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IAP Peer Review Report 2009

Papua New Guinea

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List of Acronyms

ABTC	APEC Business Travel Card
ADB	Asian Development Bank
ADR	Alternative Dispute Resolution
AFTA	ASEAN Free Trade Agreement
ANZCERTA	Australia New Zealand Closer Economic Relations Trade Agreement
APEC	Asia Pacific Economic Cooperation
APLAC	Asia Pacific Laboratory Accreditation Cooperation
APLMF	Asia Pacific Laboratory and Legal Metrology Forum
APMP	Asia Pacific Metrology Program
ASEAN	Association of Southeast Asian Nations
ASYCUDA	Automated System for Customs Data
BPNG	Bank of Papua New Guinea
CBAL	Cottage Business Activities List
CIMC	Consultative Implementation and Monitoring Committee
CIPSA	Chartered Institute of Purchasing and Supply
CLE	Compulsory Legal Education
CSTB	Central Supply and Tenders Board
CTC	Change in Tariff Classification
DCI	Department of Commerce and Industry
DIT	Direct Trader Input
DJAG	Department of Justice and Attorney General
DLIR	Department of Labour and Industrial Relations
DOC	Digital Opportunity Centre
ECD	Exchange Control Department
EE MRA	Electrical and Electronic Mutual Recognition Agreement
EPA	Economic Partnership Agreement
EU	European Union
FIU	Financial Intelligence Unit
FTA	Free Trade Agreement
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
GST	Goods and Services Tax
IAP	Individual Action Plan
ICCC	Independent Consumer and Competition Commission
ICSID	International Centre for Settlement of Investment Disputes
ICT	Information Communication Technology
IEC	International Electrotechnical Commission
IGIS	Integrated Government Information System
ILO	International Labour Organisation

IMF	International Monetary Fund
INA	Institute of National Affairs
IP	Intellectual Property
IPA	Investment Promotion Authority
IPAS	Intellectual Property Automation System
IPBC	Independent Public Business Corporation
IPONG	Intellectual Property Office of Papua New Guinea
IPR	Intellectual Property Rights
ISO	International Organisation for Standardisation
IT	Information Technology
KFR	Kina Facility Rate
LMIS	Labour Market Information System
LNG	Liquified Natural Gas
MFN	Most Favoured Nation
MRA	Mutual Recognition Agreement
MSGTA	Melanesian Spearhead Group Trade Agreement
MTDS	Medium Term Development Strategy
MTDS	Medium Term Fiscal Strategy
NACA	National Anti Corruption Alliance
NADP	National Agricultural Development Plan
NAQIA	National Quarantine Inspection Authority
NEC	National Executive Council
NGO	Non-Governmental Organisation
NICTA	National Information Communications and Technology Authority
NIPRC	National Intellectual Property Rights Committee
NISIT	National Institute of Standards and Technology
OC	Ombudsman Commission
OLDRL	Organic Law on Duties and Responsibilities of Leadership
PAC	Pacific Accreditation Cooperation
PACER	Pacific Agreement on Closer Economic Relations
PANGTEL	Papua New Guinea Radio and Telecommunications Authority
PASC	Pacific Area Standards Congress
PATCRA	Papua New Guinea Trade and Commercial Relations Agreement
PERR	Public Expenditure Review and Rationalization
PICTA	Pacific Island Countries Trade Agreement
PNG	Papua New Guinea
PNGCDC	Papua New Guinea Commercial Disputes Centre
PPP	Public-Private Partnership
PPP	Purchasing Power Parity
PRA	Pest Risk Assessment
R&D	Research and Development
RTA	Regional Trade Agreement
RVC	Regional Value Content

SCCP	Sub-Committee on Customs Procedures
SME	Small and Medium Enterprises
SOE	State Owned Enterprise
SPARTECA	South Pacific Trade and Economic Cooperation Agreement
SPS	Sanitary and Phyto-Sanitary
TBT	Technical Barriers to Trade
TFAP	Trade Facilitation Action Plan
TIPNG	Transparency International Papua New Guinea
TOR	Terms of Reference
TPA	Tourism Promotion Authority
TRIMs	Trade Related Investment Measures
TRIPs	Trade Related Intellectual Property
TRP	Tariff Reform Programme
UNCAC	United Nations Convention Against Corruption
UNCTAD	United Nations Conference on Trade and Development
UN	United Nations
US	United States
VAT	Value Added Tax
WCO	World Customs Organisation
WIPO	World Intellectual Property Organisation
WTO	World Trade Organisation

Executive Summary

Economic Policy Background

1. As a small commodity-exporting developing economy, Papua New Guinea has experienced significant impacts both from the “commodity price boom” up to 2008, and from the collapse in commodity prices from 2008 onward.
2. Economic growth, which had been rapid in the years immediately preceding the global economic crisis, is falling sharply as a result of the crisis, but is expected to remain positive in 2009 and 2009.
3. Inflation was held at low levels through the early years of the commodity price boom, but accelerated rapidly in 2008. The central bank responding by substantially raising its indicator interest rate, and is expected to maintain this stance until it is clear that inflation has subsided.
4. The Papua New Guinea government responded promptly to the crisis by implementing a fiscal stimulus package which is very large relative to the size of the economy, financed to a substantial degree by drawing down of trust funds that had been created by setting aside “windfall” mineral and oil revenues accumulated during the commodity price boom.
5. Significant challenges associated with the fiscal stimulus package include steps to ensure effective and efficient utilisation of the increased spending, and addressing consequential issues of fiscal sustainability and compatibility with the established fiscal policy framework. The current inconsistency between the fiscal and monetary policy stances will also need to be addressed at some point.
6. A very large liquefied natural gas (LNG) that appears likely to proceed promises both a major boost to the Papua New Guinea economy and an intensification of some of the economic policy challenges facing the government.
7. Papua New Guinea has urgent needs in the area of structural reform. Public sector reform, state owned enterprise performance and governance, and improvement in the business environments are key priorities in this area.

Assessment of Papua New Guinea's IAP

8. Through the sustained reduction of tariffs implemented under its Tariff Reform Programme Papua New Guinea has made important progress in implementing the Bogor goals in relation to **tariffs**. There is evidence of substantial efficiency gains to Papua New Guinea as a result of this reform. Nevertheless some nominal tariff rates remain high, and effective rates of protection remain exceptionally high in some cases as well as being highly variable across products, indicating that serious inefficiencies in resource use remain. This indicates the potential for further tariff reform to deliver substantial additional economic benefits to Papua New Guinea, and recommendations to this effect have been presented to the Papua New Guinea government. A decision to defer further tariff reductions due to revenue concerns in the current crisis situation is understandable, but means that a substantial unfinished agenda for tariff reforms remains pending, and may also leave a policy vacuum that opponents of tariff reform will endeavour to fill, as already appears to be the case. In order to maintain and build on the progress achieved to date, the government will need to stay firm in its resolve to hold to the policy approach embodied in the Tariff Reform Programme, and the well-established economic rationale that lies behind that approach.
9. There has been little change in Papua New Guinea's **non-tariff measures** since the previous IAP review. Papua New Guinea maintains relatively few non-tariff measures. There are no import quotas, export licenses, or tariff rate quotas. The export tax on exports of unprocessed logs remains in place. Resource and capacity constraints continue to inhibit movement towards a less restrictive quarantine regime.
10. The 2008 IAP shows that Papua New Guinea has made notable efforts in promoting liberalization and facilitation in the **services** sector since the 2005 IAP Peer Review, especially in sectors such as telecommunication, legal, tourism and energy services.
11. Papua New Guinea generally maintains an open **investment** regime. However, the 2008 IAP shows that few effective measures of investment liberalization have been taken by Papua New Guinea since the 2005 IAP peer review. There is scope to continue to review the business registration and certification processes, including bringing those in line with the accepted global best practices. There is also scope to bringing the strategies for promoting investment into a sharper focus so that promotions can be conducted using accepted methods and tools.

12. The 2008 IAP shows that Papua New Guinea has made substantial progress in the field of **standards and conformance** since the 2005 IAP peer review. Capacity constraints, especially in manpower, are a major challenge. Coordination with other government agencies is another key issue.
13. Papua New Guinea has made notable progress in improving **customs procedures** since the 2005 IAP peer review. A substantial forward agenda remains to be implemented in this area.
14. In the field of **intellectual property rights**, since 2005 Papua New Guinea has undertaken reviews and amendments of its existing intellectual property laws. According to the 2008 IAP of PNG, drafting of all amendments to the existing laws has been completed. Papua New Guinea still faces however a big challenge in establishing its IP Enforcement system.
15. Papua New Guinea has begun to make significant progress toward the Bogor goals in the area of **competition policy**. In order for this progress to be maintained and continued, it is imperative that its competition agency, the Independent Consumer and Competition Commission (ICCC) continue to be adequately resourced.
16. **Government procurement** is a challenging area for policy development in Papua New Guinea, and is becoming even more so with the large increase in funds being channelled to provincial government agencies. It will be important to continue and extend the steps now being taken to meet this challenge.
17. **Deregulation and Regulatory Review and Reform** is an important structural reform issue in Papua New Guinea. “Inappropriate and overly burdensome regulation” and “cumbersome administrative procedures and processes” are noted by the Papua New Guinea Treasury among the impediments to business and investment in Papua New Guinea that need to be addressed. While much clearly remains to be done, Treasury does note that significant progress has been made toward improving burdensome regulations that constrain business activities.
18. **Implementation of WTO Obligations (including Rules of Origin)** is not an issue that receives detailed examination in Papua New Guinea. Papua New Guinea government officials believe that Papua New Guinea is generally in compliance with its WTO obligations, although there are some doubtful cases or “grey areas”. Implementation of WTO commitments has tended to be a slow process in cases where amendments to legislation is required. One area where this has worked to Papua New Guinea’s disadvantage is in the case of the WTO provisions on TRIPs and Public Health.

19. There has been relatively little change in arrangements for **dispute mediation** since the last IAP review.
20. In relation to **business mobility**, since the 2005 peer review Papua New Guinea has improved the regulations and policies on temporary entry of foreign business people. Papua New Guinea joined the APEC Business Travel Card (ABTC) scheme in 2006, and efforts are continuing to make the ABTC accessible to more potential users.
21. Papua New Guinea participates in two **RTAs/FTAs**, the Pacific Island Countries Trade Agreement (PICTA) and the Melanesian Spearhead Group Trade Agreement (MSGTA). Implementation of these agreements has been relatively slow. Papua New Guinea has also initialled an Interim Economic Partnership Agreement (EPA) with the European Union, and along with other Pacific island economies is anticipating possible negotiations for a new reciprocal free trade agreement with Australia and New Zealand.
22. The objectives of the **APEC Food System** appear to have considerable relevance to agricultural policy in Papua New Guinea, based around a National Agricultural Development Plan, and to the challenges faced by Papua New Guinea in increasing the supply of food to its urban areas from the agricultural regions in its interior.
23. Papua New Guinea has taken a number of measures to improve regulatory **transparency**. The government has also enacted several measures aimed at combating the corruption problem in Papua New Guinea.
24. Papua has implemented many of the components of the second APEC **Trade Facilitation** Action Plan, especially in the areas of customs procedures and standards and conformance, and to a lesser extent e-commerce. Work continues toward implement remaining elements of the plan in these areas. Less progress has been made in implementing the business mobility components of the Action Plan.

IAP Study Report

Papua New Guinea 2009

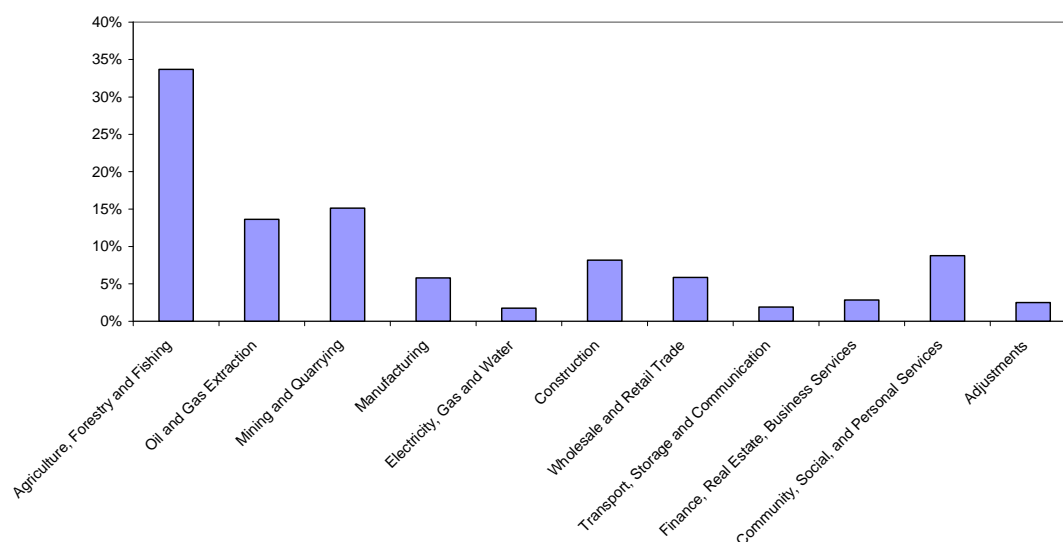
1. Economic Policy Background

Introduction

Papua New Guinea is a small commodity-exporting developing economy. As Figure 1 illustrates, oil, gas and minerals account for almost 30% of Papua New Guinea's GDP, with agriculture accounting for a further one-third of GDP. These commodity-producing sectors thus account for approximately 62.5% of Papua New Guinea's GDP. Services and utilities account for just under 30% of GDP, while manufacturing accounts for only about 6% of GDP.

Figure 1: Papua New Guinea: Sector Shares in GDP (2006)

Source: PNG Treasury, 2009 Volume 1 Budget Table



Some basic economic data on Papua New Guinea's economy is provided in Table 1. The population (about 6.3 million in 2007) is growing at just under 2% per year. It is a very young population with 40% under the age of 15, and only 2.4% aged 65 and over, the latter reflecting in part a relatively low life average life expectancy across both sexes of 57 years. Over 87% of the population live in rural areas and just over 12% in urban areas. Rural-to-urban migration is nevertheless substantial and there exist large "informal" sectors in main cities such as Port Moresby and Lae. The adult literacy rate is 58%, and 55% of children of primary school age are enrolled in

primary schools. Per capita GDP measured in current US dollars is just under \$1000. The alternative Purchasing Power Parity figure for GDP per capita in current international dollars of just over \$2000 may give a better summary indication of average living standards.

Table 1: Papua New Guinea: Basic Data (2007)

Population - total (millions)	6.32
Population growth rate (annual %)	1.95%
Urban Population (% of total)	12.6%
Rural population (% of total)	87.4%
Percentage of population aged	
0-14	40.0%
15-64	57.6%
65 and over	2.4%
Life expectancy at birth, total (years)	57.4
Literacy rate, adult total % of population)	57.8%
Primary school enrolment (% gross)	55.2%
GDP per capita (current US\$)	\$989
GDP per capita, PPP (current international \$)	\$2,084

Source: World Bank Development Indicators

The extremely rugged topography of Papua New Guinea presents major challenges to internal transportation by land. A mountain range dividing the “mainland” in two constitutes an almost impenetrable barrier to land-based communication between the northern and southern sides of the “mainland”, and there are numerous offshore islands of varying sizes. Sea and air transportation are thus crucially important within Papua New Guinea.

Trade Structure

Table 2: Value of Total Exports and Exports of Main Product Categories 2001-2008

	2001	2002	2003	2004	2005	2006	2007	2008
Agricultural and Other Exports	803.8	1,084.9	1,390.8	1,688.0	1,949.9	1,653.3	2,295.4	2,948.9
Forest Products								
Logs	255.7	365.5	369.6	355.7	404.9	491.0	567.6	447.3
Total	332.3	414.1	416.0	459.5	476.3	526.7	631.2	517.2
Marine Products	75.3	94.1	125.3	58.2	69.4	92.2	37.7	101.8
Minerals								
Crude Oil	1,889.4	1,431.2	1,631.9	1,652.2	2,283.1	2,988.5	2,983.6	3,506.1
Gold	2,115.1	2,294.8	2,811.2	2,779.5	2,834.1	3,090.9	3,674.4	4,669.3
Copper	859.1	1,018.7	1,415.0	1,544.2	2,497.7	4,329.5	4,127.7	3,616.7
Total	4,895.6	4,774.0	5,890.0	6,007.5	7,651.9	10,459.2	10,910.6	11,855.5
Total Exports	6,107.0	6,387.1	7,822.1	8,213.2	10,147.5	12,731.4	13,874.9	15,423.4

Source: Bank of PNG

The value of Papua New Guinea's exports by commodity group is shown for the period 2001-2008 in Table 2, while the shares of each commodity group in the value of 2008 exports is given in Figure 2. Strong growth in export values is evident over most of the period, especially for agricultural exports from 2001 to 2004 and again from 2006 to 2008, and for mineral exports from 2004 onward. In 2008 oils and mineral contributed 77% of the total value of exports while agricultural exports contributed 19%. Table 3 shows that Australia is easily the main destination for Papua New Guinea exports, followed by Japan, with the Philippines becoming a significant export destination from 2006. Australia is also overwhelmingly the main source of imports into Papua New Guinea, with the United States and Singapore also being substantial import sources.

