



**Asia-Pacific  
Economic Cooperation**

# **IFAP Implementation in Facilitating Investment for the Asia Pacific Region**

## **Part I: IFAP implementation progress**

**APEC Policy Support Unit**  
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**Advancing** Free Trade for Asia-Pacific **Prosperity**

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The views expressed in this paper are those of the authors and do not necessarily represent those of APEC Secretariat and APEC Member Economies. The outside sources quoted in the report such as OECD Regulatory Restrictiveness Index, World Bank's Doing Business and Investing Across Borders indicators are only for references of APEC economies and could not serve as the indicators assessing the real progresses of IFAP implementation made by member economies.

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## Executive Summary

This report analyzes the progress APEC member economies have made toward reaching IFAP implementation goals. The Policy Support Unit (PSU) was asked to assist the Investment Experts Group (IEG) in preparing an analysis of the progress that APEC has made in implementing the agreed-upon IFAP principles and a review of APEC completed projects that are related with IFAP. To meet this goal, two templates were circulated:

- Investment Facilitation – Menu of Actions and Measures: Voluntary submission by member economies; and
- Investment Facilitation Actions Already Under Way: Submission by APEC Secretariat, to reflect new APEC projects and initiatives that are relevant to IFAP.

The PSU received and analyzed sixteen submissions from member economies (Australia; Chile; China; Hong Kong, China; Indonesia; Japan; Korea; Malaysia; Peru; Philippines; Russia; Singapore; Chinese Taipei; Thailand; United States and Viet Nam) and drew from secondary sources<sup>1</sup> as an informative tool on international best practice and benchmarking. The submissions were of mixed quality with some members providing detailed information corresponding to the specific actions under each of the eight IFAP principles, while other economies provided information corresponding to only one or two specific actions out of the 50 agreed specific actions under the eight IFAP principles.

The results show that reporting economies have made substantial progress toward implementing several IFAP principles while progress on others has been less fruitful. Some of the findings based on the voluntary submissions are provided as follows:

Principle 1: Most of the reporting economies have in place a Foreign Investment Promotion Act which sets out the laws and regulations pertaining to foreign investment in their economies. The laws, rules, regulations and/or amendments relating to foreign investment are usually published in an Official Gazette, and/or on the relevant government agency's website. Most economies also have a trade and investment agency to help promote and facilitate foreign investment.

Principle 2: Most economies have a system of land ownership registration in place. Economies also generally have established effective formal mechanisms for resolving disputes between investors and host authorities and for enforcing solutions.

Principle 3: The investment promotion agencies of most reporting economies implement actions related to Principle 3. Most economies accord 'national treatment' to foreign investment, an important component of IFAP and international best practice.

Principle 4: Economies have reported efforts to streamline foreign investment applications and registration, licensing, and taxation procedures for foreign businesses.

Principle 5: Most reporting economies have taken steps toward building constructive stakeholder relationships both as a means of direct policy action and to further integrate relations between the public and private sectors.

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<sup>1</sup> Some of these secondary sources do not cover all 21 APEC economies.

Principle 6: The adoption of new technology has improved the investment climate in all economies who reported progress toward principle 6. New processes have also been implemented which greatly simplify international direct investment.

Principle 7: Reporting member economies showed a commitment to maintaining up-to-date investment policies through continuous monitoring.

Principle 8: Economies volunteering IFAP submissions report extensive international cooperation.

Secondary sources, such as UNCTAD's World Investment Report and World Investment Prospects Survey, demonstrate the importance of implementing policy changes in order to foster a welcoming environment for international investment and maximize it as a tool for economy-wide development goals. Secondary sources are included in the analysis of each IFAP Principle as a reference.

The report concludes with an analysis of on-going and completed projects undertaken toward fulfilling IFAP goals of capacity building and empirical analysis.

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## 1. INTRODUCTION

Since its endorsement in 2008, IFAP has been a highly valuable and well-received component of APEC's trade and investment agenda and an integral planning tool around which many of the activities of the Investment Experts Group (IEG) are based. As a planning tool, it has provided critical guidance to the IEG's work on investment facilitation. At the same time, its comprehensive prescription of actions that can be taken across a range of policy areas has been commended by stakeholders as a valuable reference tool for improvement of the APEC investment climate.

IFAP's initial phase of implementation was envisioned as spanning three years, from 2008 to 2010. In order to sustain the work that has resulted from IFAP, to solidify IFAP's role as a component of APEC Strategy for Investment, and to ensure that IFAP remains a credible initiative in the eyes of the stakeholder community, APEC economies have undertaken to address two important issues: (1) how IFAP will be implemented in the years ahead; and (2) how APEC can demonstrate progress in its IFAP implementation.

The IEG has agreed (2011/SOM3/IEG/010) to review IFAP implementation progress, and decide which areas of IFAP should be the focus of collective APEC actions from 2012 to 2014. At the same time, the IEG has agreed to refocus IFAP activities towards areas with strong analytical and empirical foundations; activities that seek to incorporate hard lessons from previous APEC projects; and activities that produce concrete, tangible outcomes that can be widely distributed. The IEG has further agreed that rigorous capacity-building should remain an essential component of IFAP implementation.

The PSU was asked to assist the IEG to:

1. Describe IFAP implementation progress, which includes reviewing information such as the number of investment promotion agencies in the APEC region, and the number of international investment agreements among APEC economies.
2. Analyze the pattern and trends of foreign investment (mainly FDI), focusing on inter-regional and intra-regional FDI flows, and the sectoral composition of FDI flows (depending on data availability).
3. Design templates to be circulated among member economies to support the voluntary reporting of individual IFAP implementing actions being undertaken by member economies, as well as reporting by the APEC Secretariat of collective IFAP implementing actions.

Building on the existing template proposed by Australia under Doc 2012/CTI2/IEG/008 attachment E, the PSU assisted the IEG in designing two templates: (1) Investment Facilitation – Menu of Actions and Measures (see Appendix I); and (2) Investment Facilitation Actions Already Underway (see Appendix II).

The APEC Secretariat circulated the two agreed templates to the members of the IEG on 4 June 2012, requesting the member economies to fill out and return the completed templates to the Secretariat. The PSU has received fourteen responses at the time of this writing. The quality of the information provided by the economies were mixed – some economies provided detailed

information corresponding to the specific actions under each of the eight IFAP principles, while other economies provided information corresponding to only one or two specific actions out of the 50 agreed specific actions under the eight IFAP principles.

This report (Part I) contains analysis of the information collected from the IFAP voluntary reporting and from secondary sources to describe IFAP progress. Chapter 2 will describe the implementation progress of the specific actions under the eight IFAP principles. Chapter 3 will describe the investment facilitation actions already under way.

## 2. INVESTMENT FACILITATION – MENU OF ACTIONS AND MEASURES

### IFAP Principle 1

**Promote accessibility and transparency in the formulation and administration of investment- related policies**

**Table 1 Principle 1 Actions**

<b>Specific Actions</b>	<b>Economies Reporting Implementation of Specific Actions</b>
Publish laws, regulations, judicial decisions and administrative rulings of general application, including revisions and up-dates.	Australia; Chile; China; Hong Kong, China; Indonesia; Japan; Korea; Malaysia; Peru; Philippines; Singapore; Chinese Taipei; Thailand; United States; Viet Nam
Adopt centralized registry of laws and regulations and make this available electronically.	Australia; Chile; China; Hong Kong, China; Indonesia; Japan; Korea; Malaysia; Peru; Philippines; Singapore; Chinese Taipei; United States; Viet Nam
Establish a single window or special enquiry point for all enquiries concerning investment policies and applications to invest.	Australia; Chile; China; Hong Kong, China; Indonesia; Japan; Korea; Malaysia; Peru; Singapore; Chinese Taipei; Thailand; United States; Viet Nam
Make available all investment-related regulations in clear simple language, preferably in languages commonly used by business.	Australia; Chile; China; Hong Kong, China; Indonesia; Japan; Korea; Malaysia; Peru; Philippines; Singapore; Chinese Taipei; Thailand; United States
Following establishment of an Investment Promotion Agency (IPA), or similar body, and make its existence widely known.	Australia; China; Chile; Hong Kong, China; Indonesia; Japan; Korea; Malaysia; Peru; Philippines; Singapore; Chinese Taipei; Thailand; United States; Viet Nam
Make available to investors all rules and other information relating to investment promotion and incentive schemes.	Australia; Chile; China; Hong Kong, China; Indonesia; Japan; Korea; Malaysia; Peru;

	Philippines; Singapore; Chinese Taipei; Thailand; United States; Viet Nam
Allow investors to choose their form of establishment within legislative and legal frameworks.	Australia; China; Chile; Hong Kong, China; Indonesia; Japan; Korea; Malaysia; Peru; Philippines; Singapore; Chinese Taipei; United States
Ensure transparency and clarity in investment-related laws.	Australia; China; Chile; Hong Kong, China; Indonesia; Japan; Korea; Malaysia; Peru; Philippines; Singapore; Chinese Taipei; Thailand; United States
Improve upon the APEC-wide website (e-portal) to replacing the hard copy publication of the APEC Investment Guidebook (IEG).	Chile; China; Hong Kong, China; Indonesia; Japan; Peru; Chinese Taipei; Thailand; United States
Encourage on-line enquiries and on-line information on all foreign investment issues.	Chile; China; Hong Kong, China; Indonesia; Japan; Korea; Malaysia; Singapore; Chinese Taipei; Thailand; United States; Viet Nam
Maintain a mechanism to provide timely and relevant advice of changes in procedures, applicable standards, technical regulations and conformance requirements.	Australia; China; Hong Kong, China; Indonesia; Japan; Korea; Malaysia; Philippines; Singapore; Chinese Taipei; Thailand; United States; Viet Nam
To the extent possible, provide advance notice of proposed changes to laws and regulations and provide an opportunity for public comment.	Australia; Hong Kong, China; Japan; Korea; Malaysia; Philippines; Singapore; Chinese Taipei; Thailand; United States; Viet Nam
Explore the possibility of using the international benchmarks on a voluntary basis as a reference point for peer dialogue and measuring progress.	Australia; Chile; Hong Kong, China; Korea; Malaysia; Singapore; Chinese Taipei; Thailand

## Summary

Most reporting economies have in place a Foreign Investment Promotion Act which sets out the laws and regulations pertaining to foreign investment in its economy. The laws, rules, regulations

and amendments relating to foreign investment are usually published in an Official Gazette (e.g. Japan, Peru, the Philippines, Singapore and Viet Nam), and/or on the relevant government agency's website (e.g. Australia; China; Hong Kong, China; Japan; Korea; Chinese Taipei; Thailand and the United States).

Most economies have a trade and investment agency to help promote and facilitate foreign investment, such as Austrade and the Foreign Investment Review Board in Australia; the Foreign Investment Committee in Chile; Investment Promotion Agency of MOFCOM in China; Invest-HK in Hong Kong, China; BKPM in Indonesia; Invest Japan Office and Japan External Trade Organization (JETRO) in Japan; Invest Korea; Malaysia Investment Development Authority (MIDA); Peru's Proinversio; the Philippines' Board of Investment and Philippine Economic Zone Authority; the Economic Development Board in Singapore; InvesTaiwan Service Center in Chinese Taipei; Thailand's Board of Investment and the US's SelectUSA.

In exploring the possibility of using the international benchmarks on a voluntary basis as a reference point for peer dialogue and measuring progress, Singapore mentioned that it keeps a lookout for economies which have improved in their rankings and conduct research on these economies especially in the area of business reforms. Chinese Taipei is also exploring the World Investment Report as a reference to adjust or revise their measures of investment policies.

### **Expected outcomes**

The expected outcomes from the specific actions under IFAP Principle 1 are to:

- Ensure all investors are properly informed of the laws, rules and regulations, and related changes pertaining to foreign investment so they can plan and operate projects smoothly
- Increase transparency and accessibility to all foreign investment-related information
- Enhance predictability and security for foreign investors
- Enhance international credibility of the host economy
- Maximize return-on-investment for investors

### **Information from Secondary Sources**

#### **1. World Bank's Doing Business indicators**

The Doing Business (DB) indicators could be used to describe the progress of IFAP implementation for many of the actions under the IFAP principles. The DB reports assess regulations affecting domestic firms in 183 economies and ranks those economies in 10 areas of business regulation: starting a business, dealing with construction permits, getting electricity, registering property, getting credit, protecting investors, paying taxes, trading across borders, enforcing contracts, and resolving insolvency.

