind of contract: BOT

Transport: Concessions Granted

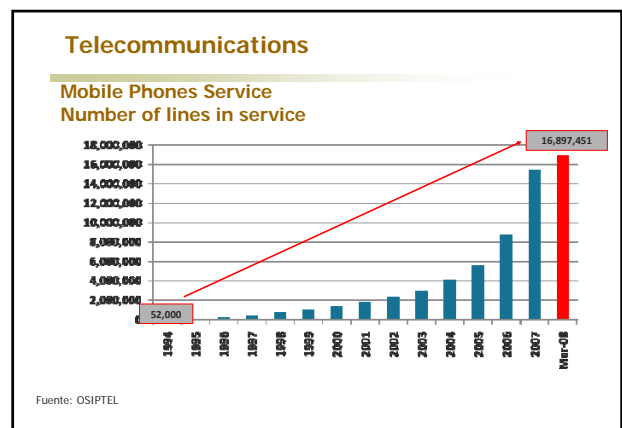
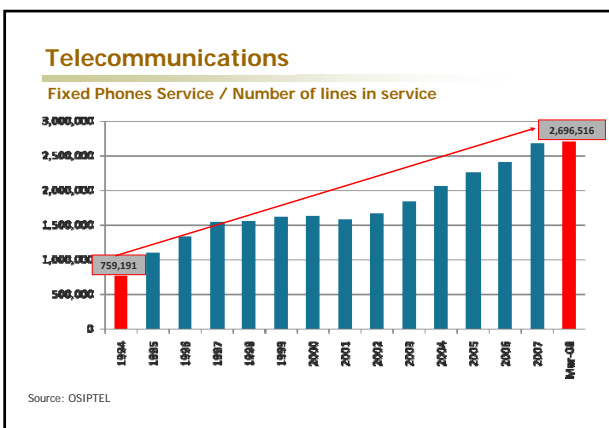
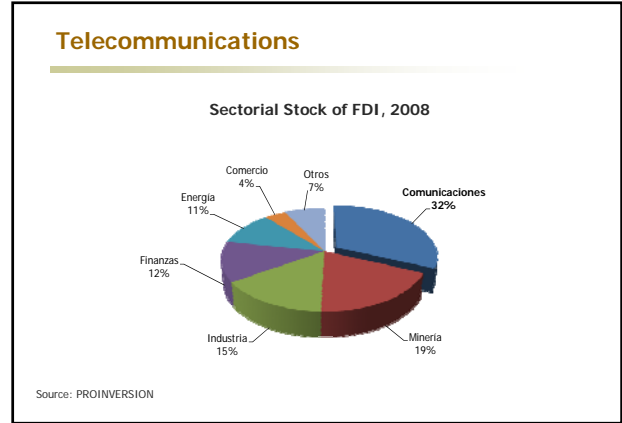
Year	Sector	Enterprise/Project	Transaction (US\$ MM)	Investment committed (US\$ MM)
1993	Airports	Corpac – Airport Jorge Chavez Parking	12.0	0.5
	Airports	Corpac - Duty Free	8.7	5.0
1999	Ports	Matarani Port	10.9	7.8
	Terrestrial	Railway System (South, Center and South-Orient)		157.0
2000	Airports	International Airport "Jorge Chávez" (LAP)		1,214.0
2002	Terrestrial	Stretch Ancón-Huacho-Pativilca		61.4
2005	Terrestrial	Eje Multimodal del Amazonas Norte de IIRSA		223.0
	Terrestrial	Inter-Oceanic South Road: Stretches 2, 3 y 4		810.0
	Terrestrial	Stretch Puente Pucusana-Cerro Azul-Chinca-Pisco-Ica		192.0
2006	Ports	Terminal "Dock South" - Callao Port		617.0
	Airports	Regional Airport		120.0
	Terrestrial	Stretch 1B - Buenos Aires - Canchaque		31.0
2007	Terrestrial	Inter-Oceanic South Road: Stretches 1 and 5		282.0
TOTAL			31.6	3,720.8

