

**CHAIRMAN'S SUMMARY  
ASIA-PACIFIC ECONOMIC COOPERATION  
INVESTMENT EXPERTS MEETING**

May 12-14, 1994  
Bali, Indonesia

**SUMMARY**

Recognizing the mandate by APEC Leaders to develop a set of non-binding investment principles for APEC and our broad objective to expand trade and investment in the region, this Investment Experts meeting set out to identify common principles that underlie APEC members' investment regimes; to identify positive approaches currently used to attract foreign investment; and to examine existing investment instruments for their relevance to APEC's work this year.

Using the Australia paper "Thematic Paper on Investment Issues," as a basis of discussion, the group preferred to meet the Leaders' mandate as a set of general principles to which member economies could aspire, as opposed to a detailed and legalistic instrument. In other words, keep the principles straightforward and unqualified but recognize in the preamble the different levels of development and the need for all members to take some exceptions to these principles.

There was a sense that we should balance the need for strong, clear principles with an understanding that all members had difficulties meeting these principles to some degree. Thus, the principles need to be considered in the context of the legal and regulatory environments as well as the different levels of development in the member economies. It was agreed that this balance of interests would require very careful and creative drafting, even in a non-binding document.

**REVIEW OF REGIMES**

The initial focus of the meeting was the investment regimes of member economies. Brunei Darussalam, Canada, Peoples' Republic of China, Hong Kong, Japan, Korea, Malaysia, New Zealand, Singapore, Chinese Taipei and Thailand provided brief descriptions of their legal regimes for foreign investment and highlighted key elements in attracting foreign investment.

It became evident from this discussion that even though there are a variety of regimes in APEC economies, there are some common elements and trends. There is a trend toward reform of investment policies and practices. The most obvious is the members' aspiration to move towards greater transparency by publishing regulations and laws to create a predictable investment environment. It was also evident that the principle of most-favored nation treatment is generally accepted. Furthermore, members are increasing the scope of national treatment for foreign investment. Several members described recent reforms to reduce the number of sectors in which foreign investment is prohibited or requiring approval. Others emphasized that they already provide national treatment for foreign investors in nearly all sectors of their economies. Another common element appears to be a move towards free remittances and fewer restrictions on inward and outward investment-related transfers.

Adequate infrastructure, such as well-developed transportation and communication systems, is seen as a key to attracting foreign investment. In addition, some members identified certain legal protections and guarantees as important elements in creating an attractive investment regime. These include protection against expropriation; protection of intellectual property rights; and access to international arbitration for the settlement of disputes. However, these protections receive varying levels of emphasis in different economies.

The approaches of the governments of members reflect the different circumstances of each economy. Some countries adopt an approach of minimum interference in business sector decisions, while others pursue their economic goals through a more regulated approach.

## EXISTING INSTRUMENTS

The discussion then moved to existing agreements that have relevance for the task of the group. The meeting considered summaries of existing bilateral, plurilateral and multilateral investment agreements provided by various members. PECC also provided a description of the process by which it developed the PECC Code.

## INVESTMENT PRINCIPLES

The group then turned to a discussion of each of the principles contained in the Australia paper.

### Transparency of regulations

There was agreement to include this in the set of principles and is highly valued by foreign investors. The group considered four specific aspects of transparency: the accessibility of information; the necessity and difficulty of publishing relevant information; the importance of clear, accurate and timely information; and the importance of active efforts to disseminate this information. The group recognized that practical considerations, however, must also be reflected.

### Non-discrimination between Source Economies

It was agreed that it is, in principle, desirable to avoid discrimination between investment from different source economies, keeping in mind the stated APEC principle of open regionalism. It was also agreed that this principle should be included in the set of principles, although there was some divergence of views on how and whether to include exceptions for regional arrangements and reflect the non-retroactivity of these principles.

### National Treatment

There was agreement to include this in the set of principles. Although no member economy currently provides full national treatment without derogations, it was agreed that national treatment pre- and post- establishment with minimum exceptions is desirable. This principle needs further discussion.