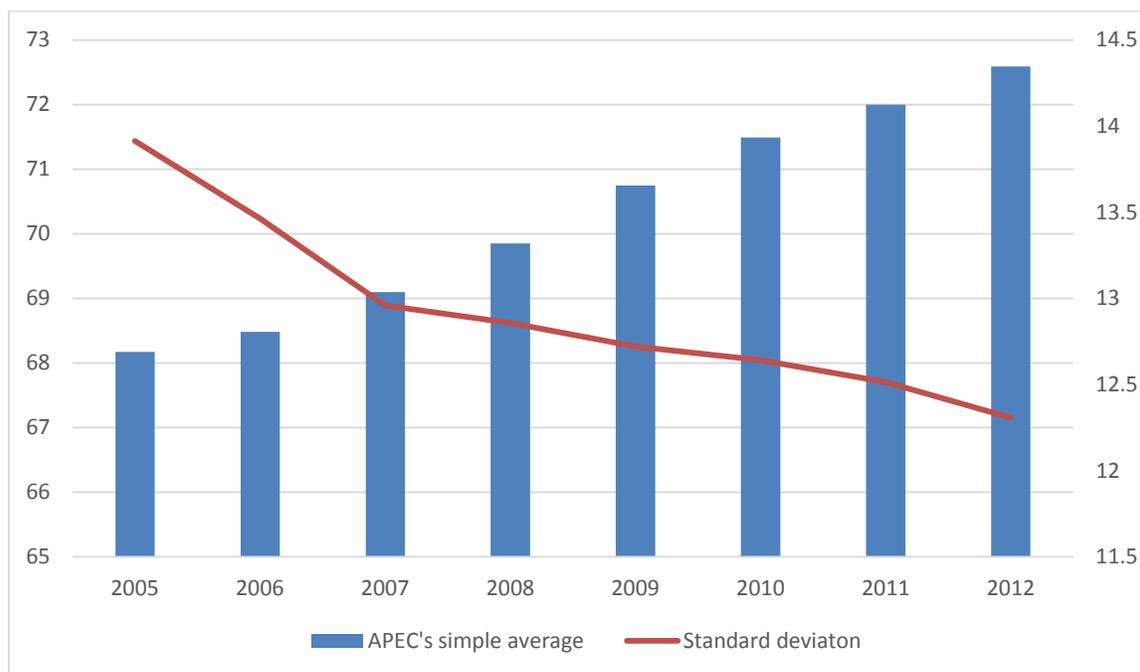
Using the latest measure from the DB 2013 report which is called the 'Distance to Frontier'<sup>2</sup>, shows how APEC's simple average for the new measure has shown consistent improvements

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<sup>2</sup> This new measure shows the distance of each economy to the "frontier," which represents the highest performance observed on each of the indicators across all economies included in Doing Business since each indicator was included in Doing Business. An economy's distance to frontier is indicated on a scale from 0 to 100, where 0 represents the lowest performance and 100 the frontier. For example, a score of 75 in DB 2012 means an economy

since 2005 to 2012, from 68.17 to 72.59. It shows that APEC as a whole is making significant progress and the gaps between member economies are narrowing as shown by the declining standard deviation values from the individual economies' figures.

**Figure 1 APEC's progress in Doing Business Indicators, using the 'Distance to Frontier' measure, 2005-2012**



Source: Own calculation from World Bank data (2013).

## 2. UNCTAD's World Investment Report (WIR)

The World Investment Report (WIR) focuses on trends in foreign direct investment (FDI) at the world, regional and economy-specific levels and looks at emerging measures to improve its contribution to development. The Report contains analysis of the trends in FDI during the previous year, with special emphasis on the development implications; a ranking of the largest transnational corporations in the world; in-depth analysis of a selected topic related to FDI; and policy analysis and recommendations.

The FDI Attraction and Potential Indices in the WIR are examples of two indicators that provide information relevant to implementation progress of the specific IFAP actions. The Inward FDI Attraction Index creates a rank of all economies by using an average of the FDI they receive in absolute terms and relative to their economic size. For example, the WIR 2012 looks at FDI flows over the 2009–2011 periods. The Inward FDI Potential Index captures four key economic

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was 25 percentage points away from the frontier constructed from the best performances across all economies and across time. A score of 80 in DB 2013 would indicate the economy is improving. In this way the distance to frontier measure complements the yearly ease of doing business ranking, which compares economies with one another at a point in time. More information about the measurement is available at: <http://www.doingbusiness.org/~media/GIAWB/Doing%20Business/Documents/Annual-Reports/English/DB13-Chapters/Ease-of-doing-business-and-distance-to-frontier.pdf>

determinants of the attractiveness of an economy for foreign direct investors: the attractiveness of the market (for market-seeking FDI), the availability of low-cost labor and skills (to capture efficiency-seeking FDI), the presence of natural resources (resource-seeking FDI), and the presence of FDI-enabling infrastructure. Economies can be ranked according to their attractiveness for FDI on each of these broad determinants using a range of proxy indicators. The index includes only economic determinants and indicators in order to facilitate its use as a tool for measuring policy effectiveness.

To illustrate, Figure 2 compares the performance of economies in attracting FDI over the past three years, captured by the FDI Attraction Index, with the FDI Potential Index. As shown in Figure 2, sixteen of the twenty one APEC economies are in the top 25 percentage of the rankings for the FDI Potential Index. Of those APEC economies, fourteen economies scored highly on the FDI Attraction Index.

Figure 2 Attraction of FDI vs FDI Potential Index Matrix, 2011 (Quartiles)

		Above expectations	In line with expectations	Below expectations	
FDI Attraction Index	High	Chad, Liberia, Madagascar, Niger	Albania, Bahamas, Congo, Congo (Democratic Republic of), Equatorial Guinea, Jordan, Lebanon, Luxembourg, Mongolia, Mozambique, Zambia	Bulgaria, Ghana, Ireland, Israel, Nigeria, Norway, Panama, Turkmenistan, Uruguay	Australia, Belarus, Belgium, Brazil, Chile, China, Colombia, Hong Kong (China), Kazakhstan, Malaysia, Peru, Poland, Russian Federation, Saudi Arabia, Singapore, Switzerland, Ukraine, United Kingdom, Viet Nam
	1st quartile				
	2nd quartile	Armenia, Cambodia, Guinea, Nicaragua, Saint Vincent and the Grenadines, Solomon Islands	Costa Rica, Georgia, Honduras, Kyrgyzstan, Libya, Maldives, Malta, Namibia, Seychelles, Sudan, United Republic of Tanzania	Brunei Darussalam, Croatia, Dominican Republic, Egypt, Estonia, Iraq, Portugal, Qatar, Serbia, Tunisia, Uzbekistan	Austria, Canada, Czech Republic, France, Germany, Hungary, India, Indonesia, Mexico, Netherlands, Romania, Spain, Thailand, Turkey, United Arab Emirates, United States
	3rd quartile	Antigua and Barbuda, Belize, Cape Verde, Central African Republic, Djibouti, Dominica, Fiji, Grenada, Guyana, Mali, São Tomé and Príncipe, Vanuatu	Barbados, Botswana, Cameroon, Lao People's Democratic Republic, the former Yugoslav Republic of Macedonia, Mauritius, the Republic of Moldova, Myanmar, Uganda, Zimbabwe	Algeria, Azerbaijan, Bolivia (Plurinational State of), Denmark, Gabon, Guatemala, Iceland, Jamaica, Latvia, Morocco, Oman, Pakistan, Syrian Arab Republic, Trinidad and Tobago	Argentina, Finland, Iran (Islamic Republic of), Italy, Japan, Korea (Republic of), South Africa, Sweden
	4th quartile	Afghanistan, Benin, Bhutan, Burkina Faso, Burundi, Comoros, Côte d'Ivoire, Eritrea, Gambia, Guinea-Bissau, Haiti, Kiribati, Lesotho, Malawi, Mauritania, Nepal, Rwanda, Samoa, Sierra Leone, Suriname, Swaziland, Togo, Tonga	Angola, Bangladesh, Bosnia and Herzegovina, El Salvador, Ethiopia, Kenya, Papua New Guinea, Paraguay, Senegal, Tajikistan, Yemen	Bahrain, Ecuador, Greece, Kuwait, Lithuania, New Zealand, Philippines, Slovakia, Slovenia, Sri Lanka	Venezuela (Bolivarian Republic of)
Low	4th quartile	3rd quartile	2nd quartile	1st quartile	
		Low	FDI Potential Index		High

Source: UNCTAD (2012).

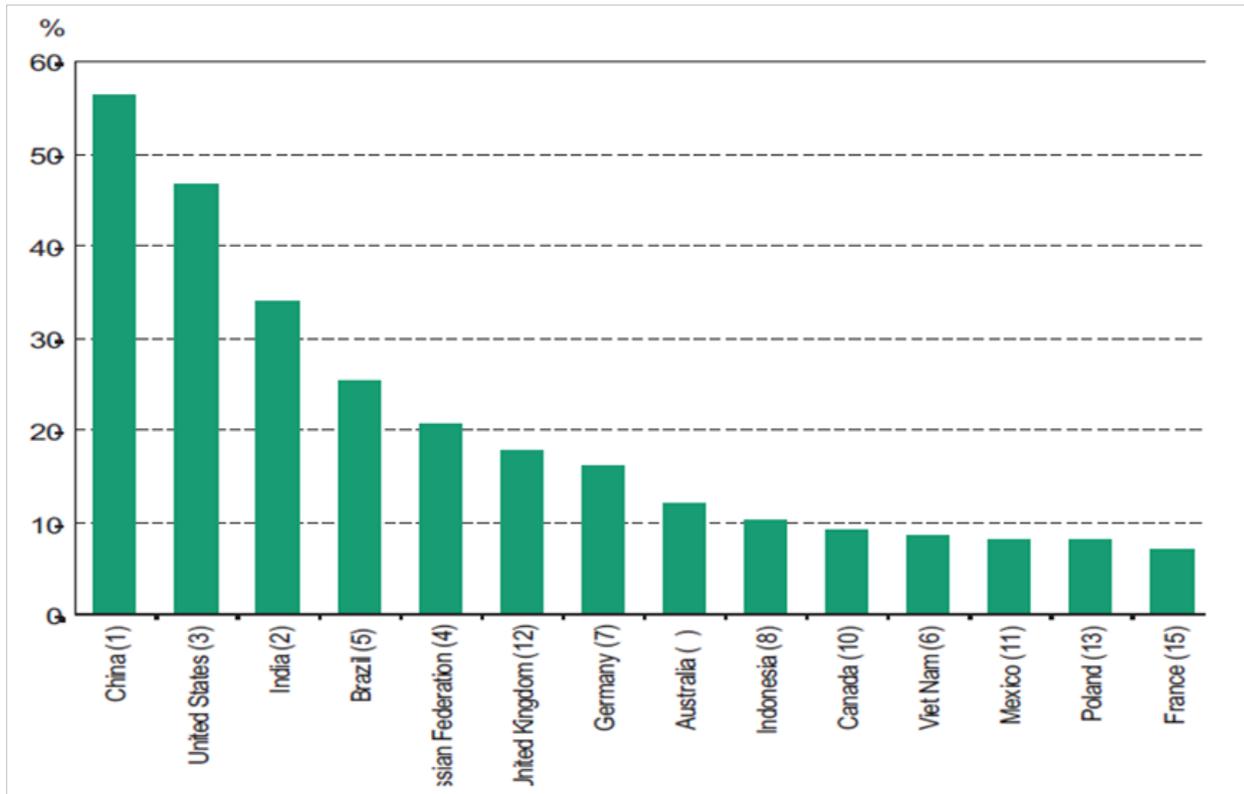
### 3. UNCTAD's World Investment Prospects Survey

UNCTAD conducts an annual survey of a sample of company executives selected among the largest non-financial transnational corporations (TNCs), which complements its analysis of FDI trends in its annual World Investment Reports. The survey, published as World Investment Prospects Survey (WIPS), aims at providing insights into FDI patterns over the subsequent three years. Rather than providing a quantitative projection, it offers an assessment of respondents' views at the time the survey was undertaken.

For example, the top fifteen most attractive economies for the location of FDI for the periods 2009-2011 are presented in Figure 3. Despite some common factors, such as market growth and size, other location determinants differ quite significantly by economy. The most favorable location factors for the 15 most attractive economies for FDI (based on the responses to WIPS) are as follows:

- For market growth, developing and transition economies are generally favored, such as China, the Russian Federation, Indonesia, Viet Nam, and Thailand
- For market size, the largest economies are favored including developed economies such as the United States and Canada or emerging markets such as China and the Russian Federation
- For access to regional markets, economies that are integrated into large markets, or which are close to large and growing economies, are favored, such as Mexico and Viet Nam
- For presence of suppliers, mostly developed economies are favored, such as the United Kingdom, Germany and France, and, to a slightly lesser extent, some developing economies such as India
- For their business environment (including government effectiveness, stability and quality of infrastructures), developed economies such as the United States and Australia are favored
- For skills and talent, developed economies such as the United States are favored, but also some developing economies, such as Thailand within the APEC region
- Cheap labor is cited for favoring developing economies, mostly in Asia and including China, Viet Nam, Indonesia and Thailand
- For access to natural resources, economies with rich resource endowments such as Canada, Australia and Indonesia are favored
- Access to capital markets is frequently mentioned as an asset for the United States and Canada as their deep, well-functioning financial systems allow easier access to credit
- Incentives are frequently mentioned for Australia and Viet Nam

**Figure 3 The 15 most attractive economies for the location of FDI 2009-2011  
(Percent of responses)**



Source: UNCTAD (2009).