Figure 2: Share of Main Commodity Groups in Exports 2008

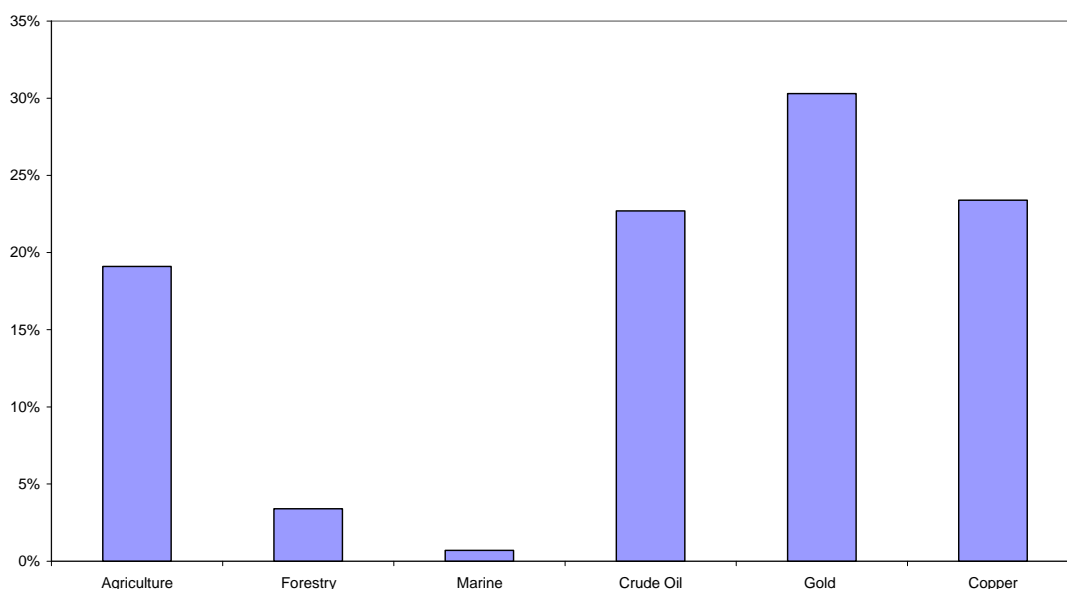


Table 3a: Main Import Sources 2003-8

% of total

Imports

	2003	2004	2005	2006	2007	2008
Australia	54.8	55.3	44.8	34.2	42.3	42.0
United States	9.6	8.1	13.8	21.0	19.5	22.7
Singapore	6.6	6.0	6.4	19.2	14.6	11.3
Japan	4.8	4.4	3.9	5.0	4.2	4.7
New Zealand	5.2	3.3	5.0	2.8	2.8	2.8
China	4.6	3.2	2.0	2.2	3.0	3.5
Malaysia	2.3	1.7	1.7	2.1	2.0	2.1
Indonesia	2.0	1.5	1.5	1.2	1.3	1.3

Table 3b: Main Export Destinations 2003-8**Exports**

	2003	2004	2005	2006	2007	2008
Australia	45.7	45.6	43.2	40.7	40.4	44.4
Japan	12.8	10.8	11.3	14.3	16.9	13.2
Germany	6.6	7.1	7.3	4.5	8.3	4.8
Korea	5.4	6.1	7.4	4.4	2.5	4.7
China	6.7	4.9	3.7	3.7	3.4	3.8
Philippines	3.5	4.0	5.3	9.7	7.7	7.0
United Kingdom	2.5	3.5	1.9	1.4	1.7	2.8
United States	2.7	2.2	1.4	1.1	1.5	1.6
Singapore	2.1	2.2	1.1	0.6	1.6	1.3
Netherlands	1.1	1.5	0.9	0.2	1.3	1.9
Indonesia	1.7	1.2	0.4	1.2	0.2	0.2
Italy	1.6	1.1	0.7	0.9	1.2	0.3

Source: Bank of PNG

Table 4: Papua New Guinea Export Price Indices (1994 = 100)

2008 Quarterly

	2001	2002	2003	2004	2005	2006	2007	2008	March Q	Jun Q	Sept Q	Dec Q
Cocoa	260.3	508.8	523.2	429.1	369.5	377.4	470.2	522.1	493.5	567.2	571.1	456.6
Coffee	124.9	143.3	146.2	147.5	215.5	217.1	249.3	258.4	261.8	270.0	264.6	237.3
Copra	120.5	182.7	189.2	219.9	187.5	159.7	207.3	340.0	361.7	377.9	332.3	288.2
Copra Oil	169.9	238.6	289.2	360	345.3	289.7	477.9	660.5	637.3	753.8	719.4	531.4
Palm Oil	260.3	388.5	409	410.8	367.8	378	608.2	729.5	687.9	861.9	745.1	622.9
Logs	116	124.4	116.3	111.9	113.2	117.3	127.7	115.5	123.6	117.9	112.8	107.7
Non-Mineral	179.6	270.3	292.7	279.1	255.9	255.1	369.7	466.2	442.2	520.2	483.1	419.1
Gold	245.6	303.9	326	327.5	319.5	473	506.5	590.9	643.4	623.9	570.2	525.9
Copper	284.9	338.2	344	499.5	617.3	1113.7	1170.6	1085.0	1129.0	1261.3	1181.1	768.7
Crude Oil	546.9	585.9	681.3	826.6	1040.7	1290.7	1357.8	1831.3	1725.0	1987.5	2250.0	1362.5
Mineral	376.1	401.8	438.5	502.2	614.2	959.3	1008.9	1116.9	1122.6	1232.7	1264.6	847.6

Source: Bank of PNG

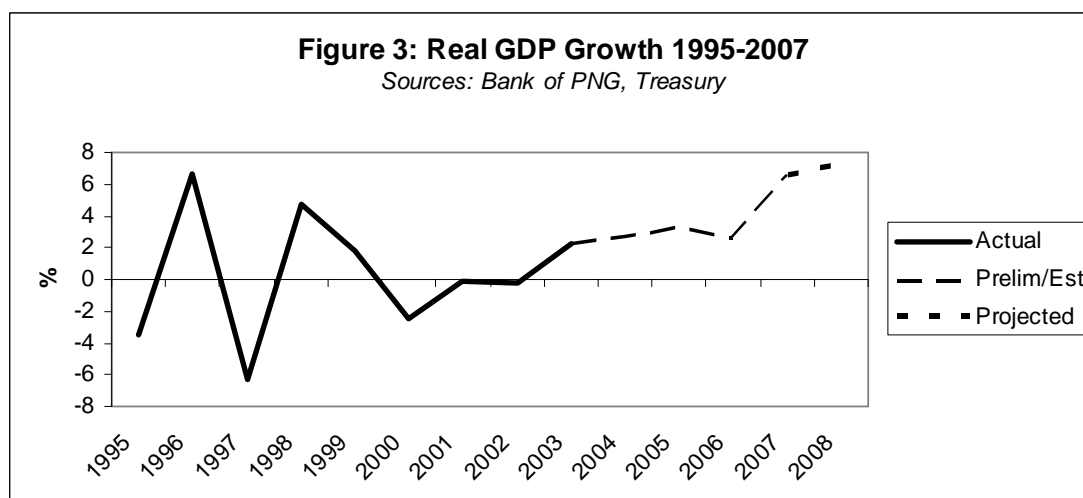
International price movements for traded goods are a crucial influence on economic activity. Table 4 indicates the year-by-year price movements for Papua New Guinea's main export commodities since 2001, further broken down by quarters for 2008. This data clearly illustrates the powerful commodity price boom that saw sharp rises in the prices for Papua New Guinea's mineral and fuel exports from 2004 onward (from 2006 in the case of gold) and in the prices for its main agricultural exports from 2007 (2008 in the case of copra). The table shows that prices of almost

all the commodities shown reached their peak at varying points in the first three quarters of 2008. The fall from the peak was especially sharp in the case of copper and crude oil prices, sharp also for the prices of the agricultural commodities, and somewhat less pronounced for gold prices. Despite these sharp falls, prices for most commodities at the end of 2008 remained well above pre-boom levels. In the first quarter of 2009 prices continued to deteriorate for most commodities, with the exception of gold, cocoa and logs.

Macroeconomic Performance

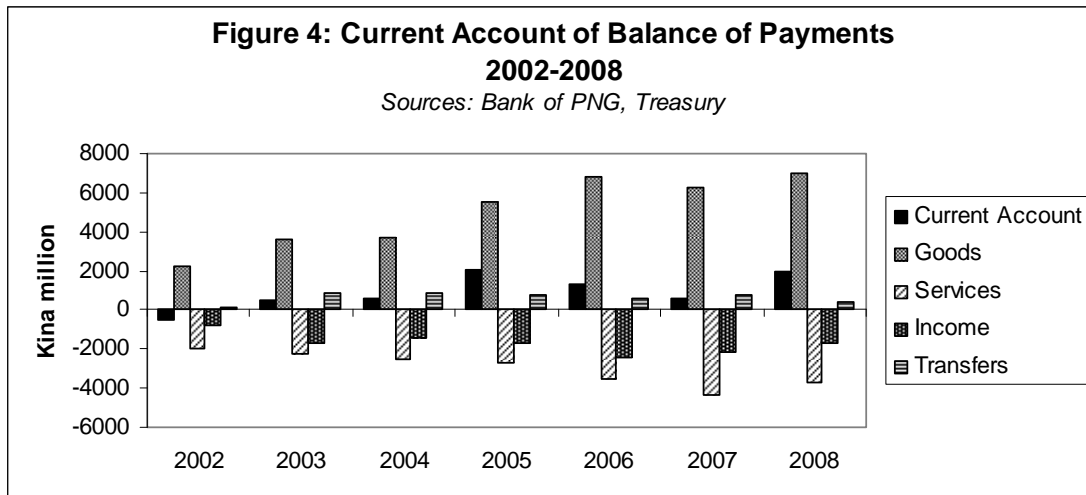
Before the global financial crisis

At the time of last review of Papua New Guinea's IAP, in 2005, the Papua New Guinea economy was emerging into a period of sustained economic growth, following a long period of weak economic performance. As shown in Figure 3, positive growth continued through 2005 and 2006, and then accelerated, reaching 6.5% in 2007 and 7.2% in 2008. This growth spurt can be attributed to the commodity price boom and the spread of its impact beyond the mineral sector, reflected in buoyant activity for example in the construction, communications, manufacturing and retail sectors.

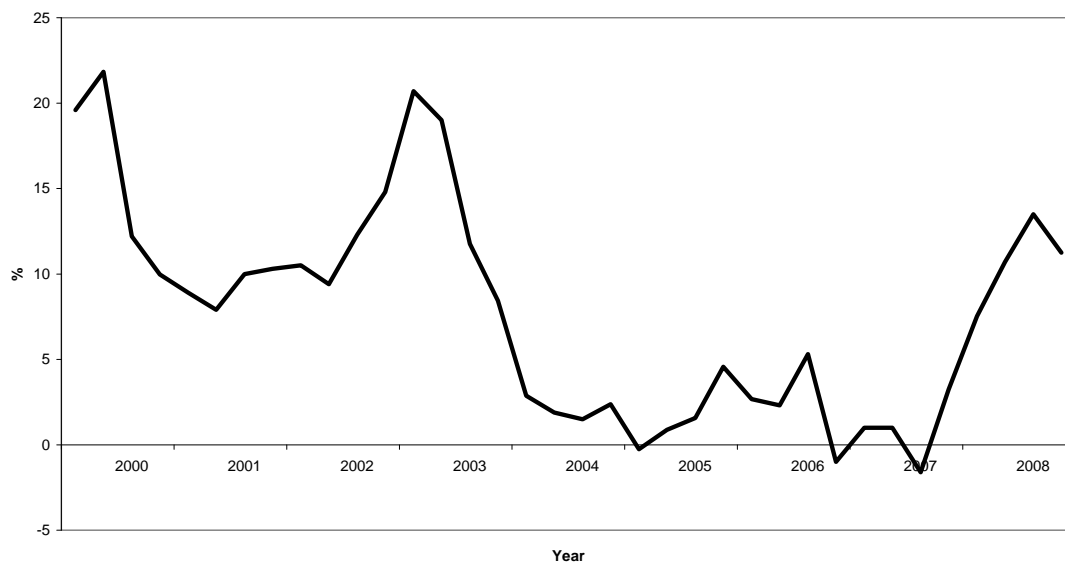


The commodity boom was also reflected in a strong balance of payments position, illustrated in Figure 4. Strong surpluses on goods trade were reflected in a series of substantial current account surpluses in most years from 2005 to 2008. Official foreign exchange reserves peaked at US\$2.7 billion in August 2008 (equivalent to

five months of imports of goods and services and more than 12 months of non-mineral project imports, according to World Bank 2009), before being drawn down to around US\$2billion by the end of 2008 as the central bank sought to resist depreciation of the kina/U.S. dollar exchange rate. External debt was reduced to about 27% of GDP by the end of 2008 (IMF 2009).



**Figure 5: Inflation 2000-2008
% Change, Year-on-Year**



Inflation had been reduced to low levels by 2004, following a period of high and variable inflation in the preceding years. As Figure 5 shows, inflation was held at low levels through the first three years of the commodity boom, but then began to accelerate, reaching a peak of 13.5% (year-on-year basis) in the third quarter of 2008.

Monetary policy settings were held steady through the period from 2005 to mid-2008. In mid-2008 the Kina Facility Rate or KFR (the key monetary policy indicator rate in Papua New Guinea) began to be raised by the central bank, reaching 8% by the end-of-the-year, although this higher nominal rate still represented a negative real interest rate at that time, given the sharp increase in inflation that had taken place.

Papua New Guinea's fiscal policy framework, the adoption of which was noted in the previous IAP review, served Papua New Guinea well during this period. The framework is based around a Medium Term Development Strategy (MTDS), a Medium Term Fiscal Strategy (MTFS) and a Medium Term Debt Strategy. In 2006 the government also adopted a Fiscal Responsibility Act, aimed at greater transparency in fiscal policy and tighter discipline in management of the government's debt. The MTDS sets out development priorities to guide the allocation of government expenditure. The MTFS aims at providing a framework for managing the government's fiscal resources so as to promote macroeconomic stability and sustainability over the medium term. A key feature of the latest MTFS, adopted in 2008, is the requirement to keep ongoing government expenditure in line with "normal" revenues, defined as non-mineral revenue plus an estimate of sustainable long-run mineral revenues.¹ This means that "windfall" mineral revenue above the "normal" guideline should not be available for recurrent government expenditure. The MTFS specifies that 70% of "windfall revenues" may be used for public investment projects, and 30% should be used for debt repayment. A further requirement is that public expenditure financed from the "windfall" revenues must be limited to 4% of GDP; this is to avoid inflationary pressures and assist in maintaining macroeconomic stability.

In practice, from 2005 onward the government set aside a proportion of each year's "windfall" revenue in trust funds, in part to avoid breaching the MTFS guidelines and in part to allow implementing agencies more time to develop suitable public investment projects. By the end of 2008 the amounts accumulated in these trust funds were equivalent to approximately 22% of GDP (ADB 2009). Because the amounts set aside in trust funds were treated as "off-budget" items the fiscal surpluses recorded in the government accounts remained relatively modest.²

The government's debt strategy is directed towards reducing government debt to sustainable levels. The Papua New Guinea Treasury (2009) notes that the IMF has estimated that debt sustainability for Papua New Guinea means a government debt of below 30% of GDP. Debt repayments during the period of the commodity boom saw government debt reduced to approximately 29% of GDP by the end of 2008 (ADB

¹ The long-run sustainable mineral revenue is defined in the latest MTFS as 4% of the GDP that can reasonably be anticipated if commodity prices fall to long-run trend levels.

² Under international norms the amounts set aside in trust funds would have been treated as "above-the-line" items, resulting in large and growing fiscal surpluses through the years 2005-2008.

2009). The government also aims to maintain a sovereign credit rating of BBB, and considers a rating of BBB- as the lowest rating consistent with an assessment that the government has adequate capacity to meet its financial obligations. The current rating of B (Papua New Guinea Treasury 2009) is below this minimum level, indicating that the level of financial risk associated with government debt remains excessive. The Treasury proposes a number of steps to reduce the level of risk, including further repayments of foreign currency debt, and adjustments to the composition and maturity structure of government debt.