Telecommunications

	1994	2007
Fixed phones		
N° of lines in service	759,191	2,672,678
Density	3.2	9.64
N° of service suppliers	1	8
Mobile phones		
N° of lines in service	52,000	15,417,368
Density	0.2	55.63
N° of service suppliers	2	4

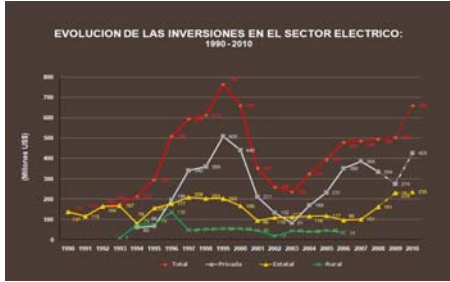
Telecom Suppliers in Peru

• Telefónica del Perú	• Zupacel Perú
• Telefónica Móviles	• Millicom Perú
• America Móvil (Claro)	• Gilat Te Home Perú
• Telcel Perú	• Industrias y Telecomunicaciones
• Nextel	• Compañía de Telecomunicaciones Móviles
• Americal Perú	



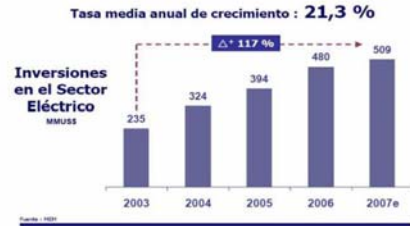
Energy

Evolution of Investments in Electricity Sector (I)



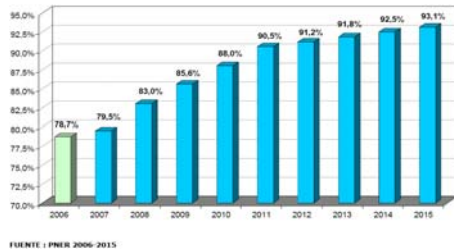
Energy

Evolution of Investments in Electricity Sector (II)



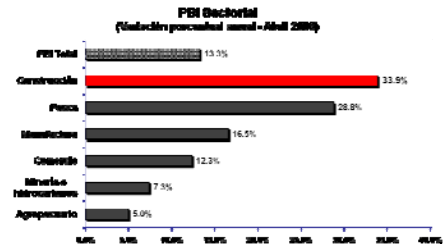
Energy

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%.



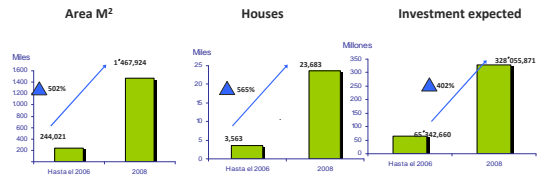
Construction

The construction of infrastructure, malls, hotels and apartment buildings explains the growth



Construction

Market Tendency: Growth of the Area in M2, N° of Houses and amount of investment expected



Peru is experimenting a real "Construction Boom"

THANK YOU!

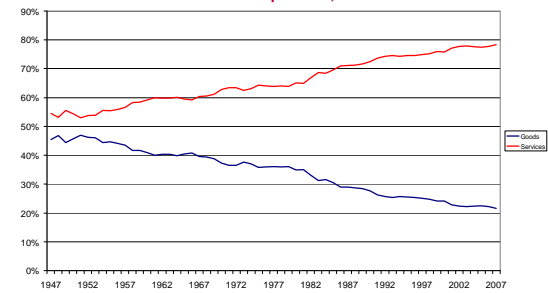
Promoting Liberalization of Trade in Services: Experience of the United States