Note: This percentage is calculated as the number of times the economy was mentioned, divided by the number of the responding companies. Figures may add up to more than 100% due to the possible multiple responses. Number into brackets indicate last year's ranking

**IFAP Principle 2****Enhance stability of investment environment, security of property and protection of investment****Table 2 Principle 2 Actions**

<b>Specific actions</b>	<b>Economies Reporting Implementation of Specific Actions</b>
Establish timely, secure and effective systems of ownership registration and / or property use rights for land and other forms of property.	Australia; Chile; China; Hong Kong, China; Indonesia; Japan; Malaysia; Peru; Philippines; Russia; Singapore; Chinese Taipei; Thailand; Viet Nam
Create and maintain an effective register of public or state owned property.	Chile; Hong Kong, China; Indonesia; Japan; Malaysia; Peru; Singapore; Chinese Taipei; Thailand; United States
Ensure costs associated with land transactions are kept to a minimum including by fostering competition.	Hong Kong, China; Indonesia; Japan; Singapore; Chinese Taipei; United States
Foster the dissemination of accurate market reputation information including creditworthiness and reliability.	Hong Kong, China; Indonesia; Singapore; United States
Explore the possibility of using the World Bank <i>Doing Business</i> indicator “Enforcing Contracts” as the basis for peer dialogue and benchmarking and measuring progress across APEC.	Chile; Peru; United States
Encourage or establish effective formal mechanisms for resolving disputes between investors and host authorities and for enforcing solutions, such as judicial, arbitral or administrative tribunals or procedures.	Australia; Chile; China; Hong Kong, China; Indonesia; Japan; Korea; Malaysia; Peru; Philippines; Russia; Singapore; Chinese Taipei; United States; Viet Nam
Encourage and facilitate the use of arbitration and other means of alternative dispute resolution for the settlement of international commercial disputes between private parties.	Chile; China; Hong Kong, China; Indonesia; Malaysia; Philippines; Singapore; Chinese Taipei; United States; Viet Nam
Facilitate commercial dispute resolution for foreign investors by providing reasonable cost complaint-handling facilities, such as complaint service centres, and effective problem-solving mechanisms.	China; Hong Kong, China; Korea; Peru; Russia; Singapore; Chinese Taipei; United States; Viet Nam
Take steps to accede to an arbitral convention.	Chile; China; Hong Kong, China;

	Japan; Malaysia; Peru; Philippines; Singapore; United States; Viet Nam;
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## Summary

Economies have, in general, a system of ownership registration in place. Most provide examples in terms of land registration and ownership. More details are necessary in order to see whether the system in place is actually timely, secure and effective.

Examples of effective public property registers along with their online reporting systems include Singapore Land Authority's State Property Information Online and the United States' Bureau of Land Management and General Services Administration. Hong Kong, China reported that the market force of competition has continued to push down conveyancing fees and their Land Registry costs are minimal. Japan mentioned its Land General Information System, implemented in April 2006, which provides investors a fair, competitive land price. In respect of the transparency with land transactions, Chinese Taipei has established the website: [http://www.moi.gov.tw/chi/chi\\_house/house.aspx](http://www.moi.gov.tw/chi/chi_house/house.aspx)

On the fostering the dissemination of accurate market reputation information including creditworthiness and reliability, United States mentioned that it has a robust private market for credit rating agencies and consumer reporting agencies, as well as laws in place that promote the accuracy of market information and the development of a broad array of tools for weighing creditworthiness and reliability. BKPM's website publicly displays Indonesia's credit rating by Fitch, S&P, and Moody's.

Chile and Peru (through the Competitiveness Council of the Ministry of Economy and Finance) and the United States have reported action under "Explore the possibility of using the World Bank Doing Business indicator "Enforcing Contracts" as the basis for peer dialogue and benchmarking and measuring progress across APEC".

Economies, in general, also have established effective formal mechanisms for resolving disputes between investors and host authorities and for enforcing solutions. Russia and Korea cited the example of having Ombudsman in place to mediate disputes, while Peru mentioned that it has established a Special Commission that is responsible for addressing plaintiffs' concerns. The Philippines' Office for Alternative Dispute Resolution aims to develop and expand the use of Alternative Dispute Resolution in the private and public sector through means such as arbitration, mediation, conciliation, early neutral evaluation, mini-trial, or a combination thereof.

Related with the use of arbitration, Malaysia provided the example of the Investment Guarantee Agreements (IGAs) which include provisions for investor-state dispute settlement through arbitration using the International Centre for Settlement of Investment Disputes (ICSID), United Nations Commission on International Trade Law (UNCITRAL), Kuala Lumpur Regional Centre for Arbitration (KLRCA) and other fora. The Hong Kong International Arbitration Centre provides services and facilities in dispute resolution mechanisms including arbitration and mediation (<http://www.hkiac.org/>); in addition the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards is also application to Hong Kong, China. Indonesia's National Board of Arbitration (BANI) provides a range of services in arbitration, mediation,

binding opinion and other forms of dispute resolution. Singapore has established the Singapore International Arbitration Centre ([www.siac.org.sg](http://www.siac.org.sg)) and the Singapore Mediation Centre ([www.mediation.com.sg](http://www.mediation.com.sg)) to support alternative dispute resolution.

Related with complaint-handling facilities, Peru provided the example of National Agency for the Defense of Competition and Protection of Intellectual Property – INDECOPI. It is the competent body in case foreign investors lodge a claim for actions that affect the right participation of economic agents in the market. Investors can attend public INDECOPI hearings on market access issues to ensure transparency is included in the process. It also considers distortions in competition between suppliers of goods and services, distortions in accessing or leaving the market, actions against the respect of intellectual property rights, copyrights and patent rights.

Russia cited the example of the Foreign Investment Advisory Council (FIAC). FIAC has two main work streams: (1) assistance in resolving specific issues encountered by foreign investors in their relations with federal executive bodies and executive bodies of constituent entities of the Russian Federation; (2) expert support of priorities in work of the government, including the regulatory and legal framework.

The United States provided an example of the SelectUSA program, which encourages and facilitates foreign investment in the United States by, among other things, serving as an ombudsman to facilitate the resolution of issues involving federal programs or activities related to pending investments (<http://selectusa.commerce.gov/>).

On complying with arbitral convention, Peru mentioned that it has ratified the Convention of the Settlement of Investment Disputes between the States and Nationals of other States (ICSID) (September 8, 1993), the Inter-American Convention on International Commercial Arbitration, signed in Panama in 1975 (June 21, 1989), and the 1958 New York Convention on Recognition and Enforcement of Foreign Arbitral Awards (October 5, 1988).

Viet Nam is currently studying accession to the Washington Convention to help settle investment disputes between the state and foreign entities.

### **Expected outcomes**

The economies have provided the following expected outcomes for implementing this principle:

- To make investors feel secure that their investments will be protected in the host economy
- To enhance security and predictability
- To reduce the time taken to obtain building permission; to improve the business environment; and to assist investors in resolving any particular problems

### **Information from Secondary Sources**

The recent APEC Best Practices Guidebook<sup>3</sup> which promotes capacity-building to help ensure appropriate and prompt consideration of investors' complaints to improve the investment climate within APEC, provides the following practices on (pre-court) dispute resolution mechanisms:

**Table 3 Practices on dispute resolution mechanisms of some APEC economies**

<b>Economy</b>	<b>Practices</b>
<b>Chile</b> (through the FIC-Foreign Investment Committee)	<p><b>Consultations:</b></p> <ol style="list-style-type: none"> <li>1. The Complaint can be received through different means; <ul style="list-style-type: none"> <li>- Direct contact with FIC;</li> <li>- Through diplomatic channels, where contact is made through the Chilean Embassy or its Ambassador to the Economy of which the Investor is resident, who will then inform FIC.</li> </ul> </li> <li>2. Once the complaint is filed, FIC will proceed to contact the investor who filed the complaint and seek an alternative and amicable solution to the problem.</li> </ol>
<b>China</b> (using the Administrative Reconsideration Law of the PRC, 1999)	<p><b>Filing a complaint:</b></p> <p>Any citizen, legal person or any other organization, who considers that a specific administrative act has infringed upon his or its lawful rights and interests may file an application for administrative reconsideration within 60 days from the day when he or it knows the specific administrative act, except that the time limit prescribed in laws, exceeds 60 days.</p>
<b>Hong Kong, China</b>	<p><b>Arbitration Process:</b> The new Arbitration Ordinance came into operation on 1 June 2011, establishing a unitary regime for arbitration which is based on the UNCITRAL Model Law on International Commercial Arbitration (Model Law) adopted by the UNCITRAL.</p> <p><b>Mediation Process:</b> The Mediation Bill was gazetted on 18 November 2011 and is expected to be enacted within 2012<sup>4</sup>. The purpose of the Bill is to provide a regulatory framework for the conduct of mediation and to address some areas in which the law is uncertain, such as confidentiality and admissibility of mediation communication in evidence.</p>
<b>Indonesia</b> (using Law No. 25/2007 and BKPM Chairman Regulation No. 13/2009 as modified by the BKPM Chairman Regulation No. 7/2010)	<p>The facilitation of problem solving is done in stages by:</p> <ol style="list-style-type: none"> <li>1. Head of Regency/ Municipal Investment Agency on the resolution of investment problems which are under the purview and the authority of the Regents/Mayors in coordination with relevant local agencies;</li> <li>2. Head of Provincial Investment Agency on the resolution of investment problems which are under the purview and the authority of the Governor of the provinces, in coordination with Head of Regency/ Municipal Investment Agency and relevant local agencies; Indonesia Investment Coordinating Board;</li> <li>3. On the resolution of investment problems which are under the purview and the authority of the Central Government, in coordination with Head of Provincial Investment Agency, Head of Regency/ Municipal Investment Agency and relevant local agencies;</li> </ol>
<b>Japan</b> (through	<b>Facilitates close communication between Government and Business sides:</b>

<sup>3</sup> The guidebook is available at [http://www.apec.org/Groups/Committee-on-Trade-and-Investment/~media/Files/Groups/IEG/20120713\\_IEG\\_BestPracticesGuidebook\\_rus.ashx](http://www.apec.org/Groups/Committee-on-Trade-and-Investment/~media/Files/Groups/IEG/20120713_IEG_BestPracticesGuidebook_rus.ashx)

<sup>4</sup> Latest update: The Mediation Bill was enacted in June 2012.

<p>the “Improvement of the Business Environment” Chapter/Article under the EPAs/BITs.</p>	<p>1. A liaison office is designated to transmit to the relevant authorities complaints, inquiries, and requests submitted by enterprises. The liaison office also forwards responses from the relevant authorities to the enterprises and provides the enterprises with necessary information and advice.</p> <p>2. Business representatives are invited, when necessary, to the (Sub-) Committee for discussion on a more favorable business environment.</p> <p><b>Encourages the Governments to address the issues:</b></p> <p>3. Based on findings regarding the business environment reported by the liaison office, the (Sub-) Committee, composed of representatives of both Governments and private sector, discusses the issues and makes recommendations for measures to be taken by the Governments.</p> <p>4. Responding to recommendations from the (Sub-) Committee, the Governments address the issues facing business enterprises.</p>
<p><b>Korea</b> (using the Foreign Investment Promotion Act)</p>	<p><b>Foreign investor filing a grievance:</b> A foreign investor may file a complaint via email, phone, fax, SNS etc. or by requesting a visit of Home Doctors, or the Foreign Investment Ombudsman’s civilian consultants, to the workplace. The investor also may file a grievance through the American Chamber of Commerce in Korea, the European Union Chamber of Commerce in Korea or other relevant organizations.</p> <p><b>Home Doctor’s review and investigation on the reported complaint:</b> When a grievance is filed, a Home Doctor is assigned to the case to review and investigate the problem.</p> <p><b>Grievance resolution:</b> After investigation of the case, the Home Doctor settles the issue in cooperation with relevant government agencies by providing legal consulting services, etc. If the revision of regulations is necessary or administrative actions need to be taken, the Home Doctor gives the authority recommendations based on his expert opinion and the Ombudsman’s final review.</p> <p><b>Report on the results:</b> The Home Doctor reports the results to the Ombudsman and the foreign investor.</p>
<p><b>Mexico</b></p>	<p>First, the mechanism is based on spreading the knowledge at the different levels of government (including the municipalities) on international rules and Mexico’s Free Trade Agreements and Bilateral Investment Treaties, particularly on the investment disciplines.</p> <p>During the second phase the federal government proposes an Agreement of formal cooperation in order to exchange information on the current legal framework that municipalities are implementing and their consistency with international commitments.</p> <p>Additionally, the investment promotion agency, ProMexico, has an alternative mechanism for resolving issues previous to the presentation of the “notice”, which is based also on a series of meetings with high level authorities when the State or the Municipalities are involved in a problem with an established or potential investor in order to identify possible solutions through good offices and constructive discussions.</p>
<p><b>Russia</b> (through the Russian Government Order No. 1298-r of 2 August 2010)</p>	<p><b>Filing a complaint</b></p> <ol style="list-style-type: none"> <li>1. An investor sends a complaint by any means convenient;</li> <li>2. The complaint is registered and filed;</li> <li>3. Investor is given access to the status of complaint;</li> <li>4. An official responsible for problem resolution is determined.</li> </ol>