Global Financial Crisis: Impact and Policy Response in Papua New Guinea

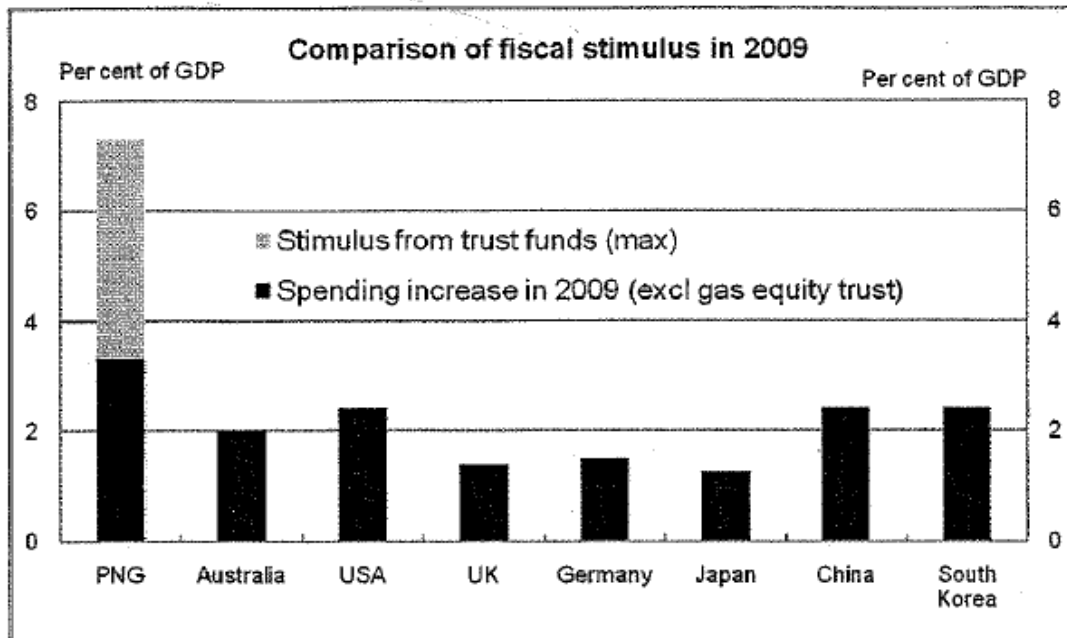
The main transmission channel for the effects of the global economic downturn in Papua New Guinea is through commodity prices, which began to decline sharply in the second half of 2008 and have continued to fall sharply in 2009. Although imports are expected to drop as well as exports, net exports are expected to decline, with the current account moving into deficit. Increased caution on the part of the private sector toward investment and especially construction, and reduced incomes among rural cash crop farmers are all contributing to the downturn in economic activity.

On the other hand Papua New Guinea is fortunate in that its banking sector has relatively little direct exposure to the global financial turmoil. The vulnerability of banks in Papua New Guinea to international credit market developments is comparatively limited, both because the banks fund their balance sheets primarily from local deposits, and because lending is directed primarily to local businesses. There is no exposure to overseas “toxic assets” and foreign currency deposits that might be susceptible to sudden withdrawal comprise only a minor share of total deposits. As economic activity slows however the risk of non-performing loans will naturally increase, and banks may become more cautious in their lending activities, with credit becoming tighter and more expensive as a result. In 2008 Papua New Guinea ranked 131st in the “Getting Credit” component of the World Bank’s “Ease of Doing Business” index, indicating that access to credit is already a serious issue for Papua New Guinea businesses.

The Papua New Guinea government reacted quickly to the expected slowdown in economic activity with a very large fiscal stimulus package, introduced through a supplementary budget in late 2008. This took the form of a substantial increase in development expenditures, supplemented by further spending increases financed from the trust funds accumulated in preceding years. As a percentage of GDP the Papua New Guinea fiscal stimulus is very large in comparison with fiscal stimulus packages elsewhere, as Figure 6 shows. This would be the case even without the additional injection of spending from the trust funds, and is so despite the fact that the initial starting position of the Papua New Guinea at the onset of the crisis was quite favourable relative to other economies. With the addition of the additional spending

from the trust funds the expected fiscal stimulus in 2009 adds up to over 7% of GDP (ADB 2009).

Figure 6: Comparison of Economic Stimulus (as % of GDP) in 2009



Source: Reserve Bank of Australia, February 2009

A further factor that is tending to maintain business confidence at higher levels than would otherwise be the case is the expectation that the necessary final decisions will soon be taken to proceed with the very large liquefied natural gas (LNG) development that has been in the planning stages for several years. Additional economic activity will be generated by this development, on a moderate scale during the construction phase and on a much larger scale once production commences, possibly around 2013. Varying estimates have been made of the economic impact of the LNG development on the Papua New Guinea economy. The IMF estimate of a 15-20% per year boost to GDP over the life of the project (IMF 2009) appears to be widely accepted as realistic.

In the short term economic activity will inevitably decline significantly from its 2008 peak, but the growth rate is nevertheless still expected to remain positive, with international agencies such as the ADB and World Bank predicting growth of just under 4% in 2009. The ADB predicts a further drop in the growth rate to 3.5% in 2010. The risks to these predicted growth rates are probably on the downside. Inflation is expected to come down substantially due to a combination of factors, including the impact of an appreciation of the kina in the latter part of 2008, lower commodity prices and weaker domestic demand conditions. The higher rate of 8% being maintained by the central bank for the key monetary policy indicator rate (the KFR rate) will also begin to bite as inflation falls below this level, so that real interest

rates turn positive and progressively increase. The central bank is expected to hold its indicator rate steady until it is clear that inflation has subsided.

Policy Challenges

Papua New Guinea's fiscal stimulus represents a prompt response on a large scale to the global economic crisis. Nevertheless there are some significant challenges and potential problems associated with it. One issue is that implementing agencies, often at the provincial or district level, may lack the administrative and operating capacity to efficiently deploy such a large increase in spending, for example on well-designed infrastructure projects, with the consequence that the effectiveness of the spending package may be diluted. Lack of capacity to implement badly-needed infrastructure projects is a longstanding problem in Papua New Guinea. Some economic commentators have also questioned whether the size of the stimulus may be excessive, tending to sustain inflationary pressures at a time when the central bank's efforts to rein in inflation by means of a restrictive monetary policy are already placing pressures on businesses. A situation where fiscal and monetary policies are pushing in different directions, as at present, is obviously not ideal. Fiscal management issues have become more acute, given that the sharp decline in commodity prices since mid-2008 has effectively wiped out the "windfall revenues" from the mineral sector at the same time as public expenditure is being dramatically increased. These concerns would be heightened if it proves to be the case that the government has under-estimated both the size of the spending increase released by the 2009 budget, as the IMF has suggested, and the scale of the fall in mineral revenues.

Framing of the 2010 budget, now under way, is likely prove especially difficult, given that the fall in revenues from the mineral sector appears to be consistently exceeding expectations, necessitating frequent re-estimations that are typically turning out to have been over-optimistic. There is concern also that the government may find it politically difficult to reverse the increase in expenditure when this becomes necessary to remain within the guidelines of the government's fiscal strategy. The IMF has commented that "given the revenue outlook, the level of public spending in the [2009] budget cannot be maintained without undermining debt sustainability". (IMF 2009). An additional reason for fiscal caution is the further pressure that may be placed on the economy's debt position by the financial obligations that the government is likely to assume as part of its involvement in the anticipated LNG development.

Implementation of the LNG development will pose further challenges to economic management. Even at this early stage there is concern that upward pressure on real estate prices due to initial activity associated with the LNG development is adding to the difficulties faced by other businesses. As the development proceeds, its demand for skilled labour will be large relative to the supply of such labour in Papua New Guinea, and this will have a substantial impact on both the availability and cost of

skilled labour for other businesses. Effects of this nature are already evident in the Papua New Guinea economy as a result of existing resource sector developments, but the LNG development will intensify them.

A further challenge for both the public and private sectors in Papua New Guinea is the rise in the minimum wage that was announced in early 2009. The mandated increase is 170%, to be phased in over the period from February to October 2009 (IMF 2009). While it is true that many employers pay well above the minimum wage, some do not, and it is in any case likely that the increase will be spread throughout the economy by relativity issues. There is no doubt that the existing minimum wage was at a level that was badly in need of upward revision, but an increase of such a large magnitude will be difficult for the economy to absorb at this juncture. The increase has implications for the government's fiscal outlook as well as private sector profitability.

Structural Reform

There is widespread agreement among economic commentators that the Papua New Guinea economy continues to stand in urgent need of structural reform along multiple fronts.

Public Sector Reform

One set of key structural reform issues relates to the size and efficiency of the public service. The Public Expenditure Review and Rationalization (PERR) programme, the initiation of which was noted in the previous IAP review, continues to operate. It consists of nine projects, each led by the relevant government agency, with the following objectives:

- Improve budget stability (lead agency: Treasury)
- Improve budget processes (lead agency: Treasury)
- Secure the payroll and appointment process (lead agency: Department of Personnel Management)
- Reduce spending on salaries (lead agency: Department of Personnel Management)
- Control and prioritise spending on procurement and improve oversight of spending (lead agency: Finance)
- Financial management improvement (lead agency: Finance)
- Expenditure adjustment and prioritisation: medium term (lead agency: Department of the Prime Minister and National Executive Council)
- Improve non-tax revenue (lead agency: Finance)
- Improve fiscal and governance oversight of statutory authorities

A review by the Papua New Guinea Treasury (2009) reports that significant progress has been made towards a number of these objectives, but also that much remains to be done. Key concerns noted by the World Bank (2009) are “ensuring the integrity of public financial management, adequate expenditure mix for sectoral service provision,

strict control over the size and performance of the civil service, and transparency and accountability in budget management.” The importance of greater emphasis on merit-based appointments to the civil service was also stressed in some consultations.

Treasury (2009) notes that “the public sector in PNG continues to struggle in many areas. Basic services are not being delivered and core public sector processes do not operate effectively.” The Treasury analysis makes it clear that substantial improvements in management capacity, human resources, and administrative systems are needed not only at the central government level but even more importantly at the provincial and district levels. These improvements are essential if the public sector and its expenditures are to adequately address the nation’s development needs.

Health, education, and provision of physical infrastructure are all crucial areas where improved performance is essential to the meeting of the nation’s development needs. In addition to pursuing improvements in public sector performance in these areas the government has now also decided in principle to open the way to greater private sector involvement through public-private partnerships (PPPs). This raises further issues of the need to improve the business environment (discussed below) and the need for the government to improve its capacity to manage the financial risks associated with such initiatives.

State Owned Enterprises

The issue of efficiency in the state-owned enterprise (SOE) sector was raised several times during consultations. This is an important issue for Papua New Guinea’s economic performance since SOEs dominate a number of critically important markets in the Papua New Guinea economy, for example electricity. ADB(2009) emphasises the importance of pursuing “reforms to state-owned enterprises by increasing accountability, strengthening governance, and opening to competition those facilities dominated by the public sector.” Improvements in the mobile telephone and aviation markets as a result of the introduction of increased competition are cited as illustrations of the progress that is potentially achievable. A vitally important role in this regard is played by the Independent Public Business Corporation (IPBC), the entity tasked with management of public investments, including the oversight of privatisation initiatives where these are decided by the government. The IPBC also has a direct project implementation role for example in the critically important upgrading of the port of Lae, and the importance of its role in the economy will increase further if, as was suggested during consultations, it becomes the vehicle for state shareholdings in the LNG developments. A more complete corporatisation of SOEs, including the setting of clearly defined profitability targets was advocated in some consultations. The importance of greater transparency through the presentation by the IPBC of timely and informative accounts for the SOE sector was also emphasised.

Improving the Business Environment

The importance of improvement in the business environment as a prerequisite for effective private sector-led development in Papua New Guinea is almost universally acknowledged, by government agencies such as Treasury, by international agencies such as the World Bank and Asian Development Bank, and by the private sector itself. The problems that need to be addressed under this heading are also well known: inadequate and often deteriorating physical infrastructure, especially roads; high cost and low reliability of public utilities, especially electricity; high costs of domestic shipping and other transportation problems; regulatory impediments; outdated and ineffectively implemented labour and immigration policies; impediments to enforceability of contracts arising from outdated or inadequate legislation³; law and order issues. In 2008 Papua New Guinea was ranked 92nd on the World Bank's "Ease of Doing Business" index.

Treasury (1989) highlights actions being taken by government to address these issues. Private sector representatives however continue to express deep dissatisfaction with what they regard as a disappointing lack of progress to date. Achieving substantial progress in these areas remains a major challenge for the Papua New Guinea government.

³ Papua New Guinea is ranked 162nd in 2008 for the "Enforcing Contracts" component of the World Bank's "Ease of Doing Business" index.

2. Assessment of Papua New Guinea's IAP

2.1. Tariffs

Objective

APEC economies will achieve free and open trade in the Asia-Pacific region by

- (a) progressively reducing tariff measures*
- (b) ensuring the transparency of APEC economies' respective tariff measures*

At the time of the last IAP review, Papua New Guinea was mid-way through implementation of an ambitious Tariff Reform Programme (TRP). The TRP was introduced in 1999 and involved a timetabled program of tariff reductions over the years from 1999 to 2006. During this period tariff policy in Papua New Guinea essentially followed the framework set out in the TRP, although there were a small number of *ad hoc* deviations from the program.

The principal features of the TRP included:

- Duty rates for most goods, with the exception of goods that are produced or could potentially be produced in Papua New Guinea, were set at zero. As a result approximately three quarters of Papua New Guinea's imports now enter the economy duty free.
- For goods that are produced or could potentially be produced in Papua New Guinea, duty rates were consolidated into three bands: the prohibitive rate, the protective rate, and the intermediate rate. Initial rates were set for each band, and the TRP then provided for these rates to be reduced in three timetabled steps of 5%.

The protective rate is intended to provide protection for producers of finished goods. The intermediate rate applies to inputs into the production process that are produced or could be produced in Papua New Guinea. The prohibitive rate is designed as a major deterrent to imports of certain goods for which local production has been deemed to be especially valuable. Prior to the TRP tariff rates for these products had ranged from 55% to 100% but the rates were consolidated for most of these products at 55% in 1999, before being reduced further under the TRP.

The timetable, together with the beginning and ending rates for each band, are set out below in Table 5.

Table 5: Timetable for Tariff Reduction Program (1 January Basis) 1999-2006

	1999-2000	2001-2002	2003-2005	2006
Intermediate Rate	30%	25%	20%	15%
Protective Rate	40%	35%	30%	25%
Prohibitive Rate	55%	50%	45%	40%

Source: White Paper on Tariff Reform

A small number of products were subject to different timetables and/or ending rates, because of government contractual obligations to the producers and/or previous commitments to very high tariff rates. Products in this category included sugar, salt, canned mackerel and veneered and laminated wood (including plywood). While cases such as these are few in number they do represent important economic distortions. The tariff on sugar imports for example remains at 70%.

A further category of goods subject to different tariff arrangements are those to which specific duties apply, expressed as a rate per unit of volume, weight, or alcohol content. Products in this category include beverages, tobacco products and animal feed. The tariffs on beer and cigarettes are designed to be prohibitive, and support the operation of local monopoly producers.

Parallel to the introduction of the TRP the government introduced a Value Added Tax, or VAT (now renamed Goods and Services Tax, or GST) to offset revenue losses from reduced tariffs and to replace provincial sales taxes. Under this changed approach tariffs were no longer to be viewed as significant revenue-generating instruments. That role was to be taken over by VAT/GST, which was also to replace the varying array of sales taxes applied at the provincial level.

The TRP was an important initiative to move tariff policy in the direction of the strategy adopted in the government’s Medium Term Development Strategy (MDTS), with its emphasis on focusing “interventions on resources, products, and commodities in which Papua New Guinea enjoys a competitive advantage in global markets”.

As noted in Papua New Guinea’s IAP, a review of the TRP was undertaken in 2007 (Auckland Uniservices 2007). This review noted that the TRP achieved substantial

reductions in both nominal and effective rates of protection. With these reductions in place, and in particular with over three-quarters of imports entering Papua New Guinea duty free, Papua New Guinea has made substantial progress toward fulfilling the Bogor goals in relation to tariffs.

The review concluded that the sustained program of tariff reduction represented by the TRP was economically beneficial to Papua New Guinea, leading to a significant re-allocation of resources in the direction of greater efficiency. Firms discontinued some production lines while introducing other new lines. New technology was introduced and operations reviewed to achieve greater efficiencies. Some firms expanded while others contracted. While other factors beside the TRP have also contributed to these changes, these developments were seen as important evidence that the TRP had its intended effect of improving economic efficiency in the private sector. At the same time the review noted that over the period of the TRP employment in the manufacturing sector increased more strongly than in any other sector, indicating that tariff reform had not led to an overall contraction of the manufacturing sector.

The 2007 TRP review also noted however that despite the reductions achieved by the TRP, the protective and prohibitive tariff rates in particular remain high. Furthermore, these rates appear to be associated with effective rates of protection that are still often exceptionally high, as well as being highly variable across products. High effective rates of protection indicate that serious inefficiencies in resource use remain, while the variability of effective rates of protection indicates that the current tariff structure is supporting production activities of widely varying efficiency in resource use. The high and variable rates of effective protection reflect the combined effect of the ongoing high protective and prohibitive tariff rates and the gap between these tariff rates and the tariffs applied to production inputs, which are either dutiable at the intermediate rate of 15% or imported duty-free if they are not produced in Papua New Guinea.

To produce more moderate and uniform effective rates of protection it is necessary both that the protective and prohibitive rates should be reduced further, and that in the process they should be better aligned with the tariff rates applicable to production inputs. These changes would be expected to contribute to Papua New Guinea's development by further enhancing the efficiency of resource allocation within the economy, along the lines indicated in the Medium Term Development Strategy (MTDS).

In line with this analysis, both the 2007 review and an earlier review in 2003 recommended that the expiry of the TRP in 2006 should be followed by a further carefully sequenced programme of tariff reductions. To date however no further action has been taken on changing tariff rates, apart from some *ad hoc* adjustments

introduced in the 2007 Budget, which in fact served to raise tariff rates for certain specific products.

Treasury is the government agency with primary responsibility for tariff policy. During in-economy consultations Treasury representatives emphasised that the government remains committed to further tariff reform. They stated that the decision to delay introduction of a further programme of tariff reductions is in recognition of the impact of the global economic crisis, with its likely significant adverse impact on the private sector and the drastic effect it has already had and will continue to have on government revenue. It is acknowledged that tariffs today make only a minor contribution to government revenue, projected at 2.9% of total revenue in 2009 (compared to over 17% in 1998), but Treasury officials emphasised that the current uncertainty over future revenue flows is such that the government cannot prudently forego even modest revenue flows.