Jai Motwane
Office of the U.S. Trade Representative

United States is a Services Economy

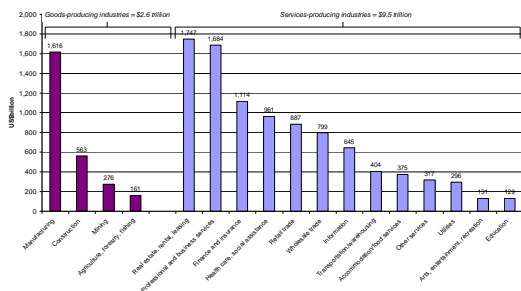
U.S. GDP composition, 1947-2007



Bureau of Economic Analysis, U.S. Dept. of Commerce

United States is a Services Economy

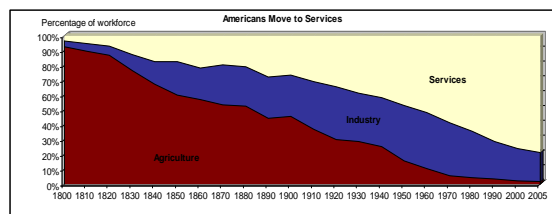
U.S. GDP composition, by industry, 2007



Bureau of Economic Analysis, U.S. Dept. of Commerce

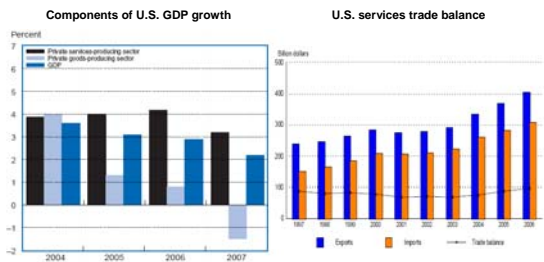
United States is a Services Economy

U.S. employment trend, 1800-2005, by sector



W.M. Cox and R. Alm, 2003 Annual Report, Federal Reserve Bank of Dallas

Services and U.S. Economic Growth



Bureau of Economic Analysis, U.S. Dept. of Commerce

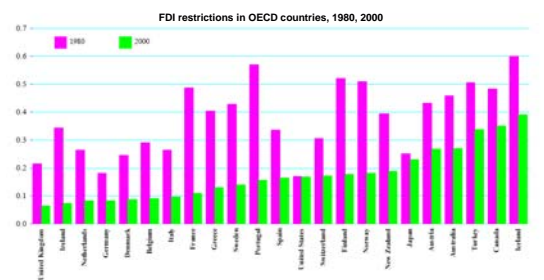
U.S. Services Trade Policy Framework

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

U.S. Services Trade Policy Framework

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



Organization for Economic Co-operation and Development

U.S. Services Trade Policy Framework

United States FTAs include provision for national treatment with respect to establishment of investments:

- 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:

World Bank GATS Commitments Index, 2006-07

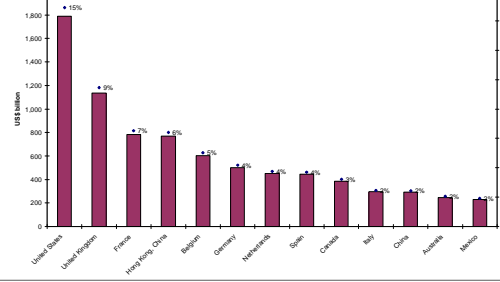
Rank	Economy	Communications services	Construction/Engineering	Distribution services	Environmental services	Transport services
3	United States	1	16	1	1	20
11	Chinese Taipei	7	30	8	21	16
13	Canada	24	15	33	4	21
22	Australia	27	32	22	31	23
25	New Zealand	23	32	34	65	6
28	Korea, Rep.	21	28	42	39	42
30	Japan	30	48	26	43	33
34	China	35	52	48	21	37
35	Viet Nam	22	52	66	30	29
43	Thailand	80	47	67	29	26
49	Malaysia	39	32	68	65	69
64	Singapore	81	7	68	66	67
71	Hong Kong, China	47	83	65	65	51
72	Philippines	88	68	68	65	3
77	Mexico	77	76	39	65	76
82	Papua New Guinea	73	55	68	66	84
92	Chile	57	88	68	65	87
104	Indonesia	90	74	68	65	88
105	Fiji	75	88	63	65	98
111	Brunei Darussalam	90	88	68	65	94

World Bank, World Trade Indicators 2008

Impact of Open Investment

United States is largest recipient of global FDI:

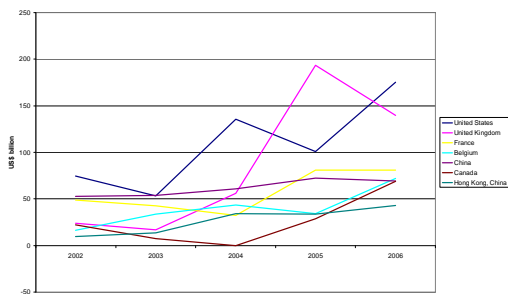
Inward FDI stock, 2006



UNCTAD FDI-STAT Database (2006)