<p>(Federal level) and The President's directive, 2011 (Regional level)</p>	<p><b>Initial evaluation</b></p> <ol style="list-style-type: none"> <li>1. Official makes a preliminary expertise of the communicated problem (including determination of the fact of investor's rights violation)</li> <li>2. Official determines the type of the problem from a list: customs regulation, immigration regulation, administrative barriers, exceeding of authority by public officials, shortcoming of the Russian legislation, taxation, trade activities regulation, property rights protection, discrimination of companies;</li> <li>3. The official defines the interested agencies;</li> <li>4. The official requests additional information from all pertaining government agencies; (The results are presented to the regional ombudsman within one day)</li> </ol> <p><b>Resolving the problem</b></p> <ol style="list-style-type: none"> <li>1. The official formulates a plan of action, with stages and deadlines, if necessary a Work Group is created;</li> <li>2. If the problem is caused by the legislation shortcoming, the ombudsman office prepares the proposals on the legislative changes;</li> <li>3. If the problem exceeds regional level, the official is entitled to engage the federal level, such as department of investment policy and development of public-private partnerships.</li> </ol> <p><b>Report the results</b></p> <ol style="list-style-type: none"> <li>1. The results are sent to the investor;</li> <li>2. The investor submits a statement as to the effect of being satisfied with the decision;</li> <li>3. Ministry of Economic Development of the Russian Federation assesses the measures undertaken;</li> <li>4. Regional ombudsman present their reports on the work accomplished at regular periods.</li> </ol>
<p><b>Singapore</b> (using the Singapore Mediation Centre)</p>	<p><b>Request for Mediation:</b> The parties contact the SMC to make the initial request. There is no formality for this request. SMC can also assist a party to contact the other parties in the dispute.</p> <p><b>Agreement to Mediate:</b> When all parties agree to mediate their dispute, SMC prepares the Mediation Agreement to be signed, designates a date, time and place for mediation, appoints a mediator and attends to all other administrative matters.</p> <p><b>Mediation Process:</b> The mediator will help facilitate a conversation between parties to guide parties through a problem-solving process. The lawyers of the parties will attend to play an important role of assisting the mediator and advising the parties throughout the settlement process. More than 90% of cases that settle are concluded within a day and SMC's overall settlement rate for mediations is 75%.</p> <p><b>End of Mediation:</b> The parties usually reduce the terms of their settlement into writing with the assistance of their lawyers at the end of the mediation. This is a binding contract between parties.</p>
<p><b>Chinese Taipei</b> (through the Coordination Office for Investment Promotion – COIP)</p>	<ol style="list-style-type: none"> <li>1. In a case where the obstacles encountered by major investment projects cannot be solved by the Investment authority, it may be transferred to the General Affairs Division of COIP for further coordination. If the nature of the case is beyond the sole jurisdiction of the General Affairs Division, the Division will coordinate with such other Divisions as Water and Electricity, Environmental Protection and Conservation, Transportation, and Land Acquisition for resolution. Those cases that need further coordination will be submitted to the COIP Director to convene a "COIP Meeting" or to the Minister, depending on the extent and nature of the</li> </ol>

	<p>problem.</p> <p>2. Those cases that have been submitted directly to the COIP, without first submitted to the Investment authority for handling, will being relayed to the agencies concerned. A notification will be sent to the applicant. COIP will convene a meeting if a case calls for coordination.</p> <p>3. Ad hoc committees will be convened to decide on important cases that relate to policy making or coordination among ministerial agencies.</p> <p>4. COIP will provide consulting assistance to enterprises regarding questions on investment related administrative laws and regulations. It may also refer the inquiries to the agencies concerned.</p>
<p><b>United States</b> (using the The President's Executive Order 13577— “Establishment of the SelectUSA Initiative,” June 15, 2011)</p>	<p>1. An investor shares the complaint by any means convenient. A SelectUSA staff member promptly interacts with the investor to further understand the nature of the complaint and its potential impact on investment, and advises the investor of next steps.</p> <p>2. SelectUSA staff works with the relevant Federal bureau/ agency to understand the case and advises the investor of its findings. If needed, SelectUSA may determine additional follow-up steps (e.g., facilitating a meeting between the investor and the relevant agency).</p> <p>SelectUSA does not have the authority to mandate a particular outcome from a Federal agency. The purpose of SelectUSA's ombudsman function is to help facilitate an investment project through the Federal regulatory process.</p>

Source: APEC (2012)

Issues on registering property are also one of the topics covered under the World Bank's Ease of Doing Business report. The World Bank noted that property owners with registered titles are more likely to invest since they have better access to credit when using their property as collateral. Land registration would also benefit the government for assessing and collecting tax revenue and would also be useful for city or regional planning purposes.

The World Bank's DB 2012 report provided the following Good Practices in making it easy to register property:

**Table 4 Good Practices around the world in making it easy to register property**

Practice	Economies	Examples
Using an electronic database for encumbrances	108	Jamaica; Sweden; United Kingdom
Setting effective time limits for registration	54	Botswana; Guatemala; Indonesia
Offering cadastre information online	50	Denmark; Lithuania; Malaysia
Offering expedited procedures	16	Azerbaijan; Bulgaria; Georgia
Setting fixed transfer fees	15	New Zealand; Russian Federation; Rwanda

Source: Doing Business Database, DB 2012 report.

Note: Among 183 economies surveyed.

Russia was cited in the DB 2012 report as one of the economies that has made registering property easier in 2010/11 through combined or reduced procedures. Malaysia was cited in the DB 2013 report as it has implemented a new caseload management system in the land office, enabling clerks to process property transfer applications 34 days faster.

The 2010 edition of APEC's Guide to Investment Regimes has information on 18 APEC economies and includes a section titled 'Mechanism to review decisions and settle disputes' that describes the available procedures and mechanism (including arbitration processes) to settle disputes. In general, foreign investors have access to the same courts and tribunals as domestic investors and are also able to access a range of alternative dispute resolution mechanisms, such as international arbitration through the International Centre for Settlement of Investment Disputes (ICSID).

Some of the actions under this principle are similar with the OECD Investment Policy Reviews questions, in which the following information is extracted for APEC economies:

- **Viet Nam:** "Changes to management of land accessible by foreign investors have been made available by the government by empowering provincial authorities to make land allocations and leases. In respect of businesses, the law rules that all enterprises are equal in the use of land". (OECD 2010: 47). Viet Nam has also established an International Arbitration Centre in Ho Chi Minh City (OECD 2010: 51). Viet Nam has signed and acceded to various investment-related bilateral and multilateral agreements, including bilateral agreements on investment facilitation and protection, with 55 economies and regions, agreements on avoidance of double taxation with 46 economies and regions, the ASEAN Framework Agreement on Investment (AIA), MIGA and the New York Convention (OECD 2010: 54). Under the 2005 Investment Law, Viet Nam allows foreign investors to use foreign arbitration or use and apply foreign laws as specified by the relevant Vietnamese laws (OECD 2010: 55).
- **Indonesia:** "If a dispute arises between the government and the investor, the Investment Law (25/2007) provides for a dispute settlement mechanism in Article 32, including mutual understanding through discussion (*musyawarah*) and arbitration (with the consent of both parties). The government has also ratified several conventions concerning alternative dispute resolution mechanisms, such as the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958) and the Convention on the Settlement of Investment Dispute between States and Nationals of other States (1965)... BANI is Indonesia's permanent court of arbitration. It provides a range of services covering arbitration, mediation, binding opinion and other forms of dispute resolution. The process is expedited by the absence of appeals or the possibility of the ruling being overturned by a higher court. BANI has developed its own rules and procedures for both domestic and international arbitration taking place in Indonesia, although other rules chosen by the parties (such as UNCITRAL Arbitration Rules) may also be applied." (OECD 2010: 73)

The latest 2011 Infrascopie report commissioned by the ADB assesses the capacity of economies in the Asia-Pacific region to carry out sustainable PPP. The report notes the value of a solid legal and regulatory framework including an assessment on dispute-resolution mechanisms. The report noted that: "There are a number of challenges associated with dispute-resolution in the courts that are more pronounced in developing economies—delays, concerns over judicial independence and issues of capacity related to complex, technical cases. These lead to a wide range of mechanisms being deployed such Alternative Dispute Resolution (ADR) which includes conciliation, renegotiation and arbitration..." (EIU&ADB 2011: 14)

**IFAP Principle 3****Enhance predictability and consistency in investment-related policies****Table 5 Principle 3 Actions**

<b>Specific actions</b>	<b>Economies Reporting Implementation of Specific Actions</b>
Increase use of legislative simplification and restatement of laws to enhance clarity and identify and eliminate inconsistency.	Australia; Hong Kong, China <sup>5</sup> ; Korea; Malaysia; Singapore; Chinese Taipei; Thailand; United States; Viet Nam
Provide equal treatment for all investors in the operation and application of domestic laws and principles on investment.	Australia; Chile; China; Hong Kong, China; Indonesia; Japan; Korea; Malaysia; Peru; Philippines; Singapore; Chinese Taipei; Thailand; United States; Viet Nam
Reduce the scope for discriminatory bureaucratic discretion in interpreting investment-related regulations	Australia; China; Hong Kong, China; Indonesia; Japan; Malaysia; Philippines; Singapore; Chinese Taipei; Thailand; United States
Maintain clear demarcation of agency responsibilities where an economy has more than one agency screening or authorizing investment proposals or where an agency has regulatory and commercial functions	Australia; Chile; China; Hong Kong, China; Indonesia; Japan; Malaysia; Philippines; Chinese Taipei; Thailand; United States
Establish and disseminate widely clear definitions of criteria for the assessment of investment proposals	Australia; Chile; China; Hong Kong, China; Indonesia; Japan; Malaysia; Philippines; Chinese Taipei; Thailand

<sup>5</sup> To enhance clarity and transparency, all primary and subsidiary legislation are published and available on the internet and decisions of the courts in Hong Kong, China, are generally published and made publicly available. Judgments of the Court of Final Appeal, the High Court and so on which are of significance as legal precedents on points of law, practice and procedure of the courts and of public interest are available on the internet. The specific action on restatement of laws, however, is not applicable in Hong Kong, China.

Establish accessible and effective administrative decision appeal mechanisms including, where appropriate, impartial “fast-track” review procedures.	Australia; Chile; China; Hong Kong, China; Japan; Malaysia; Chinese Taipei; United States; Viet Nam
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## Summary

Some of these actions were implemented through revisions of economies’ Foreign Investment Promotion Acts. The investment promotion agencies of most reporting economies implement actions related to IFAP Principle 3 while according most foreign investors ‘national treatment’<sup>6</sup> as specified by the WTO.

For example; Hong Kong, China maintains that equal treatment will be given to all applications so long as any relevant statutory requirements are in compliance. Peru’s constitution stipulates that domestic and foreign investors are subject to the same conditions. The Board of Investment of Thailand provides equal treatment to all investors. The United States is party to over 50 BITs and FTAs and uses ‘national treatment’ as the principle for their international investment regime. The United States also does not screen or otherwise require authorization for foreign investment.

In keeping with providing equal treatment for all investors, Singapore currently has 40 IGAs and 14 FTAs with Investment Chapters in force. These treaties contain provisions provided non-discriminatory protection for investors.

## Expected outcomes

Based on the information submitted by the reporting economies, the expected outcomes from the specific actions under IFAP Principle 3 are to enhance predictability, consistency, accountability and transparency so as to promote private domestic and foreign investment.

## Information from Secondary Sources

The OECD has created an FDI Regulatory Restrictiveness Index<sup>7</sup> to document the extent to which economies restrict market access in three major areas: limitations on foreign ownership, screening or notification procedures, and management and operational restrictions. Their intent is to determine if regulatory restrictions keep economies from meeting ‘national treatment’ guidelines. The index monitors performance in the areas of business services, telecommunications, construction, distribution, finance, hotels and restaurants, transportation, electricity, and manufacturing. APEC member economies who are members of the OECD have received index scores on their openness to foreign investment on a scale from 0 (completely open to FDI) to 1 (closed to international competition.) This framework could be extended to non-OECD economies within the APEC region as a way to benchmark a member economy’s progress toward low-cost, transparent investment policies.

<sup>6</sup> ‘National treatment’ is a principle in international law which essentially means treating foreigners and locals equally.

<sup>7</sup> See <http://www.oecd.org/investment/fdiindex.htm>

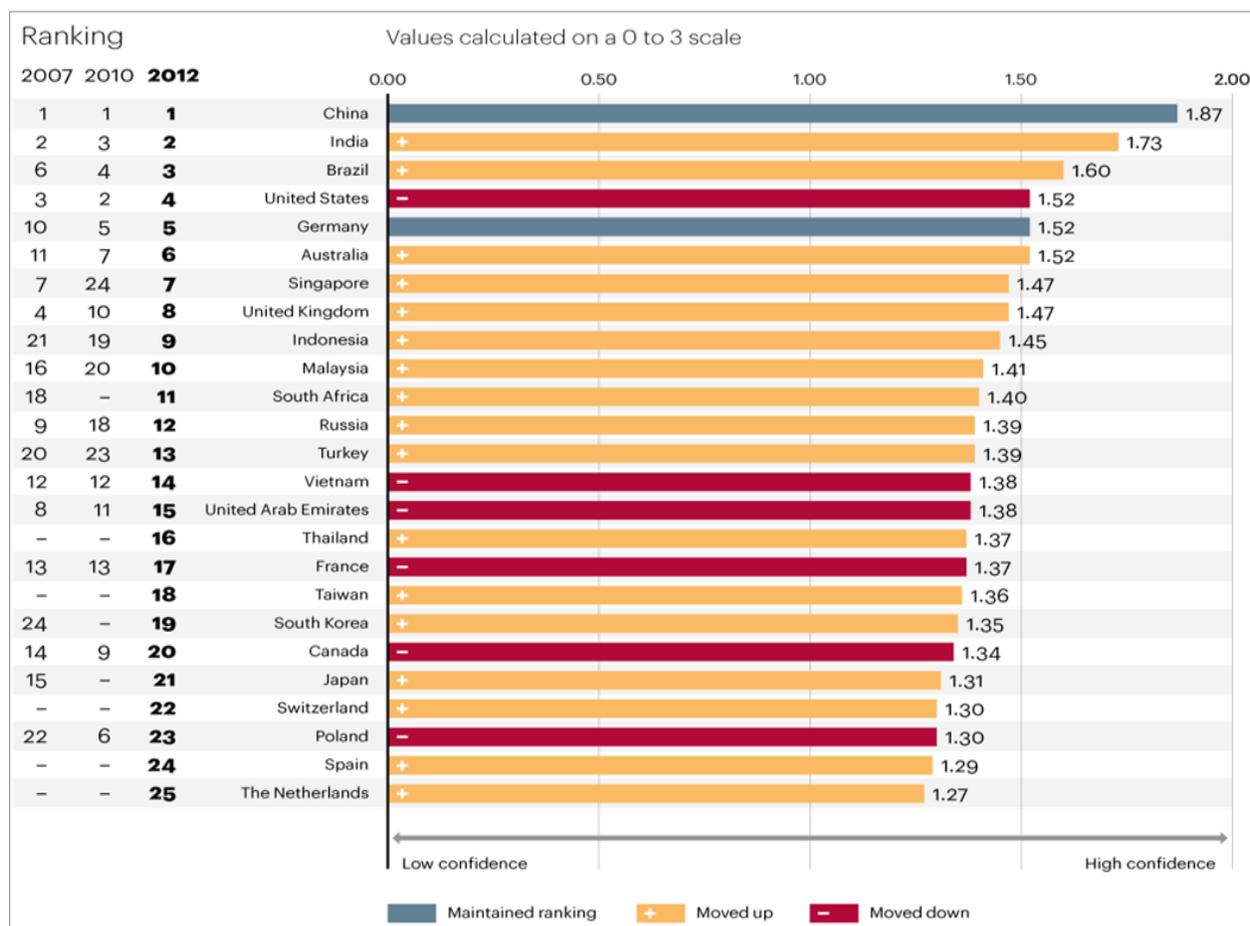
The Foreign Direct Investment Confidence Index<sup>8</sup> is a regular survey of global executives conducted since 1998 by A.T. Kearney, a consultancy. The Index provides a unique look at the present and future prospects for international investment flows by assessing the impact of political, economic, and regulatory changes on the FDI intentions and preferences of global MNC leaders. Companies participating in the survey account for more than \$2 trillion in annual global revenue.