This position is of course understandable, but it means that a substantial unfinished agenda for tariff reform remains pending. A particular concern is that the hiatus in tariff policy may create a vacuum that may be filled by opponents of further reform, or even by supporters of reversal of the reforms so far achieved. During in-economy consultations, for example, a prominent and influential manufacturers' representative argued that Papua New Guinea has "done enough" on tariff reform for the time being, and that further tariff reductions should be delayed until other APEC economies have implemented comparable reductions in their own tariffs. This argument completely ignores the basic point that further tariff reform is being advocated as a way of further enhancing Papua New Guinea's own economic well-being, rather than for the benefit of its trading partners. More disturbingly, representatives of the Department of Commerce and Industry (DCI) reported that they are developing a proposal for a new manufacturing policy for Papua New Guinea which they intend to submit to Parliament for legislative endorsement, and which would involve among other things a significant increase in tariff protection for manufacturing in Papua New Guinea, exploiting to the full the gaps between Papua New Guinea's WTO bound rates and its existing applied rates. They indicated that under the proposed policy tariff protection up to the WTO bound rate should be available to any manufacturing industry that would be viable at that level of protection. This is a variation on a policy approach that has been tried in the past in Papua New Guinea, typically with disastrous results. DCI representatives stated that they are confident that they can overcome Treasury objections and have their proposed manufacturing policy enshrined in an act of Parliament.

While there is no indication that the Papua New Guinea government is willing to be influenced by these pressures, the fact that the pressures exist suggests that tariff policy may be contested territory in Papua New Guinea for some time to come. Further progress on tariff reform, and continuation of the progress achieved to date toward the Bogor goals in this policy area, will depend on the government

maintaining its resolve to hold to the policy approach embodied in the TRP, and the well-established economic rationale that lies behind that approach.

2.2. Non-Tariff Measures

Objective

APEC Economies will achieve free and open trade in the Asia-Pacific Region by :

- (a) Progressively reducing non-tariff measures*
- (b) Ensuring the transparency of APEC economies' respective non-tariff measures*

There has been little change in Papua New Guinea's non-tariff measures since the previous IAP review. As noted by that review, Papua New Guinea maintains relatively few non-tariff measures. There are no import quotas, export licenses, or tariff rate quotas.

The export tax on exports of unprocessed logs noted in the previous IAP review remains in place. As noted in the earlier review one rationale for this export tax is to counter the suspected use of transfer pricing by log exporting companies as a means of avoiding tax liability. The alternative rationale for the export tax, namely the encouragement of domestic processing of logs, is increasingly called into question as there is little evidence of such an effect. The export tax on crocodile skins, also noted in the previous review, is said to be motivated by conservation concerns. Export taxes (predominantly on log exports) are comparable to tariffs as a source of revenue, projected at 2.7% of total government revenues in the 2009 Budget. As in the case of tariffs, revenue concerns may mitigate against any consideration of reducing or abolishing the export taxes in the short term.

Papua New Guinea does not currently have the capacity to engage in anti-dumping actions or other forms of contingent protection measures.

In the case of quarantine restrictions in-economy consultations indicated that the resource constraints highlighted in the previous review continue to inhibit movement towards a less restrictive regime. The National Quarantine Inspection Authority (NAQIA) is currently required to maintain a permanent presence at 20 ports of entry, with smaller ports also being attended on an "as needed" basis. NAQIA is critically short of the manpower needed to maintain the necessary presence at ports of entry, and is also very short of technical expertise, indicating that its staff currently includes

only two veterinary experts, two pathologists and two entomologists. It endeavours to develop protocols for imported products based on pest risk assessments (PRAs) in accordance with international standards and obligations when requested to do so, but resource limitations mean that there is inevitably a backlog, with assessments being carried out as resources permit on a “first-in, first-out” basis. Substantial “user pays” charges are levied on the private importers that request the assessments. Inadequate access to laboratory testing facilities means that the detection of potential problems usually leads to an outright ban on the product concerned. A number of products are subject to such import bans.

Under NAQIA’s system every consignment is in principle subject to inspection, although an office clearance may be granted where the risk is known to be low. Physical inspections generally cannot be carried out at the wharf due to lack of space. Following submission of documents goods are released from the wharf under a conditional permit to land, subject to later inspection off-wharf in designated quarantine areas. Consignments may remain in these designated areas for some time before being inspected, again due to resource constraints. NAQIA acknowledges that the situation is unsatisfactory from a biosecurity perspective.

From time to time there is pressure from some sections of the community for bans on imports of products considered to be a risk to human health, for example lamb flaps from New Zealand, but to date no action has been taken in this direction.

2.3. Services

Objective

APEC economies will achieve free and open trade and investment in the Asia-Pacific region by:

- (a) progressively reducing restrictions on market access for trade in services*
- (b) progressively providing for, inter alia, most favoured nation (MFN) treatment and national treatment for trade in services.*

In recent years PNG’s service sector has taken a progressively more important role in the economy’s economic growth. The 2008 IAP also shows that PNG has made notable efforts in promoting liberalization and facilitation in the service sector since the 2005 IAP Peer Review, especially in sectors such as telecommunication, legal, tourism and energy services.

However, it should be noted that the economy of PNG is clearly agricultural and mineral sector-oriented. The service sector is still relatively small, accounting for about 30 percent of PNG’s total GDP, which is almost the lowest among APEC

member economies at present. In this sense, there is great potential and big room for further development of PNG's service sector, which will in turn promote the economy's economic growth in a more balanced and sustainable approach.

Legal services

The 2008 IAP indicated that PNG has relaxed the certificate requirement for foreign lawyers. Previous practice under the Lawyers Act to admit foreign lawyers to practice in PNG was that they must first be admitted by the National Court of PNG, obtain a practicing certificate from the Law Society of PNG, and obtain a Certificate of Approval by the Attorney General. Under these arrangements only the lawyers from Australia, New Zealand and United Kingdom who had been admitted to practice in their respective economies for 3 years after admission were qualified for admission in PNG. These practices were deemed to be limiting service liberalization. However, in a recent National Court decision, it was held that foreign lawyers who have been admitted to practice in PNG do not need to obtain a separate Certificate of Approval from the Attorney General to appear before a PNG Court.

The Department of Justice and Attorney General (DJAG) has developed a form for the Attorney General to grant a Certificate of Approval for a foreign law firm to practice in PNG pursuant to. S.16 Attorney General Act. DJAG has also included certain conditions such as the need to train/mentor/supervise PNG lawyers in areas of specialty. An amendment will be made to the principal Act as well.

PNG Law Society is also looking at the option of making mandatory Compulsory Legal Education (CLE) programs as a requirement for a foreign lawyer to be registered to practice law in PNG.

Telecommunication services

Aiming to promote increased and fair competition in the domestic telecommunication market, the Government of PNG approved and adopted a National Information & Communication Technology (ICT) Policy on May 2008 with the purposes of:

- providing a strong ICT policy framework encompassing all key aspects of effective ICT sector reform to ensure improving access to telecommunication services across the economy;
- proposing a staged introduction of open competition initially in the mobile sector and subsequently across all sectors of the telecommunications market; and
- providing guidelines for competition in the mobile telephony, fixed line telephony, internet and international markets access.

The revised national information and communication technology (ICT) bill, which is now into its phase two of the reforms in the ICT sector, will further promote competition in the information technology sector. The reforms are extensive, focusing on licensing, access, interconnection, regulation of wholesale and retail prices and other related issues. There has already been substantial consultation on the development of the phase two reforms. The government expects to have the reforms working by October 2009. Subject to its approval, and acceptance in the Parliament, the draft would see that existing regimes in the *Telecommunications Act 1996* replaced by the *National ICT Act*.

In fact, before adopting the new ICT policy, PNG had made improvements in enhancing market competition in mobile phone services. Commencing April 2007, two new mobile operators were licensed by the Independent Consumer & Competition Commission (ICCC) to provide mobile phone services in competition with Telikom PNG Limited. The two new mobile operators are DIGICEL Limited and DAWAMIMBA Limited trading as Green.com. The result has been an extension of mobile phone coverage to the whole of Papua New Guinea. Originally, mobile phone coverage was only available in four of the twenty provinces. Since the licensing, the two new mobile phone operators have already rolled out their networks and undertaken related marketing initiatives. In view of increased competition, further decline in mobile phone prices and call charges are expected in PNG's telecommunication market.

To ensure that there is fair and even handed competition among the mobile operators, ICCC has developed appropriate access guidelines. The ICCC also intends to develop appropriate accounting separation guidelines for Telikom to separate its mobile business from its fixed line and other businesses lines. In addition, the Telikom regulatory contract would also be reviewed to reflect the changing circumstances in the industry.

On 22nd May 2009, the Papua New Guinea Radio and Telecommunications Authority (PANGTEL) launched a new spectrum management system (ASMS). The ASMS will be of value not only to PANGTEL, but also the telecommunications industry users and the government as a whole. This system will effectively manage and monitor radio frequency spectrums in the economy. This development is a step forward in upgrading telecommunications services, which is in line with the government's national ICT policy reforms. Under this policy initiative, "one of the requirements is to review the existing spectrum usage and policies so as to ensure they are consistent with government policy and to open up completion in the telecommunication sector".

In addition to the above and prior to that, in April 2009, Huawei Technologies Ltd of China signed a three year arrangement with Telikom PNG worth US\$ 3 million to improve the microwave transmission system in the economy.

Financial services

As part of the continuing reform of the financial sector and removal of impediments to business and investment in Papua New Guinea, the Bank of PNG (BPNG) has liberalized the following Foreign Exchange Controls since September 2007:

- Private capital account contracts between residents and non-residents;
- Securities and guarantees in favor of non-residents;
- Listed and unlisted securities and other investments with underlying written contracts; and
- Foreign currency accounts of individuals opened prior to 01 June 2005.

BPNG will conduct awareness seminars with the commercial banks and other stakeholders on these reforms.

However, BPNG will retain control on:

- Opening of offshore foreign currency accounts, including Kina accounts outside of PNG;
- Licensing of Gold Exporters;
- Licensing of Foreign Exchange Dealers; and
- Removal of physical cash in excess of K20,000.00 or equivalent in foreign currency.

The 2008 IAP of PNG also indicates recent improvements to the superannuation legislation. In 2007, BPNG and the Department of Treasury consulted with the superannuation industry and other stakeholders on the best way of making superannuation available to both the self employed and the workers in the informal sector, and announced improvements to the superannuation legislation in April 2007 with the following aims:

- to lower the threshold for compulsory superannuation coverage from 20 to 15, in terms of the number of employees in a business;
- to make it a legal requirement for employers to provide, together with their contributions to superannuation funds, the names of employees and the amounts being contributed in respect of each; and
- to assist employees withdraw part of their superannuation contributions in order to finance purchasing of principal homes.

Tourism and travel related services

Following the PNG government's endorsement of the National Tourism Master Plan and the National Tourism Industry Review in May 2007, tourism is now recognized as an economic sector under the Government's Medium Term Development Strategy (MTDS) 2005-2010. The following are some of the main focus areas of the National Tourism Master Plan and the National Tourism Industry Review:

- the immediate implementation of a three year funding plan from year 2007 to 2009;
- the waiver of entry fees for bona fide tourists from PNG's major source markets; and
- the establishment of a National Tourism Task Force Committee and a Tourism Working Group.

Along with other stakeholders, the PNG Tourism Promotion Authority (TPA) is now implementing the National Tourism Master Plan.

The 2008 IAP shows that except for activities under the Cottage Business Activity List, the tourism sector of PNG has been fully liberalized.

Transportation services

As an island economy with a large area of highland, PNG has always attached great importance to the development of maritime, air and road transportation, which are vital not only to other service sectors, but also to the overall national economy.

During the in-economy visit, officials from the Department of Prime Minister and National Executive Council highlighted that the transportation infrastructure of PNG is still less developed, especially the road transportation due to geographical restrictions. Until now, PNG has no railway. Apart from the shortage of new transportation facilities, the maintenance of existing transportation facilities is also a big problem for PNG because of insufficient funds and manpower. At present, from the annual government budget to transportation sector, 70 per cent goes to road transportation, 20 per cent to maritime transportation and 10 per cent to air transportation.

The PNG government promotes market competition in the main transportation service sectors. However, some reservations with respect to foreign entry and national treatment still exist in the maritime and air services sector. The 2008 IAP shows that the Independent Consumer and Competition Commission (ICCC) of PNG undertook a comprehensive review of the coastal shipping and air transport industries in 2006. The principle objectives of the Reviews are to:

- Report on the current impediments in the coastal shipping and air transport industries in PNG, both regulatory and non-regulatory to improve operating efficiency and competitiveness;
- Identify issues and areas where Government action may be appropriate to improve the overall cost competitiveness and efficiency of the coastal shipping and air transport industries in PNG; and
- Make recommendations on what action may be appropriate to be taken by Government to rectify the problems in the current regulation and operation of the sectors with a view to improving competitiveness and reducing transport costs.

Taking account of the findings and recommendations of the Reviews, the PNG government launched the National Transport Strategy in 2008. The transportation services sector of PNG is expected to be further strengthened and liberalized in the next few years.

2.4. Investment

Objective

APEC economies will achieve free and open investment in the Asia-Pacific region by:

- (a) Liberalizing their respective investment regimes and the overall APEC investment environment by, inter alia, progressively providing for MFN treatment, and ensuring transparency; and*
- (b) Facilitating investment activities through, inter alia, technical assistance and cooperation.*

PNG generally maintains an open investment regime, and welcomes foreign direct investments that contribute to its economic development and prosperity of the economy and its people.

PNG has already established a comprehensive legal framework for its investment regime. The main legal provisions regarding foreign direct investments are set out in the *Investment Promotion Act 1992*. Other related government Acts include the *Companies Act 1997*, the *Forestry Act 1998*, the *Fisheries Management Act 1998*, the *Oil and Gas Act 1998*, and the *Free Trade Zone Act 2000*, etc. It has a national investment policy that provides the basis for its investment promotion and facilitation activities at both the national and provincial levels.

The Investment Promotion Authority (IPA), which was set up in 1993, is the leading agency for promoting and facilitating investment into and within PNG. Work is commencing with the International Finance Corporation to review the promotional strategies to ensure that the approaches employed are effective.

The IPA also has the function of granting certificates to foreign enterprises to carry on business in PNG. The application for certification must be complete and on the correct form and be accompanied by the application fee of K2000.00. IPA will generally process the application and grant a certificate, if appropriate, in about two weeks. The process has been simplified since 2004. Work is currently in progress in conjunction with the International Finance Corporation to further review the process to reflect globally accepted best practice.

Other key legislative provisions that affect investors in PNG are administered respectively by:

- Department of Foreign Affairs (in relation to immigration procedures and visas for non-citizens);
- Department of Labor and Employment (in relation to work permits for non-citizens and occupations which are prohibited for non-citizens); and
- Bank of Papua New Guinea, the central bank (in relation to foreign exchange controls).

The following will apply depending on the area of economic activity:

- the National Fisheries Authority administers the *Fisheries Management Act 1998*, which governs the fisheries sector;
- the Forestry Authority administers the *Forestry Act 1998*;
- Acts of Parliament relating to the effecting of investment incentives, the environment, land tenure, customs duties, etc;
- the Department of Finance and Treasury and the Department of Trade and Industry, as well as any specific sectoral legislation for large scale investment proposals in the manufacturing sector; and
- by-laws imposed by provincial and local authorities, for example, local authorities issue trading licenses.

Barring very basic business activities contained in the Cottage Business Activities (see Annex 1) all business activities in the resources, timber and fisheries sectors are open for foreign participation. While joint ventures are desired and encouraged, most operating legislation within the various sectoral areas allows 100% foreign-owned companies to be involved in investment activities. In 2004 the Government replaced the then Reserved Activities List with the CBAL, and opened participation to various activities which were once restricted.

PNG is rich in natural resources. Large investments to date have been concentrated in the minerals and petroleum sectors. However, the Government of PNG recognizes

that non-renewable resources like oil and gold will eventually be depleted. It therefore wants to broaden the nation's economic base for long term sustainable economic growth. Development of the nation's vast renewable resources, including forests, fisheries and agricultural commodities, is seen as fundamental to this objective. Where it was once commonly accepted that export of raw materials was a necessity, it is now seen as essential that these products undergo further processing within PNG to maximize benefits to the nation, including greater foreign exchange earnings, more employment opportunities, technology and skills transfer and an increased standard of living. Foreign investment which reflects some or all of these important objectives will be given preference under of the investment incentives offered by the Government.

There are fiscal, financial and tax incentives available to investors of large and small business proposals. Most of the investment incentives take the form of exemptions from company income tax or deferment of income tax liabilities, including:

- Accelerated Depreciation: New industrial plant is eligible for increased depreciation up to 100% of cost. The taxpayer may elect the amount to be claimed in any year, but not so as to create a loss.
- Initial Year Accelerated Depreciation: This incentive allows the capital cost of certain new assets to be written down at a faster rate than would otherwise be possible.
- Export Sales Exemption: This incentive allows 100% of the net income derived from export sales of a wide variety of goods for three years to be treated as exempt income.
- Double Deduction for Export Market Development Costs: Expenditures on export market development for manufactured PNG goods can qualify for double deduction provided the tax saving is less than 75% of the cost of expenditure. Such expenditures as overseas publicity and advertising, market research, tender preparation, samples, trade fair expense, overseas sales and office expenses can qualify for this inducement.
- Rural Development Incentive: This provides for the exemption to businesses in a rural development industry (and those not dependent on exploitation of natural resources) for up to 10 years after the first year of commencement of business.