Impact of Open Investment

United States leading recipient of inward investment flows:

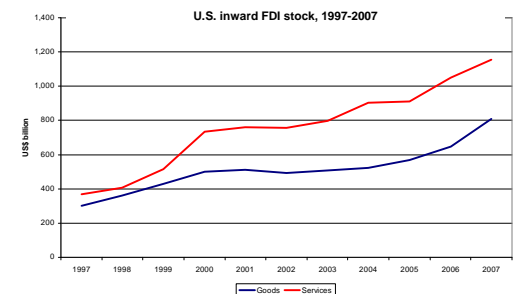


UNCTAD FDI-STAT Database (2006)

Services Component of U.S. FDI

Services account for majority of FDI in the United States:

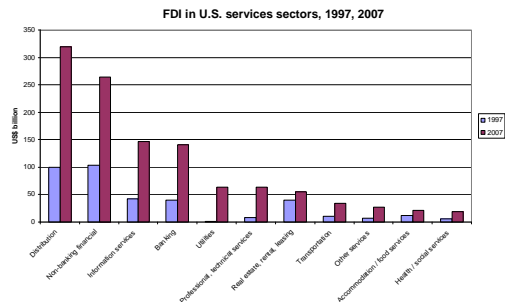
U.S. inward FDI stock, 1997-2007



Bureau of Economic Analysis, U.S. Dept. of Commerce

Services Component of U.S. FDI

Infrastructure services exhibit highest FDI growth:



Bureau of Economic Analysis, U.S. Dept. of Commerce

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

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."

UNCTAD, Study Series No. 19, 2002

Benefits of FDI in Services

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

Economy	Foreign				Domestic			
	Banking	Telecommunications	Engineering	Distribution	Banking	Telecommunications	Distribution	Engineering
Australia	9.91	0.31	2.82	0.57	0.00	0.31	0.00	2.09
Austria	5.32	0.85	14.14	na	0.00	0.85	na	6.78
Belgium	5.32	1.31	0.52	4.87	0.00	0.65	6.69	0.66
Canada	5.34	3.37	3.31	3.09	0.00	1.07	0.91	2.68
Denmark	5.32	0.20	1.14	na	0.00	0.20	na	0.69
Finland	5.32	0.00	2.28	na	0.00	0.00	na	0.73
France	5.32	1.45	6.92	5.16	0.00	0.34	7.19	0.69
Germany	5.32	0.32	10.17	na	0.00	0.32	na	2.93
Greece	5.32	4.52	na	0.25	0.00	2.56	na	0.00
Hong Kong (China)	6.91	1.26	3.06	0.66	2.65	1.26	0.00	2.34
Ireland	5.32	2.67	na	2.70	0.00	1.46	na	0.00
Italy	5.32	1.00	na	na	0.00	1.00	na	na
Japan	15.26	0.26	6.37	2.26	10.03	0.26	6.79	2.24
Lebanon	5.32	1.05	na	na	0.00	1.05	na	na
Netherlands	5.32	0.20	1.67	2.73	0.00	0.20	0.00	5.23
New Zealand	4.69	0.27	na	0.77	0.00	0.27	0.00	na
Portugal	5.32	6.23	na	na	0.00	3.80	na	na
Singapore	31.45	3.72	3.04	0.03	8.15	2.19	0.00	0.78
Spain	5.32	3.95	6.73	na	0.00	2.03	na	3.86
Sweden	5.32	0.65	4.76	na	0.00	0.65	na	0.74
Switzerland	5.95	1.23	na	5.14	0.00	1.23	8.32	na
United Kingdom	5.32	0.00	2.54	2.76	0.00	0.00	0.00	1.39
United States	4.75	0.20	7.08	2.36	0.00	0.20	0.00	3.79
Average	7.11	1.48	5.21	2.34	0.91	0.85	2.13	2.35