The 2012 survey examines future prospects for FDI flows as the world seeks to recover from the global recession and comes amidst continued economic uncertainty in Europe and the United States. Respondents included thirteen APEC economies among the top 25 best places to invest globally. This survey can act as another tool to determine market sentiment toward a host economy's investment climate.

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<sup>8</sup> See <http://www.atkearney.com/gbpc/foreign-direct-investment-confidence-index> . It should be noted that, as the author of the report mentioned: “while the FDI Confidence Index provides a sense of investor attitudes about the future, it is not designed to reveal specific reasons for the results. The study reflects upon likely causes for upward or downward changes, but the conclusions must be regarded only as considered judgment on the part of A.T. Kearney's Global Business Policy Council”. (Source: [http://www.atkearney.com/gbpc/foreign-direct-investment-confidence-index/full-report/-/asset\\_publisher/PHesJ9DLURrR/content/cautious-investors-feed-a-tentative-recovery/10192](http://www.atkearney.com/gbpc/foreign-direct-investment-confidence-index/full-report/-/asset_publisher/PHesJ9DLURrR/content/cautious-investors-feed-a-tentative-recovery/10192) )

**Figure 4 2012 FDI confidence Index**



Source: A.T. Kearney Foreign Direct Investment Confidence Index 2012.<sup>9</sup>

### IFAP Principle 4

#### Improve the efficiency and effectiveness of investment procedures

**Table 6 Principle 4 Actions**

Specific actions	Economies Reporting Implementation of Specific Actions
Simplify and streamline application and registration, licensing and taxation procedures and establish a one-stop authority, where appropriate, for the lodgment of papers	Australia; China; Hong Kong, China; Indonesia; Japan; Korea; Malaysia; Russia; Philippines; Singapore; Chinese

<sup>9</sup> According to the report, if taken separately from China, Hong Kong, China would rank 3<sup>rd</sup> in the index

	Taipei; Thailand; Viet Nam
Simplify and reduce the number of forms relating to foreign investment and encourage electronic lodgment	Australia; China; Hong Kong, China; Japan; Malaysia; Philippines; Singapore; Chinese Taipei; Thailand; Viet Nam
Shorten the processing time and procedures for investment applications.	Australia; China; Hong Kong, China; Japan; Malaysia; Philippines; Singapore; Chinese Taipei; Viet Nam
Promote use of “silence is consent” rules or no objections within defined time limits to speed up processing times, where appropriate	Australia; Chile; Malaysia; Peru;
Ensure the issuing of licenses, permits and concessions is done at least cost to the investor	China; Hong Kong, China; Japan; Philippines; Singapore; Chinese Taipei; Thailand; United States
Simplify the process for connecting to essential services infrastructure	China; Japan; Russia; Singapore; Chinese Taipei; Thailand
Implement strategies to improve administrative performance at lower levels of government.	China; Indonesia; Korea; Philippines; Viet Nam
Facilitate availability of high standard business services supporting investment	Chile; Hong Kong, China; Japan; Indonesia; Malaysia; Philippines; Singapore; Chinese Taipei; United States

### Summary

Economies have reported efforts to streamline application and registration, licensing, and taxation procedures. Chinese Taipei abolished their uniform certification system in 2009, allowing businesses to begin operation immediately after completing registration and reducing delays from the certification process. Malaysia cited the example of MIDA as the coordinating body as well as introducing a ‘fast track’ mechanism. Japan cited the example of IBSC (Invest Japan Business Support Center) and Thailand cited BOI as having established One Start One

Stop systems to facilitate investment by gathering all related investment agencies in one location. Russia reported various tax cuts and incentives.

In reducing number of forms and electronic lodgment, Malaysia provided the example of on-line applications that are available on the MIDA website whereby companies can apply for Manufacturing Licenses, Tax Incentives, Expatriate Posts and Import Duty Exemptions on Machinery and Raw Materials. They have also imposed a two-day turnaround goal for issuing manufacturing licenses.

China further delegated examination and approval authority as below: threshold of foreign investment projects requiring central government approval had been raised to US\$300 million (as total investment including expansion) under ‘encouraged’ & ‘permitted’ category of Catalogue for the Guidance of Foreign Investment Industries. Unless otherwise specified, relevant departments under the State Council may delegate approval authorities to local governments. Establishment of foreign investment enterprises in service sectors (except financial sector and telecommunication services) are examined and approved by local governments according to related regulations. China also further streamlined approvals through wider application of online licensing/administration system. The Regulation on National Security Review Relating to Mergers & Acquisitions by Foreign Investors was promulgated, which provides the transparency on handling such issues. China had allowed foreign investors to invest offshore with Renminbi and provided investment facilitation to reinvestment activities of established investment (holding) companies with foreign investment. Lastly, China revised the Catalogue for The Guidance of Foreign Investment Industries and released on December 24, 2011 and took into effect on January 30, 2012.

For the ‘silence is consent’ rules, Peru cited The Positive Administrative Silence Law issued in 2008 which stipulates that if a public entity has failed to respond to a request within 30 days, such request is considered to be accepted. This law replaced the rule which accorded the absence of reply by the administration within 30 days as a denial. Chile has also implemented ‘silence is consent’ rules to facilitate processing of foreign investment.

The United States ensures that licenses and permits are supplied at the least cost to the investor by making this principle a basis of their pricing model, using tools such as cost-benefit analysis to balance investor needs with public welfare. Common practice is to base fee-levels on the cost to government of processing an application. The United States also does not require prior approval, or maintain any general authorization procedures, for foreign investment; such that several actions under this principle would be inapplicable.

Under the “Simplify the process for connecting to essential services infrastructure” measure, Russia provided an example of the special procedure for connecting small businesses to the power system. Singapore’s Bizfile website allows investors to register with multiple agencies simultaneously, streamlining the start-up and connection process.

Indonesia’s BKPM has made considerable progress toward improving administration at lower levels of government. They have worked with 6 other agencies in establishing 130 one-stop shops throughout the economy that provide a standard, consistent level of service. The Philippines’ Nationwide Streamlining of Business Permits and Licensing Systems Reform creates a unified business registration form for all cities and municipalities, consolidating the

information needed by local and domestic agencies. The Trouble-free Registration with BOI (TURBO) Program simplifies the procedures and “strips down” the existing BOI application forms and requirements, such that number of days in processing the application is reduced from twenty (20) working days to just five (5) days.

For providing high standard business services supporting investment, Malaysia cited MIDA’s efforts in facilitating existing companies in overcoming operational problems faced. In Hong Kong, China; Invest-HK provides information to overseas and mainland companies and investors to facilitate starting or expanding their operations.

### **Expected Outcomes:**

The following are the expected outcomes resulting from implementing Principle 4 of IFAP:

1. To avoid delays in provide administrative formalities by government agencies.
2. To make it easier of doing business for investors.
3. To raise awareness of opportunities for investment within APEC economies, for example in Renewable and Clean Energy sector.
4. To make overall business process easier, faster, cheaper and to enhance predictability and understandability; to improve efficiency of government agencies to serve investors.
5. To build up cooperation with investors, especially foreign ones; to facilitate the procedure for business set-up; to stimulate the renovation of industrial capacities by providing tax incentives.

### **Information from Secondary Sources**

Based on the Doing Business 2012 report, five APEC economies are included in the list of top ten for making it easier to start a business. Some of the good practices that are common among the 10: offering one-stop shops; charging only a fixed registration fee—regardless of company size—that is limited to the administrative cost of providing the registration services; use standard registration forms; require nominal paid-in minimum capital or none at all; assigning unique company identification (ID) numbers and adopting technology to facilitate the delivery of a range of business start-up procedures; review formalities to ensure that they still fulfill their intended purpose.

Some of the actions under this principle are similar with the OECD Investment Policy Reviews questions, in which the following information is extracted for other APEC economies:

- **Viet Nam:** “Provincial government authorities have made a great effort to set-up a “one-stop shop” system. However, every provincial investment promotion agency has tried to implement the procedure in a different way and with different levels of success”. (OECD 2009: 59). The weakest link in the services provided by Viet Nam’s investment promotion agencies is dealing with problems that arise after the Investment Certificates have been granted. (OECD 2009: 60).
- **Indonesia:** Establishing a one-stop integrated services centre (Pelayanan Terpadu Satu Pintu, PTSP) has been on the government’s agenda for several years but has been an uneven process across Indonesia’s 524 autonomous regions... As a follow-up in 2009, the government instructed government departments and institutions to delegate their

authority to the Chairman of BKPM, or the head of a respective regional body responsible for investment. As of March 2010, 15 Ministers had delegated their licensing authority to the Chairman of BKPM, and two Ministers have placed their officials in BKPM to implement the PTSP. . (OECD 2009: 92-93)

## IFAP Principle 5

### Build Constructive Stakeholder Relationships

**Table 7 Principle 5 Actions**

<b>Specific actions</b>	<b>Economies Reporting Implementation of Specific Actions</b>
To the extent possible, establish a mechanism to provide interested parties (including business community) with opportunity to comment on proposed new laws, regulations and policies or changes to existing ones prior to their implementation.	Australia; China; Hong Kong, China; Indonesia; Japan; Malaysia; Philippines; Russia; Singapore; Chinese Taipei; Thailand; United States; Viet Nam
Continue to share APEC member economies' experiences of successful stakeholder consultative mechanisms.	Australia; China; Hong Kong, China; Japan; Russia; Singapore; United States
Promote the role of policy advocacy within IPAs as a means of addressing the specific investment problems raised by investors including those faced by SMEs.	Australia; China; Hong Kong, China; Indonesia; Malaysia; Philippines; Russia; Singapore; Chinese Taipei; United States; Viet Nam
Continue to share APEC member economies' experiences of successful public private dialogue to take advantage of the information on successes and problems encountered by established investors.	Chile; China; Hong Kong, China; Indonesia; Japan; Peru; Singapore; United States
Promote backward investment linkages between businesses, especially between foreign affiliates and local enterprises including through the promotion of industry clusters.	Chile; Indonesia; Philippines; Japan; United States
Encourage high standards of corporate governance through cooperation aimed at promoting international concepts and principles for business conduct, such as APEC's programs on corporate governance and anti-corruption.	Hong Kong, China; Indonesia; Japan; Korea; Peru; Singapore; Chinese Taipei; United States
Examine and share APEC member economies' experience with responsible business conduct instruments.	Hong Kong, China; Japan; Peru; Singapore

## Summary

Most reporting economies have taken steps toward building constructive stakeholder relationships both as a means of direct policy action and to further integrate relations between the public and private sectors.

Malaysia convenes the Ministry of International Trade and Industry's Annual Dialogue which brings together private sector representatives with government officials to add their input to the policy making process.

The Philippines promotes openness and transparency by inviting the public to participate in the hearings on proposed laws, rules, and regulations or changes thereto and by encouraging them to submit position papers to effectively articulate their concerns. Both Peru and Australia have embraced the OECD Guidelines for Multinational Enterprises, following international best practices in the public/private realm.

Russia has turned private sector recommendations into public policy by simplifying the process of hiring skilled expatriate workers, improving customs administration, and implementing their Developing Financial Markets strategy to open securities markets to foreign firms and facilitating access between foreign issuers and Russian investors.

Singapore works closely with APEC and encourages agencies to share their experiences of successful stakeholder engagement.

The United States is also heavily involved in APEC activities, hosting many public private dialogues including the inaugural APEC Public-Private Dialogue on Investment in 2011.

Hong Kong, China cited the Hong Kong Ethics Development Centre as one of its agencies involved in encouraging high standards of corporate governance by promoting business and professional ethics as the first line of defense against corruption.

Indonesia has continued to update their Code on Good Corporate Governance since inception in 1999, encouraging the spread of sound corporate governance practices throughout the economy.

Japan has a Public Comment System to garner opinions from public and also convenes a public private dialogue, when necessary, to add their input to the policy making process.