However, there are also some incentives that are not related to company income tax. These include wage subsidy provision, which is a straight subsidy rather than a tax incentive.

The ownership to land in PNG falls under two main categories, alienated and customary land. The customary land ownership system in PNG is of vast importance to its people and only 3% of land is outside this ownership system. The alienated land is in urban areas or is in the form of plantations. The 2005 IAP Peer Review study

report pointed out that difficulties in obtaining land from customary owners raise barriers to investment. Since then, improvements have been made by PNG in this regard. Industrial centers have been established by the PNG government so as to provide for easier and more accessible areas for businesses to operate. To assist investors, in particular those in export-oriented businesses, the PNG government is also implementing the Free Trade Zone Act No.18 of 2000 granting free access to land in the Free Trade Zone areas as well as other export enticements.

The foreign exchange controls in PNG, which were designed to support the balance of payments and to manage the foreign exchange reserves under the fixed exchange rate regime, were derived from the *Central Banking (Foreign Exchange and Gold) Regulation*. The Exchange Control Department (ECD) of the Bank of PNG administers and enforces the exchange controls. In implementing the exchange controls, only bona fide Kina and foreign exchange and gold transactions between residents and non-residents are approved. Most of the exchange controls were liberalized on 1 June 2005.

By the end of 2008, PNG had signed Avoidance of Double Taxation Agreements with Canada, Australia, Singapore, United Kingdom, Malaysia, China, Germany, Korea and Fiji. Agreements with Thailand and Indonesia are also ready to be signed.

In summary, the PNG government recognizes the importance of foreign direct investment in promoting PNG's national economic development, and has committed to liberalize its investment regime towards achieving the Bogor Goals. However, the 2008 IAP shows that few effective measures of investment liberalization have been taken by PNG since the 2005 IAP peer review. There is scope to continue to review the business registration and certification processes, including bringing those in line with the accepted global best practices. There is also scope to bringing the strategies for promoting investment into a sharper focus so that promotions can be conducted using accepted methods and tools.

2.5. Standards and Conformance

Objective

APEC economies will, in accordance with the Declaration on APEC Standards and Conformance Framework and with the Agreement on Technical Barriers to Trade (TBT Agreement) and the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) attached to the WTO Agreement:

- a. align their domestic standards with international standards;*
- b. achieve recognition of conformity assessment including mutual recognition arrangements in regulated and voluntary sectors;*

- c. *promote cooperation for technical infrastructure development to facilitate broad participation in mutual recognition arrangements in both regulated and voluntary sectors; and*
- d. *ensure the transparency of the standards and conformity assessment of APEC economies.*

The 2008 IAP shows that PNG has made substantial progress in the field of Standards and Conformance since the 2005 IAP peer review.

The National Institute of Standards and Industrial Technology (NISIT) is the leading institution in charge of all standardization and conformance activities in PNG. The Technical Standards Division of NISIT is the key sector responsible for the development, adoption and maintenance (review and amendment) and publication of PNG National Standards. PNG Standards are developed on a consensus basis and are technically facilitated through its Technical Committees whose members are representatives from industries, companies, institutions, government departments or regulatory bodies. To date, the Technical Standards Division through its 8 Technical Committees have facilitated the development, adoption and publication of some 900 PNG Standards.

The standard development processes of PNG are based on the notion that they must be seen as being ‘industry-driven’ or ‘user-driven’ and therefore must be driven by all stakeholders and users concerned. There are two approaches to standards development processes, namely the “Adoption Process” and the “In-Economy” stakeholder needs/requirements.

In the “Adoption Process”, basically all international, regional and foreign national standards are reviewed for adoption pending all necessary review inputs and comments. The process may enable adoption “in total” or “partial adoption” of either foreign national standards or international standards. According to the 2008 IAP, currently almost all PNG Standards are adopted from ISO, IEC, Codex, Australian and New Zealand Standards.

“In-economy” standards generally reflect the notion of standards development from within the national context with specific and tailored emphasis on in-economy needs and requirements. These standards are developed from within the respective in-economy sectors with involvement from all the domestic-based experts and professionals and all stakeholders concerned.

Standards developed or adopted from the International Standards Organizations are paralleled to the Government’s Commitment to WTO, APEC, current national industrial, agricultural, social, and environmental and safety needs or from other commitments through bilateral and multiple trade obligations.

NISIT attaches great importance to the review and updates of PNG Standards. The Technical Standards Division of NISIT is always taking the onus to be proactive in keeping abreast with the current trend and directions of the application and implications of the already established PNG Standards for adequacy and relevance in the domestic market and business environment. As much as possible, the standards are updated as per the regular cycle of three years from the commencement of their establishment and publication date.

The Technical Standards Division of NISIT is also responsible for the publication of standards. At this stage, the standards are only available in hard copy form. The reference copies of these standards are maintained and shelved at the Sales and Information Centre for public display and viewing. The Technical Standards Division provides a forum from which it issues Official notices as part of public launching of the newly published standards. NISIT Official Newsletters and PNGS Catalogue provide another avenue for publicising newly or recently published standards.

To further facilitate the publication of PNG standards and ensure transparency, NISIT established its own website in 2006. The website (www.nisit.gov.pg) lists the number of standards published by the respective technical committees, as well as the rules and procedures for standardization applied by NISIT.

To enhance public awareness and standards promotion, NISIT engages in Marketing through the print media and public seminars in and around the economy to disseminate information on already established and newly published standards. The 2008 IAP indicates that Awareness Seminars were held in July 2007 and February 2008 on the importance of regulations and Standards in facilitating trade. Besides, NISIT also provides a broad range of advice and consultations on all standards-related issues and matters across all industries, sectors, professions etc.

While encouraging harmonization with international standards in the domestic market, PNG also looks into ways to strengthen multilateral and regional cooperation on standards and conformity. According to the 2008 IAP, PNG through NISIT is a full member of Asia Pacific Laboratory Accreditation Cooperation (APLAC), Asia Pacific Laboratory Legal Metrology Forum (APLMF), Pacific Area Standards Congress (PASC), and Asia Pacific Metrology Program (APMP). In 2006, PNG through NISIT participated in the APMP Mass Standards Inter-Comparisons for 1g, 10g & 100g (APMP-017). In 2007, PNG through NISIT became an Associate member to the Pacific Accreditation Cooperation (PAC). Since 2006, PNG through NISIT has been participating in the meetings and development of the APEC Food Sectoral MRA, and through the PNG Telecommunication Authority (PANGTEL) became a signatory to the APEC Tel MRA. PNG through its Regulator, PNG Power, initially participated in the APEC Electrical and Electronic Mutual Recognition Arrangement (EE MRA) Seminar in May 2008, and expressed interest in participating in Part 1 of the APEC EE MRA.

During the in-economy visit, NISIT officials pointed out that there are still quite a few challenges in face of NISIT, especially the shortage of manpower. NISIT's current staff complement of 27 needs to be further increased to give full play to the agency's function. To enhance coordination with other government agencies of PNG is another key issue for NISIT. Capacity building will be a long-term issue for PNG towards achieving the Bogor Goals in the field of Standards and Conformance.

2.6. Customs Procedures

Objective

APEC economies will facilitate trade in the Asia-Pacific region by simplifying and harmonising customs procedures.

PNG's approach to customs procedures aims to protect the economy's border and to facilitate trade and investment for the benefit of the people of PNG while taking into account the economy's fiscal interests by collecting revenue.

As an operating division of the Internal Revenue Commission (IRC), PNG Customs has a staff of some 240 officers employed at various Customs seaports, airports, land border crossing ports and post offices around the economy.

PNG Customs administer a number of Acts, the principle one being the *Customs Act*. This Act regulates the movements of all persons, goods, aircraft, vessels and vehicles crossing the border and gives Customs officers' their powers to question, detain, search, seize and prosecute. The *Customs Act* has a number of regulations made under it, being the *Customs Regulations*, the *Customs (Prohibited Imports) Regulations*, the *Customs (Prohibited Exports) Regulations*, and the *Customs (Personal Effects) Regulations*. PNG Customs has also legislated powers under the *Migration Act* and the *International Trade (Flora and Fauna) Act*.

PNG Customs has been steadily upgrading and updating its systems and procedure. Automation of customs procedures has been upgraded with the introduction of ASYCUDA++ to thirteen of the twenty-one ports of entry, replacing the earlier version of ASYCUDA. ASYCUDA++ has three lanes for the clearance of goods: a green lane where all cargo is cleared immediately on payment of duties; a yellow lane where goods are held pending issue of permits or other required actions; and a red lane, where 100% physical inspection or examination of goods is required prior to clearance. Customs advise that currently 50% of goods are cleared through the green lane, 40% through the yellow lane, and 10% through the red lane.

Making more information available to the public on customs systems, processes and decisions is of great significance for achieving predictability for business decisions.

Therefore, PNG Customs has implemented a number of measures to improve transparency of customs procedures since the 2005 IAP peer review, including:

- to develop and launch the Customs Website in 2006;
- to hold annual forums among stakeholders to provide awareness on new developments of customs procedures and to raise issues of concern;
- to hold monthly meetings between Customs and business to raise and resolve issues of concern; and
- to implement PNG Customs Service Charter in January 2009, which outlines the Customs' commitment in providing services to the clients, stakeholders and the general public.

PNG Customs also attaches great importance to the development of paperless trading and started to implement the Single Window initiative in 2008. Customs requirements for submission and retention of paper documents have been further reduced with the implementation of the Direct Trader Input (DIT) system of ASYCUDA++. The next step will be the introduction of electronic manifest transfer, and electronic payments are scheduled to be introduced in 2010.

PNG has since 2007 completed the mandatory requirements for accession to the Revised Kyoto Convention and its General Annex. Currently the domestic constitutional process and diplomatic process are being pursued. It is anticipated that once these are completed, PNG will be able to accede to the *Revised Kyoto Convention*. Customs is also considering what steps should be taken to implement the Specific Annexes of the Convention.

During the in-economy visit, Customs officials stated that PNG at present has not undertaken any work related to accession to the *Istanbul Convention*. However, this issue remains an integral part of PNG's reform and modernization programs in line with development and enhancement of the ASYCUDA system forexpress consignments.

PNG Customs commenced using HS 2007 on 1 January 2008. Adoption of the HS Convention and establishment of PNG as a contracting party to HS is awaiting finalization of domestic and diplomatic protocols.

Provision for Advance Rulings in Tariff and Valuation matters has been implemented through enabling legislation in 2006. Advance Rulings are currently available under the *Customs Act*. However, administrative guidelines have not been formulated, resulting in delay to the implementation of the System. The guidelines for implementation of the System are expected to be approved by the end of 2009.

In relation to APEC's Second Trade Facilitation Action Plan (TFAP II), Customs are giving priority to the time release survey. A trial survey was undertaken last year and the main survey is scheduled for July 2009. In terms of identifying bottlenecks customs representatives stated that the main delays in physical clearance of goods are now due to slow action by the quarantine service and port authority rather than Customs. PNG Customs intend to progressively address other elements of TFAP II.

Aiming to further improve the customs administration, PNG Customs has established a Customs Modernization Management Team comprising of senior Customs technical officers and legal officers to assess the level of compliance of the *Customs Act* and Regulations against the Standards and Recommended Practices of the *Revised Kyoto Convention*. The inconsistencies identified became the basis for legislative changes.

The Team also attended to other initiatives of WCO, APEC and related regional organizations. Papua New Guinea participates actively in the APEC Sub-Committee on Customs Procedures (SCCP), which is one of the two APEC activities from which Papua New Guinea appears to derive its greatest benefit.

The Modernization Team has recently established the PNG Customs Modernization Strategic Action Plan 2009-2011 identifying the following focus areas:

- to enhance voluntary compliance in Customs administration and minimize Customs intervention;
- to enhance strategic management including planning and performance measurement;
- to improve Customs operational equipment and assets management;
- to promote the utilization of ICT in Customs administration;
- to enhance Human Resources development in the Customs sector;
- to promote the application of strategic and tactical risk management in all Customs processes; and
- to enhance cooperation and communication between Customs and External Stakeholders.

A considerable amount of work has been taken by the Team in all the focus areas to ensure meaningful and tangible outcomes from the Strategic Action Plan.

An interesting point to emerge in the consultations is that Papua New Guinea Customs is being pressed by Treasury to assist in limiting the expected revenue shortfall due to the global financial crisis, by increasing revenue collection. Customs intend to focus on post-audit clearance for this purpose. They also expect to receive

guidelines from the World Customs Organisation (WCO) on appropriate actions by customs authorities in the context of the global crisis.

Despite the impressive progress that has been made by Papua New Guinea Customs, private sector representatives do express dissatisfaction with some aspects of Customs' performance, focusing in particular on "import monitoring". This criticism appears to be related to a perceived lack of effectiveness in detecting and dealing with what are claimed to be significant levels of fraudulent activity by some importers.

In conclusion, PNG has made notable progress in improving customs procedures since the 2005 IAP peer review, through implementing quite a few effective measures to facilitate the free flow of commodities while balancing this with the need for border security and revenue collection. These improvements will not only help PNG in achieving the goal of reducing transaction costs by another 5 percent in 2010, but also give impetus to PNG's progress towards the Bogor Goals.

2.7. Intellectual Property Rights

Objective

APEC economies will, in conformance with the principles of the TRIPS Agreement, ensure adequate and effective protection, including legislation, administration and enforcement of intellectual property rights, foster harmonization of intellectual property rights systems in the APEC region, strengthen public awareness activities and promote dialogue on emerging intellectual property policy issues, with a view to further improve intellectual property rights protection and use of the intellectual property rights systems for the social and economic benefit of members.

The Government of PNG has devoted itself during the past decade to building a comprehensive and effective intellectual property system for the economy. In this regard, quite a few achievements have been made since the 2005 IAP peer review.

PNG's legislations for the protection of intellectual property are mainly composed by the *Trade Marks Act*⁴ (Ch.385), the *Patents & Industrial Designs Act 2000*⁵ and the

⁴ As the first Intellectual Property law administered in PNG, the *Trade Mark Act* came into force in 1980.

⁵ This law was introduced and approved in 2000 and came into force in 2002.

*Copyright & Neighboring Rights Act 2000*⁶. Aiming to further improve and strengthen the legal framework of IPR protection, and ensure that the legislations are fully consistent with TRIPs obligations, since 2005 PNG has undertaken reviews and amendments of its existing intellectual property laws. According to the 2008 IAP of PNG, drafting of all amendments to the existing laws has been completed and the amendments are currently awaiting issuance of Certificate of Necessity by the Attorney Generals Department. The main improvements include:

- a complete repeal of the Trade Marks Act to includes provisions on GI, well known marks and collective or multi-classed applications and requirements for the Madrid protocol;
- substantial changes to the Patents & Industrial Designs Act to include provisions on PCT and compulsory licensing;
- significant changes to the *Copyright & Neighboring Rights Act* to allow for establishment of Collective Management Organizations.

As the leading agency in IPR administration, the Intellectual Property Office of Papua New Guinea (IPOPNG) is fully dedicated to promote and protect intellectual property rights in the economy. The office was formerly known as the Trade Marks Office of PNG due the role it played in administering the *Trade Marks Act* since 1980. However, the name was changed to the Intellectual Property Office of PNG by a government decision in 1999, in light of the added responsibilities to be taken by the office with the introduction of the new intellectual property laws. IPOPNG currently administers laws that provide protection for patents, trade marks, industrial designs and copyrights. This legal framework is also supported by a modern intellectual property rights granting/registration system that the office also administers.

The National Intellectual Property Rights Committee (NIPRC) of PNG has been another key body responsible for deliberating on important IP issues. The Committee was established in 1999 with the primary purpose of drafting IP legislation for consideration by the National Executive Council (NEC). However, after the enactment of the *Patents & Industrial Designs Act* and the *Copyright & Neighboring Rights Act* in 2000, NIPRC became defunct. During the past few years, concerns have been raised for that the NIPRC needs to be revitalized with proper Terms of Reference (TOR) outlining its role and functions, in light of developing issues on IPR and the need to take a more collaborative approach in dealing with the issues. In April 2008, IPOPNG drafted a TOR for NIPRC in consultation with stakeholder organizations. The Committee is now revitalized with a TOR defining its purpose, powers and functions. Basically, NIPRC serves as a consultative, advisory and reviewing authority on all policy and legislative matters relating to intellectual

⁶ This law was introduced in 2000 together with the *Patent and Industrial Designs Act 2000* and enacted in 2002.

property matters, including the enforcement of IPR, realization of PNG's international obligations under related IP treaties to which PNG is a member, and other incidental issues.

PNG has taken effective measures in recent years to improve the IP Automation system and ensure the expeditious granting of IP rights. In 2006, the Intellectual Property Automation System (IPAS) was installed with the support of the World Intellectual Property Organization (WIPO). The system allows for processing and registering of industrial property (trademarks, patents and industrial designs) applications. The system was improved in November 2007 by a second WIPO mission.

In June 2008, the WIPO further provided a set of IT equipment to IPOPNG which includes a server, scanner, a desktop PC, two note books and their accessories. These equipments have been utilised in building the capacity of the IT system, especially in receiving, storing and retrieving of data.