UNCTAD, Study Series No. 19, 2002

Benefits of FDI in Services

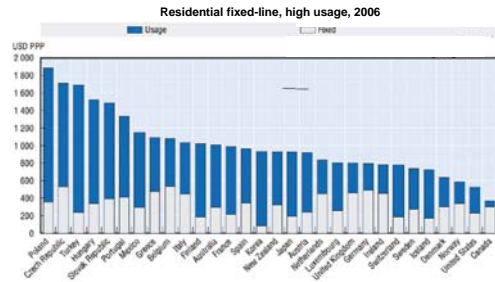
... particularly in comparison with developing economies:

Economy	Foreign				Domestic			
	Banking	Telecommunications	Engineering*	Distribution*	Banking	Telecommunications	Distribution*	Engineering*
Argentina	5.34	3.81	na	na	0.00	3.81	na	na
Brazil	45.56	5.68	na	na	6.87	3.81	na	na
Chile	34.00	1.68	na	1.32	23.70	1.68	1.92	na
Colombia	18.35	24.27	na	na	3.54	10.15	na	na
India	55.08	>150.00 [†]	na	na	3.54	>150.00 [†]	na	na
Indonesia	49.33	138.41	10.22	3.66	3.35	70.70	0.00	3.23
Malaysia	40.41	14.08	11.98	8.23	22.11	6.73	3.97	5.28
Mexico	13.40	14.43	14.17	na	0.00	6.24	na	1.95
Philippines	47.36	72.85	na	na	10.99	21.43	na	na
South Africa	14.90	20.89	3.73	0.47	0.00	13.77	0.00	0.69
Republic of Korea	36.73	8.45	na	na	14.93	4.30	na	na
Thailand	33.04	55.12	na	na	0.00	20.69	na	na
Turkey	31.54	33.53	na	na	3.54	19.59	na	na
Uruguay	40.34	11.92	na	na	11.00	7.81	na	na
Vietnam	13.44	14.94	na	na	0.00	9.27	na	na
Average	33.27	38.14	10.83	3.42	6.60	23.98	1.47	2.79

UNCTAD, Study Series No. 19, 2002

Benefits of FDI in Services

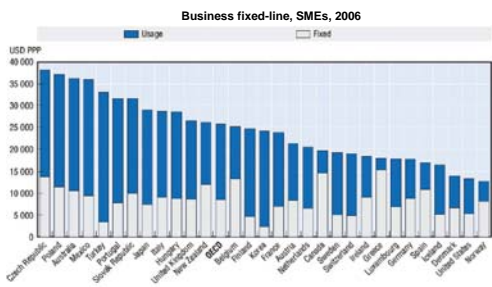
U.S. telecommunications tariffs are amongst the lowest in the world:



OECD Communications Outlook 2007

Benefits of FDI in Services

U.S. 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:

Logistics

Company	Country	Revenue (million \$)
UPS (Schweitz/Mexico)	United States	7,400
C.H. Robinson	United States	6,556
DHL Logistics	Germany	4,870
Expeditors Int'l	United States	4,626
SAK Global	Germany	3,623
UTL	United States	3,530
ESL Inc.	United States	3,218
Flexiba Logistics	United States	3,050
Schneider Logistics	United States	2,628
Kuehne & Nagel	Switzerland	2,478

Telecommunications

Company	Country	Revenue, 2006-07 (million \$)
AT&T	United States	116,300
NTT	Japan	92,703
Verizon	United States	88,144
Deutsche Telekom	Germany	77,070
Telefonica	Spain	66,490
France Telecom	France	64,953
Vodafone	United Kingdom	57,337
Sprint Nextel	United States	41,028
Telecom Italia	Italy	36,291
British Telecom	United Kingdom	37,279

Retailing

Company name	Country	2001	2002	2003	2004	2005	2006
Walmart Stores Inc.	United States	205,823	231,577	258,681	284,310	312,101	348,690
Carrefour SA	France	81,807	72,050	89,353	100,396	87,368	103,969
Home Depot Inc.	United States	53,553	58,247	64,816	73,094	81,511	90,837
Tesco Plc	United Kingdom	33,727	40,958	56,975	65,094	71,353	83,940
Metro AG	Germany	45,426	55,642	69,497	74,249	67,072	81,299