Thailand holds seminars where private sector actors are able to share their experiences and ideas with policy makers.

Chile promotes backward investment linkages between foreign investors and domestic firms, encouraging technological spillovers and productivity growth as domestic firms learn from multinationals.

## Information from secondary sources

Many domestic and international bodies cite the importance of public-private partnerships in general and specifically the collaboration between the business community and government actors in the area of economic regulation. A particular World Bank study titled “Competitiveness Partnerships – Building and Maintaining Public-Private Dialogue” by

Benjamin Herberg and Andrew Wright, 2005 examines the outcomes experienced by 40 nations and recommends best practices for future collaboration. In their report, they cite several reporting economies and highlight their successful government-business relationships.

In **Malaysia**, the internationally-acclaimed Penang Skills Development Center (PSDC) arose from collaboration between government, industry and academia; industry provides most of the funding for the center through a membership scheme.

Regional approaches can often profitably be combined with an industry cluster approach; the U.S. Agency for International Development (USAID) in particular has focused on promoting dialogue in regional industry clusters, with considerable success. The high-value agriculture sector in Western **Thailand** has seen dialogue lead to the adoption of rules on “Good Agricultural Practices”

## **IFAP Principle 6**

### **Utilize new technology to improve investment environments**

**Table 8 Principle 6 Actions**

<b>Specific actions</b>	<b>Economies Reporting Implementation of Specific Actions</b>
Promote the introduction and use of new technologies aimed at making the investment process simpler and faster	Australia; Chile; China; Hong Kong, China; Indonesia; Japan; Malaysia; Philippines; Russia; Singapore; Chinese Taipei; Thailand; Viet Nam
Maintain adequate and effective protection of technology and related intellectual property rights	Chile; China; Hong Kong, China; Indonesia; Japan; Philippines; Russia; Singapore; Chinese Taipei; United States; Viet Nam
Where possible, give effect to international norms for property protection	Hong Kong, China; Japan; Malaysia; Singapore; Chinese Taipei; United States

## **Summary**

Most reporting economies noted how their adoption of new technology had improved the investment climate.

Australia; Chile; Hong Kong, China; Japan; Malaysia and Thailand have all moved applications online, facilitating foreign investment.

New processes have been implemented which greatly simplify international direct investment. The Philippine Business Registry allows investors to access an online 'one-stop shop' which links various agencies' computer systems into one portal, eliminating the need to physically register documents at each government office and reducing business registration from two weeks to 30 minutes.

Chile; Hong Kong, China; Indonesia; Japan; Philippines; Russia; Singapore; Chinese Taipei; United States and Viet Nam all shown a commitment to implement intellectual property protection. For example, Hong Kong, China has shown this commitment through, among others, adhering to major international intellectual property treaties including the Paris Convention, Berne Convention, Patents Cooperation Treaty, Phonograms Convention and the WTO TRIPS Agreement.

Russia reduced administrative barriers for business registry by creating an online communication connection between agencies and the registering firm and developed an exhaustive list of regulations needed to register a business.

Malaysia implemented the BLESS system for approving applications which reduces processing time.

Following international guidelines for the protection of intellectual property is also important for securing international investment. Peru adheres to the Paris Convention for the Protection of Industrial Property and the Inter-American Convention for the Protection of Trademarks and Commerce.

The Philippines has created an Intellectual Property Office to ensure the effective use of the intellectual property system in the economy.

The United States has fully implemented the WTO TRIPS Agreement obligations, as well as following the Berne Convention on copyright protection.

### **IFAP Principle 7**

#### **Establish monitoring and review mechanisms for investment policies**

**Table 9 Principle 7 Actions**

<b>Specific actions</b>	<b>Economies Reporting Implementation of Specific Actions</b>
Conduct periodic reviews of investment procedures ensuring they are simple, transparent and at lowest possible cost	Australia; Chile; China; Indonesia; Japan; Malaysia; Philippines; Russia; Singapore; Chinese Taipei; Thailand; Viet Nam

### **Summary**

Reporting member economies showed a commitment to maintaining up-to-date investment policies through continuous monitoring.

Australia, Japan, Malaysia, Chinese Taipei, and Singapore review their policy framework to ensure the lowest possible costs to investing firms.

Chile monitors the implementation of their Foreign Investment Statute so that rules are properly and uniformly applied.

The Philippines reviews the Foreign Investment Negative List (FINL) every two years and/or as the need arises. Further, the Philippines' Board of Investment (BOI) annually formulates the Investment Priorities Plan (IPP) to identify the economy's priority investment areas. Thailand's Bureau of Investment provides free, current information on the commercial environment to potential investors.

Russia is currently developing a set of criteria and indicators to assess the effectiveness of institutional actions on encouraging foreign investment.

### **Information from secondary sources**

UNCTAD provides a list of potential indicators to measure investment policy effectiveness in its World Investment Report 2012. These indicators can be used to measure a variety of potential impact areas including economic value added, job creation and sustainable development. This listing provides economies with the opportunity to determine their own economy-wide goals, how international investment can best assist in the attainment of those goals, and benchmark their progress toward liberalizing and welcoming foreign investment.

## **IFAP Principle 8**

### **Enhance international cooperation**

**Table 10 Principle 8 Actions**

<b>Specific actions</b>	<b>Economies Reporting Implementation of Specific Actions</b>
To the best extent possible, accede to, or observe, multilateral and/or regional investment promotion and facilitation conventions.	Australia; Chile; China; Hong Kong, China; Indonesia; Japan; Korea; Malaysia; Peru; Philippines; Russia; Singapore; Thailand; United States; Viet Nam
Make use, where appropriate, of international and regional initiatives aimed at building investment facilitation and promotion expertise, such as those offered by the World Bank, UNCTAD and OECD.	China; Hong Kong, China; Indonesia; Japan; Malaysia; Peru; Philippines; Singapore; Viet Nam
Ensure measures exist to ensure effective compliance with	Chile; Hong Kong, China;

commitments under international investment agreements.	Japan; Korea; Philippines; Singapore; Chinese Taipei; United States
Review existing international agreements and treaties to ensure their provisions continue to create a more attractive environment for investment.	China; Hong Kong, China; Japan; Malaysia; Philippines; Singapore; Chinese Taipei; United States; Viet Nam

## Summary

Economies volunteering IFAP submissions report extensive international cooperation.

Korea, Indonesia, and Australia are members of multiple international organizations focused on trade and investment liberalization.

Chile's Competition Tribunal and its National Economic Prosecutor Office participate in international forums that address competition policy issues to enhance cooperation across agencies and implement best international practices.

In Hong Kong, China efforts are being made by relevant bureaus/departments to ensure that any measures that they introduce would not be in conflict with Hong Kong, China's international obligations under Investment Promotion and Protection Agreements (and other international agreements). In addition, each of Hong Kong, China's Investment Promotion and Protection Agreements can be amended for improvement if the two Contracting Parties agree to do so.

Peru has recently issued decrees on a wide-range of international financial issues such as banking and stock market regulation, arbitration, tax, and intellectual property regulations.

Thailand regularly attends international workshops to develop their policies in line with accepted global norms.

Russia is involved extensively with the European Bank for Reconstruction and Development while Malaysia participates in the OECD Investment Policy Peer Review.

The Philippines has developed a Model Investment Agreement used while negotiating international investment treaties. Philippines also ensure compliance with its commitments under various international agreements through a system of periodic review and monitoring.

Singapore has committed to the ASEAN Comprehensive Investment Agreement which enhanced liberalization and protection elements with the aim of bolstering investor confidence in the region.

Chinese Taipei explores its measures of investment periodically to ensure sufficient measures existed to maintain effective compliance with commitments under international investment agreements. To date, Chinese Taipei has signed 31 BIAs and 4 FTAs to create a more attractive environment for investment.

The United States has published a revised Model BIT which maintains high standards of investor protection while preserving the government's ability to regulate in the public interest. The United States also maintains a number of mechanisms to ensure compliance with international commitments.

Viet Nam has signed agreements on investment protection and promotion in preparation for the upcoming Trans-Pacific Partnership agreement.

### **Information from Secondary Sources**

UNCTAD maintains a database of all bilateral investment treaties signed between nations, including those implemented as part of a preferential trade agreement<sup>10</sup>. This source allows member economies the opportunity to monitor the international investment relationships which exist between states and determine potential action they may need to take to further court foreign investment and match international best practices.

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<sup>10</sup> See [http://unctad.org/en/Pages/DIAE/International%20Investment%20Agreements%20\(IIA\)/Country-specific-Lists-of-BITs.aspx](http://unctad.org/en/Pages/DIAE/International%20Investment%20Agreements%20(IIA)/Country-specific-Lists-of-BITs.aspx)

### 3. INVESTMENT FACILITATION ACTIONS ALREADY UNDER WAY

The following matrix outline examples of ongoing and recently completed APEC projects related with IEGs. The key findings of particular actions and how they will help facilitate investment in the Asia-Pacific region are presented below.

“Investing Across Borders: An Important Diagnostic Tool to Assist in IFAP Implementation (APEC 2011)” was the first stage in a multi-year collaboration between APEC member economies and the World Bank. The study uses four World Bank IAB indicators – Investing Across Sectors, Starting a Foreign Business, Accessing Industrial Land, and Arbitrating Commercial Disputes - to compare the state of investment policies within APEC with the investment climate of other regional groupings. Designed to analyze policies which can be implemented and measured in the short-term and provide quick results, the World Bank describes their indicators as “actionable because they identify specific impediments to FDI in the legal, regulatory, administrative, and institutional frameworks of each economy covered. The indicators are reform-oriented because they identify problems that can be addressed in the short and medium term to strengthen an economy’s investment climate.” (APEC 2011: 10). The study found that 24% of APEC economies require state approval before FDI is allowed, a policy which directly hinders international investment (APEC 2011: 13). This compares favorably with a 21% global average but falls behind other regional groupings such as Latin America and the Caribbean and high-income OECD nations. Additional findings show that while APEC member economies rank second globally providing court assistance with arbitration proceedings (APEC 2011: 17), 14% of APEC economies lack institutional capacity to handle arbitration cases entirely, leaving scope for additional investment policy implementation and liberalization.

Seminars and capacity building activities constitute a majority of recently completed IFAP actions. Ten of the projects focused on capacity building and sharing of regulatory experiences and best practices in the investment environment generally and a variety of area-focused topics more specifically. Examples include CTI 35-2008T – ‘Doing Business - Investment at the Sub-National Level to Promote Economic Integration’ and TWG 01-2008T ‘Capacity Building on Tourism Satellite Accounts as a Basis for Promoting Liberalization and Facilitation on Tourism Services.’

Remaining projects consisted of empirical studies analyzing the regulatory framework currently in place in the APEC region. Examples include HRD 02/2008T ‘Measures Affecting Cross-Border Exchange and Investment in the APEC Region’, EC 03/2008T ‘Measuring the Ease of Doing Business in APEC’, and CTI 04/2008A ‘APEC UNCTAD Joint Capacity Building Project for Addressing Knowledge Gaps in the Use of FDI (Stage 2)’. These studies provide the theoretical and practical framework for future capacity-building seminars.

**Table 11: Matrix of completed APEC Projects under IEGs**

<b>Project Name</b>	<b>Number</b>	<b>Objectives</b>	<b>Key findings</b>
Recent Trends on Investment Liberalization and Facilitation in Transport and Telecommunication Infrastructure	CTI 09/2008T	The Seminar sought to explore the performance of agencies engaged in the promotion of private investment in infrastructure. Especially regarding the implementation of infrastructure development policies in APEC member economies, focusing on the best practices applied, including financing schemes, and, on the improvement of regional connectivity through multimodal infrastructure projects.	Providing participants from public and private sector the opportunity to discuss and exchange experiences about the measures and practices currently applied in the APEC region in order to facilitate the participation of private investment for the improvement of economic infrastructure, focusing on transport and telecommunications. Analyzing best practices provided for the promotion of private investment in the improvement of regional connectivity through multimodal infrastructure projects.
Capacity Building for International Investment Agreements	CTI 02/2008T	The purpose of this project is to improve understanding among APEC member economies of the scope and content of high-standard international investment agreements (bilateral investment treaties and investment chapters of trade agreements), and to enhance the capacity of member economies to negotiate and implement these agreements.	The seminars afforded participants broad insights into the issues being discussed, from the perspectives of those who negotiate investment agreements, those who study them, those who might bring investor claims against a State, those who would defend States against such claims, and those who might serve as arbitrators in tribunals established to consider such claims
“Recent Trends on Investment Liberalization and Facilitation in Transport and Telecommunication Infrastructure ”	CTI 09/2008T	The Seminar sought to explore the performance of agencies engaged in the promotion of private investment in infrastructure. Especially regarding the implementation of infrastructure development policies in APEC member economies, focusing on the best practices applied, including financing schemes, and, on the improvement of regional connectivity through multimodal infrastructure projects.	Providing participants from public and private sector the opportunity to discuss and exchange experiences about the measures and practices currently applied in the APEC region in order to facilitate the participation of private investment for the improvement of economic infrastructure, focusing on transport and telecommunications.