Towards the end of 2008, the IPOPNG launched its own website. The website exists to create awareness on the services the organisation provides and other IP related information. The website address is www.ipopng.gov.pg

Another WIPO IPAS mission is planned in July 2009 to further review the use of the system and discuss on upgrading to IPAS Java which will allow for e-filing of applications

IPOPNG is also working with WIPO to set up a Patent Information Centre. This facility, once established, will serve as a source of information on patents for local researchers and scientists to access and improve their R&D activities. This project is expected to be completed by the end of 2009.

The organisation also has a close working relationship with IP Australia and provides strong support to IPOPNG in building its internal capacity. Under a recent bilateral arrangement, three trade mark examiners and one legal officer of PNG were trained by IP Australia in Aug-Sept 2008. This program will go a long way in building skills and expertise of staff who are directly involved in administering the intellectual property system.

Notable improvements have also been made in enhancing public education and awareness of IP. An IP Awareness program was adopted by IPOPNG in 2004. The goal of the program is to have increased awareness of the requirements/implications of the laws and the commercial use and benefits of protecting intellectual property. Specifically the main objectives of the program include:

- Ensuring an improved level of understanding of IP rights and the ability to

exercise these rights and thus to encourage greater participation by the public in economic development of the economy through means other than formal employment;

- Encouraging potential owners of IP to approach relevant authorities to seek protection of their IP; and
- Stimulating economic growth in the economy through greater creativity and innovation, and to promote investment in PNG by invoking investor confidence through the protection and respect of IP rights in the economy.

Under this program, IPOPNG will continue to carry out small workshops and seminars targeting specific audience groups in the main centers of the economy. Plans have also been made for a National IP Awareness Campaign to be carried out on an annual basis.

Apart from the awareness program, IPOPNG has also organized national workshops and seminars in collaboration with international partners like APEC and WIPO in the past two years. These included the Research & Higher Education Symposium 2007, the Copyright Workshop 2007, and the Enforcement Seminar 2008.

In spite of the above mentioned improvements, PNG still faces a big challenge in establishing its IP Enforcement system. For any IP system to work effectively, it must be underpinned by an enforcement system where infringement issues can be properly addressed. In light of widespread increase in the importation, reproduction and sale of counterfeit and pirated goods throughout the economy, the laws need to be further strengthened and a collaborative approach needs to be taken to address the issues. As a result, IPOPNG and relevant line agencies are now networking through established Committees to come up with solutions to address pressing IPR issues/agendas.

PNG Customs has been proactive in introducing regulatory measures that assists IP owners in effectively enforcing their rights at the borders. A *Customs (Prohibited Imports) Regulation Ch 101* has been implemented and is now in force, enabling Customs, with assistance from IPOPNG trade marks section through a recordation process to intervene at the border to stop illegal import of counterfeit and pirated goods. Those companies and individuals (intellectual property owners) should provide details of their IP registrations to the Customs Office of the IRC for recording. This will help customs officials in identifying IPR-infringing products.

In order to provide a proper road map and direction in developing and addressing IP issues in the economy, the IPOPNG has embarked on developing a National Intellectual Property Strategy. The project is currently underway and the organisation is collaborating with the WIPO and local stakeholders to develop the strategy. A draft strategy is expected to be produced by end of 2009 for approval by the Government.

2.8. Competition Policy

Objective

APEC Economies will enhance the competitive environment in the Asia-Pacific region by introducing or maintaining effective and adequate competition policy and/or laws and associated enforcement policies, ensuring the transparency of the above, and promoting cooperation among APEC economies, thereby maximizing, inter-alia, the efficient operation of markets, competition among producers and traders, and consumer benefits.

At the time of the previous IAP review, Papua New Guinea's Independent Consumer and Competition Commission (ICCC) had recently been established.

The ICCC has legislated authority to enforce competition law and policy. The legislation prohibits arrangements which substantially lessen competition (including a *per se* prohibition on price fixing); resale price maintenance; exclusionary conduct (primary boycotts); misuse of market power (abuse of dominant position); anti-competitive mergers or acquisitions.

The ICCC is provided with investigative powers under its Act, which can be used in investigations undertaken either on its own initiative or in response to complaints. Although it does have powers of entry and search, these have not been used as yet. The approach followed in ICCC investigations typically involves receiving complaints, screening, asking questions of the complainant and the target of the complaint, and consulting other parties that may have relevant information on possible breaches of the ICCC Act. In fact the ICCC receives relatively few complaints, and those that have been investigated to date have not been shown to involve breaches of the Act.

The Commission will at times also initiate its own investigations, for example it undertakes post-merger analysis to ensure that the Act is not breached. No merger investigated to date has been found to breach the Act. The Commission has also pursued cases of abuse of market dominance, and resale price maintenance. In two cases it has cautioned parties concerned to remedy breaches of the Act and the parties have complied. The law also has provision for private litigants to initiate proceedings for breaches of competition law, but to date no such proceedings have been brought.

The ICCC attributes the relative lack of demand for enforcement activity to the fact that competition policy and law has only recently been introduced into Papua New Guinea, so that awareness and understanding of the law and of the benefits of

competition was initially low. In the early years of its existence the ICCC had to devote substantial efforts to raising public awareness of these matters. The ICCC believes that awareness of competition issues and the role of the ICCC has become more widespread in recent times. An important breakthrough in public awareness of the importance of competition was achieved recently with the successful introduction of increased competition in the mobile telephone and passenger air transport markets, which resulted in significantly lower prices to consumers in many cases. This assessment by the ICCC was corroborated in several other consultations.

A mark of the increased recognition of the importance of competition and the role of the ICCC has been the tasking of the ICCC by government to undertake reviews of the air transport, coastal shipping, stevedoring, general insurance and water and sewage industries. The approach taken by the ICCC in these reviews was relatively light-handed, identifying issues that it considered should be addressed and making generally fairly modest recommendations to this effect. In the case of the stevedoring industry review in particular, the recommendations left the way open for stronger intervention should that prove to be necessary. The ICCC notes that there no “one size fits all” solution to the issues identified in the various industries, as each industry presents its own challenges. The need for practical and workable approaches to addressing these challenges within Papua New Guinea’s circumstances, including public benefit considerations, influence the form and shape of the ICCC’s recommendations. The ICC insists that the issues identified by it are considered on their own merits and independently of vested interests in both government and the private sector. Although the relatively light-handed approach disappointed some elements in the private sector, especially in the case of the coastal shipping industry, the Commission believes that its approach was appropriate to the circumstances of the industries concerned and the general state of competition policy in the economy.

The Commission also believes that it has played a significant role in the introduction of greater competition in passenger air transport.

The approach to consumer protection reflects the particular circumstances of Papua New Guinea, in particular the lack of competition that exists in some markets. This was considered to necessitate price control for certain basic commodities and services such as fuel, public transport services, rice and flour. More recently the ICCC has moved to withdraw from control of retail prices of rice and flour, believing that the level of retail competition for these commodities is now adequate. Control of factory-gate prices will be retained however.

The other area where the consumer protection function of the ICCC is considered to require control over pricing is in the regulation of government owned monopoly utilities, which operate in key sectors such as electricity, water, ports, telecommunications and postal services. In these cases the ICCC (on behalf of Papua New Guinea consumers) has entered into regulatory contracts with the utilities, under

which a price path is set out for the services provided by the utility concerned, looking forward to the medium and long term, together with quality standards that the utility is required to meet. This procedure developed in response to the situation that existed in the 1990s, prior to the ICCC's inception, when there was massive under-investment by government-owned utilities in all utility sectors, tariffs did not cover the economic cost of supply, and service standards consequently deteriorated badly as assets depreciated. The new regulatory regime adopted since the inception of the ICCC aims to ensure that utilities (1) undertake vital capital investment to upgrade their facilities; (2) charge tariffs that reflect the economic cost of supply; (3) earn an appropriate rate of return; and (4) deliver appropriate service standards. While the approach appears reasonable in principle, private sector representatives tend to question whether it is delivering satisfactory outcomes, especially in the case of electricity.

Competition issues in the telecommunications sector merit particular attention. While the introduction of increased competition in mobile telephony is widely acknowledged as a success, it was noted in several consultations that prices have not yet fallen as far as might be expected in a fully competitive market. Like many economies, Papua New Guinea struggles with termination fee issues. In the case of broadband internet services, the incumbent monopoly has been broken but it appears that additional competition will be needed before significant reductions in the prices charged by ISPs can be expected.

A recent review of the telecommunications sector has resulted in major changes in regulation of the telecommunications sector. Previously, the regulatory function was divided between ICCC as the economic regulator and PANGTEL as the technical regulator. Under the new regulatory regime PANGTEL, reconstituted as the National Information Communications and Technology Authority (NICTA) will become the industry-specific telecommunications regulator. In several consultations concern was expressed by stakeholders as to whether NICTA would be effective in its new regulatory role, given that the regulatory performance of its predecessor PANGTEL was generally considered to have been poor.

From a practical perspective, another important feature of the change in telecommunications regulation is that the telecommunications licensing powers previously exercised by ICCC, which provided approximately 60% of its financial resources, will be transferred to NICTA. Unless this loss of revenue can be compensated in some way, ICCC will be forced to drastically curtail its operations.

The work of ICCC has seen Papua New Guinea beginning to make significant progress towards the Bogor goals in the field of competition policy. If this progress is to be maintained it will be important that ICCC continues to be adequately resourced.

2.9. Government Procurement

Objective

APEC Economies will

- (c) Develop a common understanding on government procurement policies and systems, as well as on each APEC economy's government procurement practices; and*
- (d) Achieve liberalization of government procurement markets throughout the Asia-Pacific region in accordance with the principles and objectives of the Bogor Declaration, contributing in the process to the evolution of work on government procurement in other multilateral fora.*

As noted in the previous IAP Review, central government procurement has been consolidated under the Central Supply and Tenders Board (CSTB) for all procurements above the stipulated threshold level. It does not however conduct procurement on behalf of state-owned enterprises. The CSTB is an independent body under the Finance Department, reporting to the Minister of Finance. The CSTB advised that the legislation covering government procurement has not changed since the last IAP review.

Provincial government procurements valued at over 3 million kina must also be conducted through the CSTB. Provincial government procurements valued at below 3 million kina may be conducted through provincial procurement boards. Bid-splitting to circumvent these thresholds is prohibited, although the CSTB executive consulted acknowledged that this practice was common in the past.

Tenders must be called for procurements valued at K300,000 or over. A bid manual sets out rules for conduct of the tender process. The manual emphasises general criteria such as value for money, quality, transparency, effective competition and fair dealing. In effect the CSTB conducts tenders on behalf of client departments or provincial governments. Tender documents are initially prepared by the clients, setting out the specifications that tenderers are required to meet and the criteria that will be used in evaluating the tenders. The client submits the proposed documents to the CSTB, which may reject them if they do not conform to the criteria set out in the bid manual. When bids are received, the CSTB refers them to the client for evaluation and recommendation as to the successful tenderer. The CSTB may reject

the client's recommendation if it considers that the bid evaluation has not been carried out properly in accordance with the criteria specified in the tender documents. The client agency may appeal against the CSTB's rejection of its recommendation. If no agreement can be reached between the CSTB and the client agency as to the successful tenderer, the matter may be referred to the ombudsman for decision. The bid manual also sets out procedures for dealing with complaints and grievances.

One complication is that the CSTB may also conduct procurement on behalf of development partners such as the World Bank, Asian Development, and AusAid. In these case the procedures and criteria of the development partner may also need to be reflected in the tender process.

The CSTB is working with a consultant to develop a standardised bidding document. This will contain standard evaluation criteria although there will also be room for project-specific criteria. In addition the CSTB is working with the Chartered Institute of Purchasing and Supply (CIPSA) to provide increased procurement training for its own staff and for the staff of all central and provincial government agencies involved in procurement. Training for staff of provincial agencies is especially important in view of the weak administrative capacity of many provincial governments and the sharply increased amounts of government expenditure that are now being channelled through them.

The CSTB executive consulted indicated that preference is routinely shown to local contractors in projects that are fully funded by the Papua New Guinea government. The margin of preference was said to be 7.5%. He indicated that almost 95% of such tenders are awarded to local firms. Joint ventures between local and foreign suppliers are encouraged for large projects. These procedures do not necessarily apply for procurements funded by development partners.

The previous IAP review noted concerns over the excessive use of Ministerial Waivers and Certificates of Inexpediency. These are mechanisms intended for use in cases where normal tendering procedures would not be appropriate or effective, for example in emergencies or where there is only one possible supplier, but their increasing use suggested that were being used as a means of avoiding competition. In consultations for the present review it was indicated that Ministerial waivers have not been used recently. However ministerial approvals are sought in cases where entities are allowed under their own legislation in order to procure goods, services and works. In these cases the entities concerned generally make their own call or public tenders, evaluate the responses, and obtain management endorsement of their recommendations prior to seeking ministerial approval. It was also indicated during consultations that the CSTB is working hard to restrict the use of certificates of inexpediency to emergencies such as health crises or natural disasters, and to specific situations such as:

- where there is a limited number of potential suppliers and calling for tenders will not attract additional suppliers (e.g, procurement of motor vehicles, outboard motors etc)
- where supplies are required in a remote location where only one or two potential suppliers or contractors exist.
- where funds have not been released in sufficient time to call for public tenders

Government procurement is a challenging area for policy development and implementation in Papua New Guinea. It will be important to continue and extend the steps now being taken to meet this challenge.

2.10. Deregulation/Regulatory Review and Reform

Objective

APEC economies will facilitate free and open trade and investment in the Asia-Pacific Region by, inter alia:

- a. enhancing the transparency of regulatory regimes; and*
- b. eliminating domestic regulations that may distort or restrict trade, investment or competition and are not necessary to achieve a legitimate objective.*

“Inappropriate and overly burdensome regulation” and “cumbersome administrative procedures and processes” are noted by Treasury (2009) among the impediments to business and investment in Papua New Guinea that need to be addressed. Regulatory impediments are a significant factor behind Papua New Guinea’s 92nd ranking on the World Bank’s “Ease of Doing Business” index in 2008. Treasury notes that significant progress has been made toward improving burdensome regulations that constrain business activities, and stresses that the Papua New Guinea government remains committed to addressing impediments to business and investment in Papua New Guinea.

In other consultations improved regulation of the state-owned enterprise (SOE) sector, with a particular emphasis on increased transparency, was highlighted as an important area for improving the performance of the Papua New Guinea economy.

It emerged during consultations however that the National Working Group on Removing Impediments to Business and Investment (the so-called “Impediments

Committee”), whose establishment in 2003 was noted in the previous IAP review, is no longer operating. This would appear to be somewhat unfortunate. An alternative forum does exist, in the form of the Consultative Implementation and Monitoring Committee (CIMC), managed by the Institute for National Affairs (INA). This however is a more broadly-based committee, including civil society as well as business and government representatives, and dealing with a range of non-economic as well as economic issues. It thus may not have the same focus on business issues as the “Impediments Committee”, which was in fact originally established as a result of a CIMC recommendation.

This area forms part of the structural reform agenda discussed at the beginning of this report, which is recognised as a key priority for improved efficiency in the Papua New Guinea economy, and for private sector development in particular.

2.11. Implementation of WTO Obligations (including Rules of Origin)

Objectives

APEC Economies will ensure full and effective implementation of Uruguay Round outcomes within the agreed time frame in a manner fully consistent with the letter and spirit of the WTO Agreement:

On Rules of Origin, APEC Economies will:

- (a) Ensure full compliance with internationally harmonized rules of origin to be adopted in relevant international fora; and*
- (b) Ensure that their respective rules of origin are prepared and applied in an impartial, transparent and neutral manner.*

Consultations indicated that Papua New Guinea government officials believe that Papua New Guinea is generally in compliance with its WTO obligations, but that this is not an issue which receives detailed attention in Papua New Guinea. In part this is because Papua New Guinea does not have representation in Geneva and finds itself somewhat cut off from WTO activities. Papua New Guinea officials are generally not involved in the type of regular discussions with other WTO members in which compliance issues might be expected to be raised, and do not have access to the capacity-building which would be expected to flow from regular interaction with experts and international agencies associated with the WTO. It seems that issues of Papua New Guinea’s compliance with WTO obligations are raised rarely if at all. For

the same reasons Papua New Guinea has found it difficult to maintain meaningful involvement in the WTO's Doha Development Agenda.

Officials indicated that implementation of WTO commitments has tended to be a slow process in cases where amendments to legislation is required. One area where this has worked to Papua New Guinea's disadvantage is in the case of the WTO provisions on TRIPs and Public Health. Officials stated that Papua New Guinea could benefit from these provisions, for example through importing generic drugs from developing economy suppliers such as India, but is unable to do so because the necessary amendments to its intellectual property legislation have not been made. This is said to be due in part to lack of coordination between Papua New Guinea's Intellectual Property Office and its Health ministry.

Isolated cases of non-compliance with WTO obligations have been noted in the past. The previous IAP review noted for example that Papua New Guinea's tariff rates for salt and sugar may exceed its current WTO bound rates. The conformity of certain of Papua New Guinea's investment incentives with the WTO's TRIMs Agreement might also be questioned. It appears clear also that for several years Papua New Guinea's regulatory regime for telecommunications was not in conformity with its obligations under the WTO Agreement on Basic Telecommunications. Officials consulted for the present review suggested that recent changes to the telecommunications regime may have moved it closer to WTO compliance, but this appears to remain something of a "grey area".