USITC, Recent Trends in Services, 2008

Benefits of FDI in Services

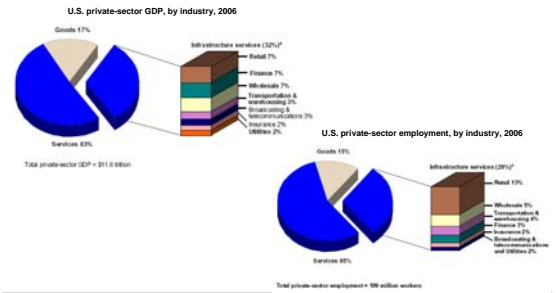
Foreign firms contribute stronger U.S. economy:

- 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.

Bureau of Economic Analysis, U.S. Dept. of Commerce

United States is a Services Economy

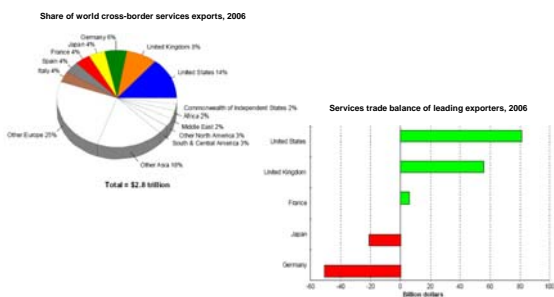
A robust and competitive services sector is essential to U.S. economic growth and employment:



Bureau of Economic Analysis, U.S. Dept. of Commerce

United States is a Services Economy

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




WTO, International Trade Statistics, 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

2



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.

3



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.

4



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.

5



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 thin line 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

6



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.

7



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)

8

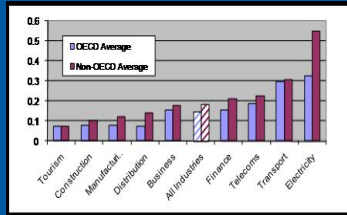


FDI Regulatory Restrictiveness Index

OECD's FDI Regulatory Restrictiveness Index: Revision and Extension to More Economies

Working Paper on International Investment, 2006/4

Covers 42 countries



9



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

10



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.

11

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 (eg 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?

Participants List - CTI32/08T
Capacity Building for Sharing Success Factors of Improvement of Investment Environment

as of 16 Aug, 2008

No.	Economy	Name			Position	Organization
1	Peru	Mr.	Jorge	Camacho	Trade Officer	Ministry of Foreign Trade and Tourism
2	Peru	Ms.	Alejandrina	Kunigami K.	Japan External Trade Organization	JETRO: Japan External Trade Organization
3	Peru	Ms.	Verónica	Maseda Beaumont	Legal Advisor	Proinversion
4	Peru	Mr.	Danny J.	Cárdenas A.	Delegate Assistance	Ministry Trade and Tourism of Peru
5	Peru	Mr.	Carlos	Herrera	Head of Investors Servicing	Proinversion
6	Peru	Mr.	Danilo	Campos	Specialist in Finance	Osiptel (Regulator of Telecommunication)
7	Peru	Mr.	Conrado	Falco	PROINVERSION	Proinversion
8	Peru	Mr.	Gonzalo	Ramirez Arteaga	Estudios Economicos	Miincetur
9	Peru	Mr.	Benjamin	Chavez	Head of Services Negotiations	Vice Ministry of Foreign Trade
10	Peru	Mr.	David	Lemor	Executive Director	Proinversion
11	Peru	Mr.	Carlos	Chau	Investment Analyst-Investment Promotion Office	Proinversion
12	Mexico	Ms.	Zaida	SARIÑANA Schroeder	Deputy General Director for International Treaties	Ministry of Economy
13	Brunei Darussalam	Mr.	Md. Hakashah	Samad	Apec Desk	MFAT
14	Singapore	Ms.	Hiroko	Taniguchi	Director (Program)	APEC Secretariat
15	Singapore	Mr.	Alvin	Lee	Assistant Director	Ministry of Trade and Industry
16	Chinese Taipei	Mr.	Yen	Kuo-Ruey	Senior Assistant	Department of Investment Senior, MOEA
17	Chinese Taipei	Mr.	Shyu	Haur-Jiunn	Officer	Department of Investment Senior, MOEA
18	Australia	Mr.	Ken	Waller	Senior Advisor	ABAC Australia Secretariat
19	Australia	Dr.	Paul Bernard	Kennelly	Policy Advisor	Department of Treasury
20	Australia	Mr.	Roy	Nixon	convenor	APEC IEG
21	Chile	Mr.	Felipe	Sandoval	Delegate Chile CTI	Ministry of Foreign Affairs
22	Chile	Mr.	Rodrigo	Monardes	Legal Advisor of Services Investment	Ministry of Foreign Affairs (Direcon)
23	Chile	Ms.	Myriam	Duran	APEC Coordinator	Ministry of Foreign Affairs (Direcon)
24	Thailand	Mrs.	Chulamane	Chartsunam	Director	Ministry of Foreign Affairs
25	Thailand	Mrs.	Vasana	Mututanont	Director International Affairs	Thailand Board of Investment
26	Thailand	Dr.	Bonggot	Anuroj	Senior Investment Promotion Officer	BOI
27	Thailand	Mrs.	Sirinard	Chaiyalapo	Investment Promotion Officer	BOI
28	Thailand	Mr.	Worawit	Sing-in	Senior Trade Officer	Department of Business Department Ministry of Commerce
29	Thailand	Ms.	Vicahada	Pabunjertkit	Senior Trade Officer	Department of Trade Negotiations
30	Thailand	Mr.	Rongvudhi	Virabutr	Diplomatic Officer	Ministry of Foreign Affairs