Capacity Building for International Investment Agreements	CTI 02/2008T	The purpose of this project is to improve understanding among APEC member economies of the scope and content of high-standard international investment agreements (bilateral investment treaties and investment chapters of trade agreements), and to enhance the capacity of member economies to negotiate and implement these agreements. The project was executed over two one-week workshops, each of which was instructed by a faculty consisting of investment arbitration lawyers and legal scholars, arbitrators, and experienced officials of APEC governments.	Each one-week workshop afforded participants broad insights into the issues being discussed, from the perspectives of those who negotiate investment agreements, those who study them, those who might bring investor claims against a State, those who would defend States against such claims, and those who might serve as arbitrators in tribunals established to consider such claims. Workshop topics were presented in terms of both theory and practice – the second week included a ‘mock arbitration’ conducted at the World Bank facilities where arbitral hearings under the ICSID Convention are held.
Capacity Building for Sharing Success Factors of Improvement of Investment Environment	CTI 32/2008T	This project is conceived to respond to the instructions from Ministers to implement capacity-building customized for each APEC member based on its economic progress, and it is also designed to cater to ABAC’s calls for substantial improvements in the business climate.	The dialogue will focus on three or four investment-related areas each year and share successful experiences of increased investment (new investment, reinvestment, capacity-widening investment, replacement investment, etc.).
Doing Business - Investment at the Sub-national Level to Promote Economic Integration	CTI 35 - 2008T	Phase 1 of this project involved the completion of 2-3 case studies at the sub-national <sup>11</sup> level of successful efforts to overcome behind-the-border barriers to investment. The project drew on the World Bank’s expertise in using its Ease of Doing Business indicators as a diagnostic tool for improving economy-wide performance to the level of better practice of high growth states/provinces (rather than to international best practice) on the assumption that better practice may be more achievable and deliver very significant growth outcomes. The lessons drawn from case studies contribute to improving member economies understanding of the elements of a sound investment climate.	The project objectives were successfully achieved. Two complete case studies were undertaken (Mexico and the Philippines) and also covered was information on similar work undertaken in China in 2008 and forthcoming in 2009 in Indonesia. This seminar included broad discussion on the two completed studies and presentations about Viet Nam and Indonesia and its sub national reform programs.

<sup>11</sup> Sub-national refers to a district level of administration.

Measures affecting cross border exchange and investment in the APEC Region.	HRD 02/2008T	Identify positive and negative measures affecting exchange and investment in higher education across four modes of supply (cross-border, consumption abroad, commercial presence and presence of natural persons) amongst APEC member economies.	Project final report, produced from analysis of survey responses and desk research, met the qualities and requirements detailed in the Contract and associated Request For Proposal
Human Resources Development Working Group-Capacity Building Network (HRD-CBN)	HRD 01/2007T	To raise the capacity of both public and business sector people who are involved in domestic legislation, policy making and social system development in the field of foreign direct investment.	Eleven cases in total by 13 experts from 8 economies were developed. The case development started in August 2007, drafts reviewed by the peer experts and editors, draft finalized in September 2008.
Measuring the Ease of Doing Business in APEC	EC 03/2008T	This was a study on the positive impact of regulatory reform on a range of macro-level economic indicators such as economic growth, inward FDI and job creation, as well as the regulatory burden's impact on firm level indicators like job creation and investment. Eight case studies of successful reforms in member economies illustrated the impacts and learning principles from specific reforms in specific economies. The study findings reiterated the urgency of reducing regulatory burden and identifying priorities for reform, thereby giving further impetus to the regulatory reform agenda in APEC.	This project had fulfilled its key objective of using empirical analysis to study the positive economic impact of regulatory reforms on key macroeconomic and microeconomic firm-level indicators. Complementing this empirical analysis was a set of case studies that documented the impact of specific reforms on economic outcomes in individual economies
APEC UNCTAD Joint Capacity Building Project for Addressing Knowledge Gaps in the Use of FDI (Stage 2)	CTI 04/2008A	The purpose of this study (Stage 2) was to produce consolidated case studies' reports that conducted comparative analysis in two issue areas; integration of FDI in skills development process and creating benefit from foreign affiliate-domestic SME linkages in two economies each. Each case study's report analyzed best practices in one developing economy and one developed economy, which could provide a framework for member economies to draw on when considering infrastructure development and the potential use of FDI.	Stage 2 produced a consolidated case studies report (published on-line) that conducts comparative analysis in two issue areas: Best Practices in Investment for Development: Case Studies in FDI – How to Integrate FDI in the Skills Development Process <u>and</u> How to Create Benefit from Foreign Affiliate – Domestic SME Linkages

Core Elements Project (Phase II)	CTI 34/2008T	The purpose of this project was to expand the process of identifying core elements by examining the content of a larger sample (100) of intra-APEC investment agreements together with a sample of 100 IIAs from other regions of the world, including all (or almost all) remaining intra-APEC IIAs	The output became the subject of separate capacity building projects aimed at creating an APEC-wide understanding amongst investment treaty negotiators and investment policy makers of how regional approaches to core elements compared and a clear understanding of investment principles (CTI 31/09T, etc).
Capacity building on Tourism Satellite Accounts as a basis for promoting liberalization and facilitation on tourism services.	TWG 01/2008T	The project was divided into two phases. In the first phase consultants were commissioned to develop a survey tool to gauge the development of TSA to international standards in the APEC region. The survey results were used to develop an understanding of best practice and areas for continuing improvement. The second phase was the design and delivery of four in-economy workshops with an aim of bringing together key stakeholders to discuss capabilities, issues and use the consultants experience and the handbook to formulate a path towards TSA implementation.	An important outcome for the project came through the involvement of organizations and government departments related to the Tourism industry in the workshops, such as central banks and immigration/border control departments. It gave these organizations a practical understanding of the importance of a TSA is and how its development can only occur as a result of all stakeholders ensuring the provision of high quality and timely data to feed into a TSA.
Good Governance on Investment Promotion	CTI 10/ 2008 T	Speeches of the Seminar speakers, pointed the role of good governance through investment policies and measures required to improve the APEC investment environment.	Experiences shared by APEC economies and international organization provided to seminar participants new ideas to improve investment promotion. Particular interest was shown for future workshops on good governance, policy advocacy, investor aftercare services, corporate governance and corporate social responsibility.

<p>APEC UNCTAD Joint Capacity Building Project for Addressing Knowledge Gaps in the Use of Foreign Direct Investment</p>	<p>CTI 03 /2008A</p>	<p>This project is part of a joint IEG – UNTAD targeted capacity building framework intended to make a significant contribution to the development of the ‘narrowing of economic gaps’ pillar of APEC’s Investment Facilitation Action Plan requested by Ministers and Leaders in Sydney. The multi stage framework addresses gaps in APEC’s investment liberalization and facilitation agenda through the creation of an inventory of best practice case studies on foreign direct investment (FDI). In Stage 1 (the subject of this proposal), four APEC member economies are selected as examples of best practice and case studies are produced by UNCTAD</p>	<p>UNCTAD reported the success of the project to IEG and advised that the outcomes from the studies undertaken had been promulgated widely and had been well received. Further questions and practical solutions to the many issues raised in the case studies (which were well-researched) gave rise to considerable scope for linkages from this work to other planned capacity building activities.</p>
<p>Investing Across Borders: An important diagnostic tool to assist in IFAP implementation</p>	<p>CTI 43/2009T</p>	<p>This project is Stage 1 of a multi-year project which commenced in the first quarter of 2010. This project seeks to use the World Bank’s (WB) Investing Across Border (IAB) Indicators to improve APEC member economies strategies to implement the Regional Economic Integration (REI) agenda. The Report will provide information about key REI goals – transparency, reducing investor risk through providing more certainty, and simplifying business regulation. The study reports would provide data for all APEC economies over the life of the IFAP. Stage 2 of the project will be recommended to IEG –CTI when the WB/IFC are able to undertake the research (probably late 2012).</p>	<p>The report presents for each member economy fact based benchmarking data on laws and regulations in selected policy areas affecting entry and operations of foreign direct investors</p>

## 4. CONCLUSION

The results from voluntary submission by member economies show that reporting economies have made substantial progress toward implementing several IFAP principles while progress on others has been less fruitful. Some of the findings based on the voluntary submissions are provided as follows:

Principle 1: Most of the reporting economies have in place a Foreign Investment Promotion Act which sets out the laws and regulations pertaining to foreign investment in their economies. The laws, rules, regulations and/or amendments relating to foreign investment are usually published in an Official Gazette, and/or on the relevant government agency's website. Most economies also have a trade and investment agency to help promote and facilitate foreign investment.

Principle 2: Most economies have a system of land ownership registration in place. Economies also generally have established effective formal mechanisms for resolving disputes between investors and host authorities and for enforcing solutions.

Principle 3: The investment promotion agencies of most reporting economies implement actions related to Principle 3. Most economies accord 'national treatment' to foreign investment, an important component of IFAP and international best practice.

Principle 4: Economies have reported efforts to streamline foreign investment applications and registration, licensing, and taxation procedures for foreign businesses.

Principle 5: Most reporting economies have taken steps toward building constructive stakeholder relationships both as a means of direct policy action and to further integrate relations between the public and private sectors.

Principle 6: The adoption of new technology has improved the investment climate in all economies who reported progress toward principle 6. New processes have also been implemented which greatly simplify international direct investment.

Principle 7: Reporting member economies showed a commitment to maintaining up-to-date investment policies through continuous monitoring.

Principle 8: Economies volunteering IFAP submissions report extensive international cooperation.

Looking at the content of the IFAP principles; principle 1, 2, 3 and 4 contains key elements that any investors would see as critical factors when making their investment decisions. Principle 5, 7, 8 are also important for new or existing investors as well as for governments to make sure that the current investment policies and regulations are well suited to attract and maintain new as well as existing FDI flows and activities. Principle 6 is particularly important to further reduce business and regulation costs as well as to encourage business to invest in new technologies.

Secondary sources, such as the World Bank's Ease of Doing Business and UNCTAD's World Investment Report and World Investment Prospects Survey, demonstrate the importance of implementing policy changes in order to foster a welcoming environment for international investment and maximize it as a tool for economy-wide development goals.

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## APPENDIX I INVESTMENT FACILITATION – MENU OF ACTIONS AND MEASURES

(Voluntary submission by member economies)

IFAP Principle 1: Promote accessibility and transparency in the formulation and administration of investment-related policies			
Specific Actions	Time Table	Details of implementation	Expected outcomes
<ul style="list-style-type: none"> <li>• Publish laws, regulations, judicial decisions and administrative rulings of general application, including revisions and up-dates.</li> <li>• Adopt centralized registry of laws and regulations and make this available electronically.</li> <li>• Establish a single window or special enquiry point for all enquiries concerning investment policies and applications to invest</li> <li>• Make available all investment-related regulations in clear simple language, preferably in languages commonly used by business</li> <li>• Following establishment of an Investment Promotion Agency (IPA), or similar body, and make its existence widely known</li> <li>• Make available to investors all rules and other information relating to investment promotion and incentive schemes</li> <li>• Allow investors to choose their form of establishment within legislative and legal frameworks.</li> <li>• Ensure transparency and clarity in investment-related laws</li> <li>• Improve upon the APEC-wide website (e-portal) to replacing the hard copy publication of the APEC Investment Guidebook (IEG)</li> <li>• Encourage on-line enquiries and on-line information on all foreign investment issues</li> <li>• Maintain a mechanism to provide timely and relevant advice of changes in procedures, applicable standards, technical regulations and conformance requirements</li> <li>• To the extent possible, provide advance notice of proposed changes to laws and regulations and provide an opportunity for public comment</li> <li>• Explore the possibility of using the international benchmarks on a voluntary basis as a reference point for peer dialogue and measuring</li> </ul>	<p>(The timeframe within which APEC economy has implemented or expect to implement these IFAP's actions)</p>	<p>(How were the actions being implemented? Or How will the actions be implemented?)</p>	<p>(Describe the expected outcome within this principle)</p>

progress			
<b>Other voluntary actions in addition to the above:</b> <ul style="list-style-type: none"> <li>• _____</li> <li>• _____</li> </ul>			
<b>IFAP Principle 2 Enhance stability of investment environments, security of property and protection of investments</b>			
<b>Specific Actions</b>	<b>Time Table</b>	<b>Details of implementation</b>	<b>Expected outcomes</b>
<ul style="list-style-type: none"> <li>• Establish timely, secure and effective systems of ownership registration and / or property use rights for land and other forms of property</li> <li>• Create and maintain an effective register of public or state owned property.</li> <li>• Ensure costs associated with land transactions are kept to a minimum including by fostering competition.</li> <li>• Foster the dissemination of accurate market reputation information including creditworthiness and reliability</li> <li>• Explore the possibility of using the World Bank <i>Doing Business</i> indicator “Enforcing Contracts” as the basis for peer dialogue and benchmarking and measuring progress across APEC</li> <li>• Encourage or establish effective formal mechanisms for resolving disputes between investors and host authorities and for enforcing solutions, such as judicial, arbitral or administrative tribunals or procedures</li> <li>• Encourage and facilitate the use of arbitration and other means of alternative dispute resolution for the settlement of international commercial disputes between private parties</li> <li>• Facilitate commercial dispute resolution for foreign investors by providing reasonable cost complaint-handling facilities, such as complaint service centres, and effective problem-solving mechanisms</li> <li>• Take steps to accede to an arbitral convention</li> </ul>	(The timeframe within which APEC economy has implemented or expect to implement these IFAP’s actions)	(How were the actions being implemented? Or How will the actions be implemented?)	(Describe the expected outcome within this principle)
<b>Other voluntary actions in addition to the above:</b>			