Papua New Guinea customs officials indicated that their concerns with rules of origin are focused mainly on preferential rules applied in RTAs/FTAs. They believe that Papua New Guinea is in compliance with WTO rules on non-preferential rules of origin.

2.12. Dispute Mediation

Objective

APEC Economies will:

- (a) *Encourage members to address disputes cooperatively at an early stage with a view to resolving their differences in a manner which will help avoid confrontation and escalation, without prejudice to rights and obligations under the WTO Agreement and other international agreements and without duplicating or detracting from WTO dispute settlement procedures*

- (b) *Facilitate and encourage the use of procedures for timely and effective resolution of disputes between private entities and governments and disputes between private parties in the Asia-Pacific region; and*
- (c) *Ensure increased transparency of government laws, regulations and administrative procedures with a view to reducing and avoiding disputes regarding trade and investment matters in order to promote a secure and predictable business environment.*

There has been relatively little change in arrangements for dispute mediation since the last IAP review.

The Alternative Dispute Resolution (ADR) mentioned in the previous review operates under certain practice directions under National Court Rules, and courts have been making full use of these practice directions in dealing with disputes that come before them. ADR has been found very useful by the courts in handling certain commercial or civil disputes. ADR is seen as another avenue through which parties may amicably settle their disputes. Its use has become commonplace to the point where it is now regarded as part of the normal court process. This helps to reduce the workload of the courts by reducing the number of cases that go before the courts.

There has been little change in relation to procedures for settling investor-state disputes. The Papua New Guinea Commercial Disputes Centre (PNGCDC), a private sector body established as an avenue for dispute resolution under commercial arrangements, has been utilised on a rather *ad hoc* basis. The Centre has produced a long list of arbitrators including very senior and prominent lawyers in the legal fraternity in both Papua New Guinea and Australia as well as current serving judges of the National and Supreme Court. There has however been no recent meeting of the Centre's executive committee, and there has been a lack of concerted effort by the Centre's stakeholders to promote its use. There are currently two investor-state disputes before the Centre.

Papua New Guinea has ratified the Convention on the Settlement of Investment Disputes between States and Nationals of other States (the ICSID or Washington Convention). However the Department of Justice and Attorney General reports that dispute settlement arrangements have not really been formalised to the point where Papua New Guinea can safely assert that there exists an adequate policy and legal framework for dispute settlement. It attributes this situation both to a lack consultation between the relevant government agencies in addressing the relevant issues and the lack of any coordinated approach by the relevant stakeholders.

The Department of Justice and Attorney General continues to provide advice on the issue of the dispute settlement provisions under the various Investment Promotion and Protection Agreements that Papua New Guinea has entered into with other States.

The Department has consistently maintained that the nature of this type of agreement is such that a formal or strict dispute settlement provision may not be appropriate. It expresses a preference for a consultation provision designed to give parties flexibility in resolving issues and differences through a simpler process. The rationale for the Department's view is that a stricter and more formal dispute settlement provision can have enormous financial implications for the State, and it is therefore preferable to avoid lengthy and costly procedure's outside the jurisdiction of Papua New Guinea courts.

2.13. Mobility of Business People

Objective

APEC Economies will enhance the mobility of people engaged in the conduct of trade and investment in the Asia-Pacific region.

PNG provides different types of visa and visa-extension procedures to facilitate foreign business people's short trips to PNG, and also stays with a duration of more than one year.

The Short-term Multiple Entry Permit is designed for persons entering PNG to attend business meetings, board meetings, conferences, conduct an exploratory business visit or participate in business negotiation. It is valid for 12 months with a stay of up to 60 days permitted on each arrival. Extensions for the Short Term Multiple Entry Permit may be approved once only for a further 30 days.

As a general rule, employment in PNG is prohibited for the holder of a Business Short Term Multiple Entry Permit. However, in very limited circumstances, the holders may be granted work rights for the purpose of travelling to PNG to undertake short-term work assignments (no more than two months). Examples could include where an employee is required to fulfill an initial probation period or where an employee is required to undertake urgent maintenance work that cannot be performed by anyone else in PNG. In such cases:

- The maximum period of stay is limited to two months;
- Entry is limited to two times per year with a maximum stay period of four months per year; and
- No extensions permitted under any circumstances.

All Business Short Term Multiple Entry Permit applications that require business related work rights will be processed through PNG Immigration and Citizenship Services, and be considered by the appropriate authority. Applications must be accompanied by a letter from the business clearly stating why the applicant is required to undertake short-term employment in PNG.

If an employee is required to stay in PNG for longer than two months continuously, then a Work Permit and Working Resident Entry Permit must be obtained. This category comprises the following classes:

- Business person/Investor: Person wishing to invest in Papua New Guinea and/or establish a business. A valid work permit is required.
- Employment: Persons wishing to work in PNG for 6 months to 3 years. A valid work permit is required.
- Short Term Employment: Persons wishing to perform short work assignments and relief duties for period of up to 12 months. Approval from the Department of Labor and Industrial Relations (DLIR) is required.
- Consultant/Specialist: Persons with specialized skills wishing to carry out a specific work assignment, which would be completed in less than 3 months, e.g, repair or maintenance of equipment. Approval from DLIR is required.
- Dependent of Citizen (Working): Persons entering PNG as dependent spouses of PNG citizens. A valid work permit is required. In certain circumstances, Dependents of Citizens may occupy localized positions. In such cases, a letter from DLIR is required.
- Employees of Major Development Project Companies: Persons required for major infrastructure development companies for periods of less than six months. Entry is allowed without work permit. Where period of stay is to extend beyond six months, application for work permit and Working Resident Entry Permit may be made onshore.

Working resident classes of entry permits are valid for periods of up to 3 years and are issued for multiple entries in accordance with expiry dates of the Work Permit/approval issued by DLIR. Extension may be granted if the employee is required to continue in the same position or promoted to a new position. A new work permit must be issued by DLIR.

The 2008 IAP shows that PNG has improved the regulations and policies on temporary entry of foreign business people since the 2005 peer review. A New Law on the *Employment of Non-Citizens* was passed by the National Parliament on 25 April 2007 replacing the *Employment of Non-Citizens Act 1978*. This new legislation:

- balances the need of the business community for foreign labor to the legitimate expectations of Papua New Guinea for decent employment opportunities;
- promotes training and empowerment opportunities by removing unnecessary red tape and impediments to investment and growth; and
- strengthens the capacity of the Department of Foreign Affairs & Trade to monitor and enforce compliance with the rules regarding the employment of non-citizens.

The Employment of Non-Citizens Act 2007 came into force in January 2009. During the transitional period leading up to the introduction of the new law, the government of PNG has conducted public education and awareness campaigns to ensure stakeholders are aware of their responsibilities under the new law.

Visa and work permit issues remain a source of major dissatisfaction on the part of the private sector in Papua New Guinea. Pressures in this area are likely to intensify with the very substantial increase in demand for skilled personnel anticipated from the LNG project.

On 27 July 2007, DLIR in collaboration with the International Labor Organization (ILO) initiated the development of the Labor Market Information System (LMIS), which provide statistics on market trends and identifies employment opportunities throughout PNG. The objectives of LMIS are:

- to allow DLIR to measure and assess labor market capacity within PNG;
- to develop programs and policies to support employment creation throughout PNG;
- to collect meaningful statistics that can be used to assist employers and industry in understanding labor market needs; and
- to provide insight to employment participation rates and skills shortages.

PNG joined the APEC Business Travel Card (ABTC) scheme in 2006. PNG Immigration and Citizenship Services is responsible for issuing the cards. By April 2009, 13 cards have been issued for citizens of PNG, most of which were issued to ministers and government senior officials and a few to business persons. 8 cards are pending for approval and 20 others are under application. PNG Immigration and Citizenship Services will continue to work closely with the business community to make the ABTC accessible to more potential users.

2.14. RTAs/FTAs

Papua New Guinea has been a member since 2001 of the Pacific Island Countries Trade Agreement (PICTA), which is an FTA involving the majority of the independent Pacific Island states that are members of the Pacific Islands Forum (PIF). This is a “negative list” agreement, under which tariffs on all products other than those on each members’ negative lists were to be phased out over lengthy periods. Papua New Guinea’s negative list was far longer than those of other members. Implementation of PICTA by its members was slow to develop, and a revised tariff reduction schedule was eventually agreed, under which tariff reductions by the larger members, including Papua New Guinea, was to begin in 2007. Papua New Guinea has not yet begun to implement these reductions, although it is understood to be preparing to do so. The rules of origin in PICTA are based on a 40% regional value content (RVC) requirement.

PICTA members are now in the process of negotiating an extension to PICTA to cover trade in services.

Papua New Guinea is also a member of the Melanesian Spearhead Group Trade Agreement (MSGTA), the other members of which are Fiji, Vanuatu and the Solomon Islands. All MSGTA members are also members of PICTA, so that the membership of the two agreements overlaps. The MSGTA originally began as a “positive list” agreement, covering a very small group of commodities, but the decision was subsequently taken to convert it to a “negative list” agreement, reflected in a revised version concluded in 2007 and known as MSGTA 2007. The rules of origin under the MSGTA 2007 are based on a change in tariff classification (CTC) rule. There is some lack of clarity as to the precise detail of the tariff reduction and elimination commitments that have been agreed in the MSGTA, and thus of Papua New Guinea’s obligations under this agreement. According to Papua New Guinea Customs no changes have yet been made to Papua New Guinea’s tariff schedules to reflect changes incorporated in MSGTA 2007. The position is further clouded by the fact that Papua New Guinea has a separate bilateral trade agreement with Fiji, and it may be that it is the tariffs applicable to the latter agreement that are currently applied to imports from Fiji. Thus Papua New Guinea’s trade with Fiji is potentially covered by three separate agreements. In practice prospects for increased trade with Fiji have been somewhat soured by a long-running dispute over reciprocal exports of corned beef.

Papua New Guinea has also been involved, as part of the Pacific regional grouping within the African Caribbean and Pacific (ACP) group of nations, in negotiations with the European Union for a new Economic Partnership Agreement (EPA). The EPA was intended to replace the non-reciprocal preferential trade arrangements provided

by the EU to the ACP states under the Cotonou Agreement and its predecessor the Lomé Convention. The latter non-reciprocal agreements had been legitimised by a WTO waiver, and the EU had advised that it would not seek any further extension of the waiver beyond the end of 2007. Thus ACP members wishing to retain their existing level of preferential access to the EU would have to negotiate new reciprocal FTAs, which in view of the EU's developed member status would also have to be compliant with GATT Article XXIV. Loss of preferential access would have had serious consequences for a number of Papua New Guinea's exports to the EU. In the event Pacific ACP states were unable to reach agreement on an EPA with the EU by the end of 2007. The EU however offered to maintain those preferences for Pacific ACP states that initialled an Interim EPA containing sufficient provisions to meet the requirements of GATT Article XXIV. Papua New Guinea along with Fiji decided to initial the Interim EPA, and Papua New Guinea is in the process of finalising the details of the text of its Interim EPA for signature. Negotiation of a permanent EPA remains a task for the future.

In relation to Australia and New Zealand, Papua New Guinea along with the other Pacific Island members of the Pacific Islands Forum, has long enjoyed duty-free access under the South Pacific Regional Trade and Economic Cooperation Agreement (SPARTECA). The rules of origin in SPARTECA are based, with some modifications, on the rules that applied until 2007 under ANZCERTA. Papua New Guinea also has a separate agreement with Australia, the Papua New Guinea Trade and Commercial Relations Agreement (PATCRA).

At the time of the conclusion of PICTA, Australia and New Zealand negotiated the PACER (Pacific Agreement on Closer Economic Relations), of which Papua New Guinea and the majority of independent Pacific Island states are members. PACER is a framework agreement rather than an FTA. One of its provisions requires Pacific Island states to offer to negotiate reciprocal FTAs with Australia and New Zealand in the event that they enter negotiations FTAs with other developed economy partners (such as the EU).⁷ Australia and New Zealand have for over a year now been invoking this provision to call upon the Pacific Island members of the PACER (including Papua New Guinea) to enter into negotiations for a reciprocal FTA with themselves (currently referred to as "PACER-Plus"). Several informal meetings have been held towards this end, although formal negotiations have not yet commenced.

Finally, Papua New Guinea recently decided to seek membership of the Association of Southeast Asian Nations (ASEAN). If its quest is successful this would presumably also imply membership of the ASEAN Free Trade Agreement (AFTA) and the various "ASEAN Plus" FTAs.

⁷ Less stringent provisions apply in the event that Pacific Island states negotiate FTAs with partners that are not developed economies.

2.15. APEC Food System

The objectives of the APEC Food System are likely to be of considerable interest to Papua New Guinea. There is currently no shortage of cultivable land in most parts of Papua New Guinea, and food is not scarce, although it can be expensive in urban areas, with associated low protein consumption, because of high transport costs. Food production however falls far short of the nation's potential, due to a combination of institutional factors (including land tenure issues), lack of technical expertise, and problems in storage and transportation. In order to address some of these issues Papua New Guinea is currently implementing a National Agricultural Development Plan. A Food Security Programme is an integral part of the NADP.

The focus of the Plan is on expanding the variety of food crops grown in rural villages, with the aim of improving food security in rural areas where supplies of imported foodstuffs cannot always be guaranteed. Substantial effort is being applied to encourage rural villages to use spare land to plant and grow dryland rice and wheat. Dissemination of knowledge on the harvesting, post-harvest handling, small-scale processing and storage of these crops, and on technologies for their use in food preparation, is an important part of this effort.

It has also long been recognised that enormous potential exists for the more agriculturally productive regions of Papua New Guinea, such as the Highlands region, to produce and supply food to the main urban centres such as Port Moresby and Lae. Major logistic problems associated with transport and distribution have to be overcome in order for this to happen. The roading infrastructure of the Highlands and the road connection from the Highlands to Lae are in urgent need of restoration and upgrading, while the lack of a road connection to Port Moresby means that the efficiency and cost of coastal shipping is another important issue.

Establishment of adequate storage facilities for collection and distribution of the produce, as well as the organisation of these processes, are other major challenges. Some relatively small-scale initiatives are under way that attempt to tap this potential, with assistance from development partners, but it probably fair to say that they are only scratching the surface of what is theoretically feasible.

2.16 Transparency

In order to further implement the APEC Transparency Standards, especially to enhance the transparency of administrative procedures, the PNG government has

taken effective measures to improve legislation, public notification and consultation since the 2005 peer review.

Quite a few laws and regulations were introduced or rectified in a wide range of areas such as investment, services, intellectual property right, competition policy, etc. Several government agencies established and launched their websites. By now, almost all PNG government agencies have their own websites. Through updating websites, publishing official guidebooks and brochures as well as establishing contact points, the PNG government can release the policy information comprehensively and promptly, and in time receive comments and respond to public inquiries.

Apart from government efforts, semi-official institutions and NGOs of PNG, such as the Consultative Implementation and Monitoring Council (CIMC) and Transparency International Papua New Guinea (TIPNG), also play an important role in improving regulatory transparency. CIMC is an independent organization that brings together civil society, private sector and government partners to develop policy and directly influence and monitor government decision making for the long term development of PNG. The goal of CIMC is to ensure that dialogue, through ongoing consultation processes, is sustained between government, private sector and the community at large and recommendations made to government are implemented. TIPNG is a non-profit, non-government organization with the aim of combating corruption and promoting openness, honesty and accountability in public and private dealings of PNG. The activities of CIMC and TIPNG will undoubtedly contribute to improve regulatory transparency in PNG.

During the in-economy visit, officials from all related government agencies of PNG expressed their willingness to further enhance transparency standards by providing information on laws, regulations and procedures to interested persons or groups in a more comprehensive, prompt and easily accessible manner.

The Papua New Guinea government has recognised that problems with corruption and governance are major threats to the economy's future development, and has recently enacted a number of measures designed to combat corruption and improve governance. The importance of this issue can be illustrated by noting Papua New Guinea's ranking of 151st in the 2008 version of Transparency International's International Corruption Perceptions Index, the lowest ranking of the 20 APEC economies included in the index, with a score of 2.0 on the 0 to 10 scale, well below the score of 5.0 regarded by Transparency International as the threshold below which serious corruption problems are indicated. It would be expected that effective implementation of the measures recently adopted, described below, should result in a significant improvement in Papua New Guinea's ranking on this index in future. On July 14th 2007, PNG ratified the *UN Convention Against Corruption* (UNCAC). In both the lead up to, and since that ratification, PNG has introduced many steps to combat corruption.

There is a *Leadership Code of Conduct* for all leaders, which is defined to include elected parliamentarians, including the appointed ministers at national and sub-national levels, together with the senior executives of government departments and semi-government organizations. The Leadership Code is governed by the *Organic Law on Duties and Responsibilities of Leadership* (OLDRL) and is enforced by the Ombudsman Commission (OC). Public officials who do not fall within the ambit of the *Leadership Code of Conduct* are dealt with under the *Criminal Code* and relevant legislations.

The *Proceeds of Crime Act 2005* is another key legislation in relation to combating corruption. This legislation, together with the *Mutual Assistance in Criminal Matters Act 2005* and the *Extradition Act 2005*, implement many of the provisions of UNCAC as well as implementing PNG's obligations under the 1992 Honiara Declaration of the Pacific Islands Forum.