No.	Economy	Name			Position	Organization
31	Malaysia	Mrs.	Roeslina	Abbas	Deputy Director	Malaysian Industrial Development Authority
32	Philippines	Mrs.	Mary Sherylyn D.	Aquia	Senior Trade and Industry Development Specialist	Department of Trade and Industry
33	Indonesia	Mrs.	Neneng	Tarigan	Head of Bureau of Trade and International Cooperation	Office of Vicepresident of Indonesia
34	Japan	Mr.	Tsutomu	Baba	General Secretariat	Camara de Comercio Industria Peruano - japonesa
35	Japan	Ms.	Kazune	Ouchi	Assistant Director	Ministry of Economy, Trade and Industry
36	Japan	Ms.	Sayaka	Terai	staff officer	The Tokyo Chamber of Commerce and Industry
37	Japan	Mr.	Hitoshi	Nakamura	Deputy General Manager, International Division	The Tokyo Chamber of Commerce and Industry
38	Japan	Mr.	Shuichiro	Megata	Ambassador to Peru	Embassy of Japan in Peru
39	Japan	Mr.	Hideyuki	Saito	First Secretary	Embassy of Japan in Peru
40	Japan	Mr.	Tatsuya	Ishida	JETRO	JETRO: Japan External Trade Organization
41	Japan	Mr.	Tetsuro	Fukunaga	Director	Ministry of Economy, Trade and Industry
42	Japan	Mr.	Mitsuhiro	Tamori	Assistant Director	Ministry Economy Trade and Industry
43	Japan	Mrs.	Hiroko	Onisawa	JETRO	JETRO-Lima
44	Japan	Mr.	Takuya	Sasayama	Director of APEC Division	Ministry of Foreign Affairs
45	Japan	Mr.	Mitsuhiko	Sugita	Officer	APEC Div. Ministry of Foreign Affairs
46	China	Mr.	Han	Yi	Section Chief	Ministry of Commerce
47	Vietnam	Ms.	Vu Lien	Huong	Official	Ministry of Industry and Trade
48	The USA	Mr.	Jai	Motwane	Director for Services and Investment	Office of US Trade Representative
49	OECD	Ms.	Judit	Vadasz	Lead Manager, Directorate for Financial and Enterprise Affairs	OECD
50	UNCTAD	Mr.	Thomas	Westcott	Legal Advisor, International Arrangements Section Division on Investment & Enterprise	UNCTAD

Questionnaire 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.