## Reporting Requirements

It was agreed that this is an aspect of national treatment which did not merit separate mention as a principle.

## Investment Incentives

The discussion was divided into two parts. The potential distortive effects of fiscal incentives on the efficient distribution of capital was noted. In addition, a consensus emerged that because some members' federal structure and because some members use incentives to serve certain purposes such as regional and sectoral development, it was unclear whether it would be possible to address fiscal incentives in the set of principles. This element needs further work.

With respect to relaxing health and safety standards to attract investment, some countries feared that such a principle might invite comparison of standards among member economies. Others viewed the principle as useful. The chair concluded that this is an issue that required further discussion.

## Host Government Performance Requirements

There was agreement to include this in the set of principles. While some members felt that performance requirements can be a useful policy tool in certain circumstances, it was generally agreed that performance requirements which distort trade and investment flows are undesirable. It was noted that most member economies had signed the Uruguay Round TRIMs Agreement and that this serve as a useful starting point for defining a principle.

## Expropriation and Compensation

There was agreement to include this in the set of principles. Members generally agreed that property may be expropriated in accordance with domestic legal arrangements and upon payment of compensation. It was suggested that the group consider existing instruments for suitable language.

## Repatriation and Convertibility

There was agreement to include this in the set of principles. There is a consensus on the importance of this principle to investors and that members' concerns may be addressed by a reference to domestic laws within this principle, as reflected in existing instruments.

## Settlement of Disputes

All members agreed on the value of this principle to investors, yet flexibility should be provided so as not to limit members to existing formal legal international arbitration mechanisms. There was a consensus on the value of binding international arbitration, but it is not clear how to reflect this given the non-binding nature of the principles.

## Entry and Sojourn of Personnel

There was agreement to include this in the set of principles and that entry and sojourn of personnel should be permitted in accordance with member laws and regulations.

## Avoidance of Double Taxation

A lengthy discussion on the language in the Australian paper indicated there is not yet consensus on how to address, or if to address at all, the concern of double taxation in the context of a non-binding set of principles. It is clear that members view double taxation treaties differently. Some members thought it would more be appropriate to address the problem of tax burdens on investors without suggesting a specific remedy such as double taxation treaties. Additional work will be necessary on this issue.

## Responsibilities of Investors

Despite a divergence of views, some members expressed the view that all investors should be encouraged to abide by the laws, regulations and the policies of the host economies. In addition, the principle on investor responsibilities should not imply responsibilities for foreign and domestic investors beyond domestic laws and international obligations. This issue will require further work.

## Responsibilities of Capital Exporting Economies

Members generally agreed that it is desirable to remove restrictions on capital outflows to achieve APEC's objective of increased investment flows within and to the region. In addition, there was a proposal to add this element to the transfers principle.

## ADDITIONAL PRINCIPLES AND ISSUES

In considering possible additional principles and issues which might be addressed in the context of the APEC initiative, the principle of standstill/rollback was raised, as was the need for preambulatory language which noted the importance of infrastructure, supporting industries, human resource development (HRD) and the needs of small and medium-sized businesses.

It was agreed the concept of standstill/rollback is extremely important both as a general principle for advancing progress on deregulation, for providing a strong signal to the global business community about our commitment to ongoing efforts to improve our investment

regimes and as a reminder to members of our overall objectives of expanding trade and investment. In this regard, the importance was also recognized of the potential benefits of including elements of peer pressure in the APEC initiative, recognizing the positive contribution such pressure had played in advancing other international processes. Finally, there was a desire to ensure that concepts of standstill/rollback were expressed in the context of aspirations of members.

#### PROCEDURAL ISSUES

Procedurally, it was suggested that the Experts Group draft a "non-paper" to be attached to the Chairman's Summary on an informal basis for transmission to the CTI. It was agreed that this non-paper shall constitute a contribution for further discussion.