<ul style="list-style-type: none"> <li>• _____</li> <li>• _____</li> </ul>			
<b>IFAP Principle 3 Enhance predictability and consistency in investment-related policies</b>			
<b>Specific Actions</b>	<b>Time Table</b>	<b>Details of implementation</b>	<b>Expected outcomes</b>
<ul style="list-style-type: none"> <li>• Increase use of legislative simplification and restatement of laws to enhance clarity and identify and eliminate inconsistency.</li> <li>• Provide equal treatment for all investors in the operation and application of domestic laws and principles on investment</li> <li>• Reduce the scope for discriminatory bureaucratic discretion in interpreting investment-related regulations</li> <li>• Maintain clear demarcation of agency responsibilities where an economy has more than one agency screening or authorising investment proposals or where an agency has regulatory and commercial functions</li> <li>• Establish and disseminate widely clear definitions of criteria for the assessment of investment proposals</li> <li>• Establish accessible and effective administrative decision appeal mechanisms including where appropriate impartial “fast-track” review procedures</li> </ul>	(The timeframe within which APEC economy has implemented or expect to implement these IFAP’s actions)	(How were the actions being implemented? Or How will the actions be implemented?)	(Describe the expected outcome within this principle)
<b>Any voluntary actions in addition to the above:</b> <ul style="list-style-type: none"> <li>• _____</li> <li>• _____</li> </ul>			
<b>IFAP Principle 4: Improve the efficiency and effectiveness of investment procedures</b>			
<b>Specific Actions</b>	<b>Time Table</b>	<b>Details of implementation</b>	<b>Expected outcomes</b>
<ul style="list-style-type: none"> <li>• Simplify and streamline application and, registration, licensing and taxation procedures and establish a one-stop authority, where appropriate, for the lodgement of papers</li> </ul>	(The timeframe within which APEC economy has implemented or expect to implement	(How were the actions being implemented? Or How will the actions	(Describe the expected outcome within this principle)

<ul style="list-style-type: none"> <li>• Simplify and reduce the number of forms relating to foreign investment and encourage electronic lodgement</li> <li>• Shorten the processing time and procedures for investment applications.</li> <li>• Promote use of “silence is consent” rules or no objections within defined time limits to speed up processing times, where appropriate</li> <li>• Ensure the issuing of licences, permits and concessions is done at least cost to the investor</li> <li>• Simplify the process for connecting to essential services infrastructure</li> <li>• Implement strategies to improve administrative performance at lower levels of government.</li> <li>• Facilitate availability of high standard business services supporting investment</li> </ul>	these IFAP’s actions)	be implemented?)	
<p><b>Other voluntary actions in addition to the above:</b></p> <ul style="list-style-type: none"> <li>• _____</li> <li>• _____</li> </ul>			
<b>IFAP Principle 5: Build constructive stakeholder relationships</b>			
<p><b>Specific Actions</b></p>	<p><b>Time Table</b></p>	<p><b>Details of implementation</b></p>	<p><b>Expected outcomes</b></p>
<ul style="list-style-type: none"> <li>• To the extent possible, establish a mechanism to provide interested parties (including business community) with opportunity to comment on proposed new laws, regulations and policies or changes to existing ones prior to their implementation</li> <li>• Continue to share APEC member economies’ experiences of successful stakeholder consultative mechanisms</li> <li>• Promote the role of policy advocacy within IPAs as a means of addressing the specific investment problems raised by investors including those faced by SMEs</li> <li>• Continue to share APEC member economies’ experiences of</li> </ul>	(The timeframe within which APEC economy has implemented or expect to implement these IFAP’s actions)	(How were the actions being implemented? Or How will the actions be implemented?)	(Describe the expected outcome within this principle)

<p>successful public private dialogue to take advantage of the information on successes and problems encountered by established investors</p> <ul style="list-style-type: none"> <li>• Promote backward investment linkages between businesses, especially between foreign affiliates and local enterprises including through the promotion of industry clusters</li> <li>• Encourage high standards of corporate governance through cooperation aimed at promoting international concepts and principles for business conduct, such as APEC’s programs on corporate governance and anti-corruption.</li> <li>• Examine and share APEC member economies’ experience with responsible business conduct instruments</li> </ul>			
<p><b>Other voluntary actions in addition to the above:</b></p> <ul style="list-style-type: none"> <li>• _____</li> <li>• _____</li> </ul>			
<p><b>IFAP Principle 6: Utilize new technology to improve investment environments</b></p>			
<p><b>Specific Actions</b></p>	<p><b>Time Table</b></p>	<p><b>Details of implementation</b></p>	<p><b>Expected outcomes</b></p>
<ul style="list-style-type: none"> <li>• Promote the introduction and use of new technologies aimed at making the investment process simpler and faster</li> <li>• Maintain adequate and effective protection of technology and related intellectual property rights</li> <li>• Where possible, give effect to international norms for property protection</li> </ul>	<p>(The timeframe within which APEC economy has implemented or expect to implement these IFAP’s actions)</p>	<p>(How were the actions being implemented? Or How will the actions be implemented?)</p>	<p>(Describe the expected outcome within this principle)</p>
<p><b>Other voluntary actions in addition to the above:</b></p> <ul style="list-style-type: none"> <li>• _____</li> <li>• _____</li> </ul>			
<p><b>IFAP Principle 7: Establish monitoring and review mechanisms for investment policies</b></p>			

Specific Actions	Time Table	Details of implementation	Expected outcomes
<ul style="list-style-type: none"> <li>• Conduct periodic reviews of investment procedures ensuring they are simple, transparent and at lowest possible cost</li> </ul>	(The timeframe within which APEC economy has implemented or expect to implement these IFAP's actions)	(How were the actions being implemented? Or How will the actions be implemented?)	(Describe the expected outcome within this principle)
<p><b>Other voluntary actions in addition to the above:</b></p> <ul style="list-style-type: none"> <li>• _____</li> <li>• _____</li> </ul>			
<b>IFAP Principle 8: Enhance international cooperation</b>			
Specific Actions	Time Table	Details of implementation	Expected outcomes
<ul style="list-style-type: none"> <li>• To the best extent possible, accede to, or observe, multilateral and/or regional investment promotion and facilitation conventions</li> <li>• Make use, where appropriate, of international and regional initiatives aimed at building investment facilitation and promotion expertise, such as those offered by the World Bank, UNCTAD and OECD</li> <li>• Ensure measures exist to ensure effective compliance with commitments under international investment agreements</li> <li>• Review existing international agreements and treaties to ensure their provisions continue to create a more attractive environment for investment.</li> </ul>	(The timeframe within which APEC economy has implemented or expect to implement these IFAP's actions)	(How were the actions being implemented? Or How will the actions be implemented?)	(Describe the expected outcome within this principle)
<p><b>Other voluntary actions in addition to the above:</b></p> <ul style="list-style-type: none"> <li>• _____</li> <li>• _____</li> </ul>			

## APPENDIX II INVESTMENT FACILITATION ACTIONS ALREADY UNDER WAY

(Submission by APEC Secretariat, to reflect new APEC projects and initiatives that are relevant to IFAP)

<b>Principle</b>	<b>Action(s) under way</b>
① <i>Accessibility and transparency</i>	<ul style="list-style-type: none"> <li>• Tourism Destinations using Planning Processes to Facilitate Investment (TWG)</li> <li>• Capacity Building on Tourism Satellite Account as basis for Promoting Liberalization and Facilitation on Tourism Services (TWG 01/2008T)</li> <li>• Reducing Trade, Regulatory, and Financing Barriers to Accelerate the Uptake of Clean Coal Technologies by Developing Economies in the Asia Pacific Region (EWG 01/2008T)</li> <li>• ABAC: Business Statements on the importance of Transparency to Facilitate Investment</li> <li>• <b>Development of APEC Guide to Investment Regimes E-Portal and Electronic Publication (CTI 01/2009)</b></li> <li>• <b>Provision Joint APEC-BOI-FIAS Workshop on Improving Investment Promotion Performance in Accessibility to Investors and Information Provision (CTI 08/2009T)</b></li> <li>• <b>Capacity Building for Dispute Prevention and Preparedness (CTI 42/2009T)</b></li> <li>• <b>APEC-UNCTAD Workshop on Investor-State Dispute (CTI 47/2009T)</b></li> <li>• <b>Core Elements Project - Moving Beyond Phase III – Activity 6 APEC-UNCTAD Workshop on Investor-State Dispute Settlement (CTI 03/2011T)</b></li> </ul>
② <i>Stability, security and protection</i>	
③ <i>Predictability and consistency</i>	<ul style="list-style-type: none"> <li>• Seminar on Good Governance on Investment Promotion (CTI 10/2008T)</li> <li>• Cross-border Mergers and Acquisitions on Exports, FDI and Competition Policy (EC)</li> <li>• ABAC: Business Statements on the importance of Harmonisation of Rules to Facilitate Investment</li> </ul>
④ <i>Efficiency and effectiveness</i>	<ul style="list-style-type: none"> <li>• APEC-UNCTAD Joint Capacity Building Project for Addressing Knowledge Gaps in the Use of Foreign Direct Investment (Stage 1) (CTI 03/2008A)</li> <li>• APEC-UNCTAD Joint Capacity Building Project for Addressing Knowledge Gaps in the Use of Foreign Direct Investment (Stage 2) (CTI 04-2008A)</li> <li>• Doing Business - Investment at the Sub-National Level to Promote Economic Integration (Phase 1) (CTI 35/2008T)</li> </ul>

<b>Principle</b>	<b>Action(s) under way</b>
	<ul style="list-style-type: none"> <li>• Measures Affecting Cross Border Exchange and Investment in Higher Education in the APEC Region (HRD 02/2008T)</li> <li>• Study on Measures of Ease of Doing Business in APEC (EC)</li> <li>• ABAC: Business Statements on the importance of Simplification of Approvals Processes to Facilitate Investment</li> <li>• Seminar for Sharing Experience on Improving Investment Policy (CTI 07/2009T)</li> <li>• Capacity-Building Seminar on Ease of Doing Business: Enforcing Contracts (CTI 28/2009T)</li> <li>• Core Elements Project – Moving Beyond Phase III – Activity 2&amp;3 A Handbook for Negotiators (Steps 1 and 2): A Handbook for Negotiators of IIAs (Step 1) / A Seminar for Negotiators of IIAs (Step 2) (CTI 15/2010T)</li> <li>• Core Elements Project – Moving Beyond Phase III – Activity 5 Intensive Training Course of International Investment Agreements in the APEC Region (CTI 16/2010T)</li> <li>• Core Elements Project – Moving Beyond Phase III – Activity 1 Study on Core Elements of IIAs in Domestic Investment Frameworks (CTI 28/2010T)</li> <li>• Core Elements Project – Moving Beyond Phase III – Activity 4 Study on Transparency in IIAs (CTI 30/2010T)</li> <li>• APEC-UNCTAD Workshop on Best Practices in Investment Policy Formulation in the APEC Region (CTI 12/2011T)</li> <li>• Seminar on Successful Cases of Renewable and Clean Energy Investment in APEC(CTI 34/2011T)</li> </ul>
⑤ <i>Constructive stakeholder relationships</i>	<ul style="list-style-type: none"> <li>• Workshop on SMEs' Financing in Asia-Pacific Region (SMEWG 02/2008A)</li> <li>• Capacity Building for Investment Liberalisation and Facilitation (HRDWG project for 2007-2008) (HRD 01/2007T)</li> <li>• Capacity Building for Sharing Success Factors of Improvement of Investment Environment (CTI 32/2008T)</li> <li>• ABAC: Matrix of Successful Investment Facilitation Measures</li> <li>• Public-Private Dialogue: Investing for Growth (How to Spur Tangible and Robust Private Sector Investment in Infrastructure and Economic Growth)</li> <li>• ABAC Public-Private Investment Dialogue: Implementing the Investment Facilitation Action Plan (IFAP) Effectively to Grow Investment and Promote Infrastructure Development</li> </ul>
⑥ <i>Use of new technology</i>	<ul style="list-style-type: none"> <li>• Capacity Building for Sharing Success Factors of Improvement of Investment Environment – Phase 2 (CTI 02/2009T)</li> <li>• Filling the Infrastructure Gaps in the APEC's Developing Economies (CTI 11/2009A)</li> <li>• Capacity Building for Sharing Success Factors of Improvement of Investment Environment – Phase 3 (CTI 03/2010T)</li> <li>• Organizing an APEC Seminar on Infrastructure Investment in 2011 (CTI 08/2011T)</li> </ul>

<b>Principle</b>	<b>Action(s) under way</b>
	<ul style="list-style-type: none"> <li>• Seminar on Successful Cases of Renewable and Clean Energy Investment in APEC (CTI 34/2011T)</li> </ul>
⑦ <i>Monitoring and review</i>	<ul style="list-style-type: none"> <li>• Investing Across Borders: An Important Diagnostic Tool to Assist in IFAP Implementation – Stage 1 (CTI 43/2009T)</li> </ul>
⑧ <i>Enhance international cooperation</i>	<ul style="list-style-type: none"> <li>• Seminar on Recent Trends on Investment Liberalization and Facilitation in Transport and Telecommunications Infrastructure (CTI 09/2008T)</li> <li>• APEC Energy Trade and Investment Study and Roundtable (EWG)</li> <li>• Capacity Building for International Investment Agreements (CTI 02/2008T)</li> <li>• Core Elements in International Investment Agreements Project (Phase II) (CTI 34-2008T)</li> <li>• APEC Seminar for Sharing Experience in APEC Economies on Relations between Competition Authorities and Regulator Bodies (CTI 13/2008T)</li> <li>• Core Elements Project (Phase III) (CTI 31/2009T)</li> </ul>

Note: The projects after 2009 are shown in red.