Within the Royal PNG Constabulary, PNG has established the National Fraud and Anti-Corruption Directorate as the main criminal investigation unit that enforces the *Criminal Code* on fraud and corruption. It works in close liaison with the Police Prosecutions Unit and the Public Prosecutor's Office. The National Anti Corruption Alliance (NACA) is another effective agency, which is a collaboration mechanism that stemmed from the common desire to address the problem of corruption within public sector.

PNG also pays much attention to anti money laundering, which is an important portion of the UNCAC obligations. Related agencies, such as the Financial Intelligence Unit (FIU) established within the Royal PNG Constabulary, the Public Prosecutors Office and NACA, have been working closely on this issue. It is worth noting that PNG has become a full member of the Asia Pacific Group on Money Laundering, an organization established to help combat money laundering and financial crime in the Asia-Pacific region.

The Department of Treasury, through the Public Expenditure Review Rationalization (PERR) Project No.9 and its inter agency team members, seeks to improve the governance of statutory authorities by strengthening the accountability framework with the aim of improving expenditure control and realizing fiscal savings for the government.

There is also ongoing work by the Public Sector Reform Management Unit and its Advisory Group to ensure the success of the Public Sector Reform Program aiming to improve good governance in the overall government operations in its departments and line agencies. The assessment of the Papua New Guinea Treasury (2009), quoted earlier in this report, indicates that public sector reform continues to be a major challenge for Papua New Guinea.

It is also worthy mentioning the work of the National Research Institute, the Environmental Law Centre, Transparency International and the Consultative Implementation & Monitoring Council in maintaining the ground swell of public support for anti-corruption measures.

Aiming to establish an anti-corruption authority to work side by side with existing institutions, the Department of Justice and Attorney General is currently working with key stakeholders to develop a comprehensive legal policy position to address this issue. The PNG government is also working towards developing a National Anti-Corruption Strategy which will align the many anti-corruption initiatives into one document to provide a roadmap for the future initiatives in PNG. This is clearly a vital issue for Papua New Guinea's future development.

2.17. Trade Facilitation

APEC's Second Trade Facilitation Action Plan (TFAP II) focuses on four elements:

- Customs Procedures
- Standards and Conformance
- Business Mobility
- Electronic Commerce

In relation to customs procedures the following actions have already been taken:

- Completion of requirements for accession to the Revised Kyoto Convention and its General Annex
- Introduction of appeals procedures
- Adoption of HS 2007
- Introduction of Customs Code of Ethics and Conduct and PNG Customs Service Charter

In addition, significant progress has been made in the introduction of paperless trading and the customs data model is compliant with WCO Common Data elements. PNG Customs is looking into the steps that could be taken to implement the Specific Annex of the Revised Kyoto Convention. Provision has been made for an advance ruling system, and guidelines for implementation of the system are expected to be approved by the end of 2009.

In relation to further elements of TFAP II, as noted in Section 2.6 above, priority is being given to the time release survey. A trial survey was undertaken last year and the

main survey is scheduled for July 2009. A start has also been made on the single window project. A team has been set up to consider how PNG can implement the WCO's Framework of Standards. No work has yet been undertaken on accession to the Istanbul Convention, and Papua New Guinea does not yet have a customs laboratory.

In relation to standards and conformance, NISIT has made substantial progress on alignment with international standards. Areas where further work is required include trade facilitation in information technology products, adoption of principles for good regulatory practice, alignment of domestic regulations for medical devices with the principles of the Global Harmonization Task Force, alignment of domestic hazard classification and labelling schemes to the Globally Harmonised System, and accession to the global Mutual Recognition Agreement on Measurement co-ordinated by the International Bureau of Weights and Measures

Significant parts of the TFAP II Business Mobility elements remain to be implemented by Papua New Guinea, particularly relating to the streamlining and standardisation of procedures and enhanced use of information and communications technology.

The following steps have been taken by Papua New Guinea on electronic commerce:

- Participation in APEC's Digital Opportunity Centre (DOC) project.
- Establishment of an Integrated Government Information System (IGIS) project
- Approval of a National ICT Policy
- Encouragement for the use of Mobile Money Banking
- Programme to establish telecentres in rural areas to encourage SMEs to participate in E-Commerce

Other elements of the E-Commerce component of TFAP II remain to be implemented.

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Annex 1 Cottage Business Activities List of PNG

The *Regulations of the Investment Promotion Act 1992*, as amended, contain a list of business activities which are restricted to citizens and/or national enterprises. Activities restricted to citizen enterprises only make up the Cottage Business Activities List (CBAL). The CBAL replaces what used to be called the Reserved Activities List. Foreign enterprises cannot conduct business in activities listed under CBAL. The list may be reviewed from time to time.

AGRICULTURE

- Cultivation and growing of vegetables and other market produce with annual sales of K50,000 or less.
- Farming of animals with annual sales of K50,000 or less.
- Poultry farming with annual sales of K50,000 or less.
- Hunting, trapping and game propagation including related service activities.

FORESTRY, LOGGING AND RELATED ACTIVITIES

- Gathering of wild growing forest materials including balata and other rubber-like gums; cork; lac, resins and balsams, rattan; vegetable hair and eel grass; acorns and horse-chestnuts; mosses, lichens and cut evergreen trees used for festive occasions; saps; bark; herbs; wild fruits; flowers and plants; leaves; needles; reeds; roots; or other wild growing materials.
- Wokabaut (Mobile) sawmill.

WILDLIFE

- Hunting or collecting of non-protected fauna, including insects, shells, animal teeth, tusks, feathers, declared sedentary organisms and similar products and living or dead fauna.

FISHING

- Fishing on a commercial basis in coastal and inland waters. "Coastal" means within three miles off the shoreline.
- Taking of marine or freshwater crustaceans and mollusks. Hunting of aquatic animals such as turtles, sea squirts and other tunicates, sea urchins or other echinoderms and other aquatic invertebrates.
- Gathering of marine materials such as natural pearls, sponges, coral and algae.

MINING

- Alluvial mining, according to the definitions of the Department of Mining.

CATERING

- Mobile food delivery service

WHOLESALE AND RETAIL TRADE

- Wholesale and retail sale of wild growing materials including balata and other rubber-like gums; cork; lac; resins and balsams; rattan; vegetable hair and eel grass; acorns and horse-chestnuts; mosses lichens and cut evergreen trees used for festive occasions; saps; barks; herbs; wild fruits; flowers and plants; leaves; needles; reeds; roots; or other wild growing materials.
- Retail sale through stalls, tucker shops and markets.
- Wholesale and retail sale of secondhand clothing and footwear.
- Retail sale carried out from a motor vehicle or motorcycle.
- Wholesale and retail sale of handicraft and artifacts.
- Repair of footwear when not done in combination with manufacture or wholesale or retail of these goods.

OTHER COTTAGE BUSINESS ACTIVITIES

Weaving – The activity includes, but not limited to, weaving of cane products, textiles, baskets, nets, dishes, ropes and bags that are saleable at home, street market or retail outlet on a fee.

Bilum Making – Making of string bags (bilums) from traditional bush ropes and cottons taking traditional and contemporary designs that are saleable at home, street market or retail outlet on a fee.

Knitting – Includes knitting of textile, wearing apparel, cloth, garment, designs, fabrics, and decorations that are saleable at home, street market or retail outlet on a fee.

Art & Craft Making – All sorts of handcraft and artistic designs that are saleable at home, street market or retail outlet on a fee.

Carving – Wood carvings and sculptures on a fee (contract) or assorted carvings that are saleable at home, street market or retail outlet on a fee.

Pottery Making – All sorts of pottery products including clay pots, cups, mugs, dishes, plates, sculptures and other art forms that are saleable at home, street market or retail outlet on a fee.

Painting – All sorts of paintings in any shape, type and form including portrait paintings, screen paintings, sand paintings, oil paintings, saleable at home, street market or retail outlet on a fee.

Screen Printing – Screen printing of designs including emblems, logos, traditional and contemporary art forms, commemorations and special events on apparels including laplaps, shirts, T-shirts and other garments and textile materials, suited to the event, situation or purpose to which they relate, that are saleable at home, street market or retail outlet on a fee.

Sewing – Sewing of garments, textile materials, wearing apparels, cloths and fabrics that are saleable at home, street market or retail outlet on a fee.

Jewellery Making – Making of simple jewellery products including necklaces, earrings, arm bands, primarily from sea shells, tusks and beads for sale at home, street market or retail outlet on a fee.

Baking – Baking of fresh bakery products including bread loaves, cakes, pies, cookies and scones, saleable at home, street market or retail outlet on a fee.

Coffee Pulping – Coffee pulping using manual pulping machines with the beans saleable at buying points or at coffee depots.

Hunting of crocodiles and processing of skins – Hunting and processing of crocodile skins for sale at established market outlets.

Operation of Tyre Repair Service – Operation of small tyre repair shops, where not done as incidental to the core business of Maintenance and Repairs.

Annex 2 Members of the Review Team

Moderator: Mr. John Sloan
APEC Senior Official for Canada

Experts: Dr. Robert Scollay
Associate Professor, Director
APEC Study Centre
The University of Auckland, New Zealand

Mr. Liu Chenyang
Associate Professor, Deputy Director
APEC Study Center
Nankai University, China

APEC Secretariat: Mr. Takeshi Komoto
Director (Program)

**Annex 3 Meeting Schedule for the APEC IAP Peer Review In-Economy Visit
Port Moresby of PNG, 6-9 April 2009**

TIME	ISSUE AREA	AGENCY	VENUE
6 April 2009, Monday			
8:30-9:00	Open Session	Dept. of Foreign Affairs and Trade	Moale Haus
9:00-10:30	Macroeconomic Policy, Deregulation/Regulation Reform	Dept. of Treasury	Moale Haus
10:30-12:00	Government Procurement	Dept. of Finance	Moale Haus
13:15-14:30	Government Procurement	Central Supply & Tenders Board	Moale Haus
14:30-16:00	Non-tariff measures	National Agricultural Quarantine and Inspection Authority	Moale Haus
7 April 2009, Tuesday			
8:30-10:30	FTAs/RTAs, Implementation of WTO Obligations and Rules of Origin	Dept. of Foreign Affairs and Trade	Moale Haus
10:30-12:00	Non-tariff measures	Dept. of Commerce & Industry	Moale Haus
13:15-15:30	Standards and Conformance	National Institute of Standards and Industrial Technology	Moale Haus
15:30-16:30	Economic Policy Background	Institute of National Affairs	Moale Haus
19:00-21:00	Private Sector Perspective	ABAC PNG	Dinner
8 April 2009, Wednesday			
8:30-9:30	Tariffs, Customs Procedures, Rules of Origin, Trade Facilitation, RTAs/FTAs	Internal Revenue Commission	IRC
10:00-12:00	Investment, Intellectual Property Right	Investment Promotion Agency, Intellectual Property Office	Moale Haus
13:15-15:30	Competition Policy, Services	Independent Consumer & Competition Committee, Tourism Promotion Authority, Department of Transportation	Moale Haus

15:30-16:30	Dispute Mediation	Department of Justice and Attorney General	Sir Buri Kidu Haus
9 April 2009, Thursday			
8:30-10:00	Business Mobility	Immigration & Citizenship Services, Dept. of Prime Minister	Moale Haus
	Economic Policy and Performance	Asian Development Bank	ADB Office
10:00-11:00	APEC Food System	Department of Agriculture and Livestock	Moale Haus
11:00-12:00	Wrap-up Session	Dept. of Foreign Affairs and Trade	Moale Haus

Annex 4 Organizations and Officials Consulted by Experts

ABAC PNG

Mr. Wayne Golding

Asian Development Bank

Mr Dominic Mellor

Mr Erik Aelbers

Central Supply and Tenders Board

Mr Ruben Thapola

Department of Agriculture and Livestock

Mr Ian Mesibere

Department of Commerce & Industry

Mr Ronald Maru

Ms. Komas

Mr. Willie Reia

Department of Finance

Mr. Philip Julius

Department of Foreign Affairs and Trade

Ms Jacinta Warakai

Ms. Bridgette Kamish

Ms Celine Lohia

Mr. Alex Kerangpuna

Department of Justice and Attorney General

Ms Eunice Kewere

Department of Prime Minister

Mr. John Maigu

Department of Transportation

Mr. Koni Pombo

Department of Treasury

Mr. Allan Kapi

Mr Andrew Oaeke

Immigration & Citizenship Services

Mr. Joseph Nobetau

Independent Consumer & Competition Commission

Mr. Avi Hubert

Mr. Titus Mengi

Institute of National Affairs

Mr Paul Barker

Intellectual Property Office (IPONG)

Ms. Patricia Sawanga

Internal Revenue Commission (IRC)

Mr. Clement Taipala

Mr. Paul Iramu

Investment Promotion Agency (IPA)

Mr. Kini Mala

Mr. Kil

National Agricultural Quarantine and Inspection Authority (NAQIA)

Mr Alphonse Bannick

National Institute of Standards and Industrial Technology (NISIT)

Mr. Timothy Kepa

Mr. Dan Samson

Tourism Promotion Authority

Mr. Jerry Agus

ANNEX 5: QUESTIONNAIRE AND RESPONSES

MACROECONOMIC ENVIRONMENT

APEC Review Team

1. Please provide the IAP review team with copies of PNG's 2009 Budget publications, together with any other publicly available analysis of PNG's macroeconomic situation and outlook by government ministries or the Reserve Bank.
2. What assessments have been made of the macroeconomic impact on PNG of the global financial crisis and the sharp decline in commodity prices associated with the crisis?
3. PNG's 2009 Budget is notable for a substantial increase in the government's contribution to the Development Budget. Please outline the strategic priorities reflected in this increase.
4. The Budget also provides for a transfer of control of funds allocated to district administrations from the Departments of Treasury and Finance to the Department of National Planning and Monitoring. Please outline the reasons for this change.
5. Please outline steps the government has taken in the last two years to reduce costs of doing business in PNG.

TARIFFS

Hong Kong, China

6. We welcome Papua New Guinea's effort in implementing its Tariff Reform Programme by 2006. As a result, tariff rates were reduced from 25% (intermediate rate), 35% (protective rate), 50% (prohibitive rate) to 15%, 25% and 40% for each respective category. However, applied rates as high as 40% are still in place. In this regard, we encourage Papua New Guinea to further reduce tariffs for goods with high applied rates. (page 4 of chapter 1 of 2004 IAP which was referred by 2005 & 2008 IAP updates)

APEC Review Team

7. Have decisions been taken regarding implementation of the review of Papua New Guinea's Tariff Reform undertaken in 2007? If so, what are these decisions? What decisions remain to be taken, and what factors are being taken into account in these decisions?
8. The prohibitive tariff band in Papua New Guinea's tariff structure remain exceptionally high. Is Papua New Guinea contemplating significant reductions in the prohibitive rates, and what policy issues are being considered in relation to a decision on this issue?

9. Has the government made a decision on tariffs to be applied on sugar when the current contractual arrangements relating to the tariff on sugar expire?
10. Despite the substantial progress on tariff reform, effective rates of protection appear to remain high for a number of products. How far is the government taking account of effective rates of protection in considering possible changes to the tariff structure?
11. What steps has the government taken to increase transparency in the procedures for considering proposals for changes to tariff rates for individual products?
12. What is Papua New Guinea's current policy regarding tariff concessions for foreign investment projects?
13. What steps has Papua New Guinea taken to implement the revised tariff elimination schedule for PICTA?
14. What provision does Papua New Guinea's tariff schedule contain for tariffs on imports from members of the MSG Trade Agreement?
15. Has Papua New Guinea to date implemented any tariff concessions in favour of the European Union?

NON TARIFF BARRIERS

Hong Kong, China

16. We note that Papua New Guinea maintains very few NTMs mainly for the reasons of protection of health and safety. We encourage Papua New Guinea to keep up with its effort in upholding such principle. (page 1 of chapter 2 of 2004 IAP which was referred by 2005 & 2008 IAP Updates)

APEC Review Team

17. Please identify and provide details of any non-tariff measures of the following kinds currently being applied by Papua New Guinea: quantitative import restrictions or prohibitions, import levies, discretionary import licensing, automatic import licensing, pre-shipment inspections.
18. Does Papua New Guinea currently apply any export taxes, export subsidies, or export prohibitions? If so, to what products do these measures apply, and what is their rationale?
19. Please outline the current process for regulating access to Papua New Guinea's fisheries resources.

SERVICES

APEC Review Team

20. The 2008 IAP indicates that "in a recent National Court decision, it was held that foreign lawyers who have been admitted to practice in PNG do not need to obtain a separate Certificate of Approval from the Attorney General to appear before a PNG Court". Please specify the date of the decision. Does the decision have legal effect and will it become formal legal provision?

Response

1. The decision in OS No. 293 of 2008 was handed down on the 22 of July 2008;
2. The decision in OS No. 293 of 2008 is a court precedent and therefore has legal effect unless otherwise overuled by the supreme court. As it stands, it is good a law.

21. What are the procedures and standards for the National Court to decide whether a foreign lawyer is admitted to practice in PNG?

Response

The decision of OS No.293 of 2008 is basically a clarification on the legal effect of and the application of two sets of laws - the Lawyers Act of 1986 including the Lawyers Admission Rules of 1990 and the Attorney Generals Act of 1989.

The Lawyers Act including the Lawyers Admissions Rules establishes procedures for the admission and practice of lawyers including overseas based or foreign lawyers in Papua New Guinea (PNG).

National Lawyers, who has not been admitted to practice in a foreign economy, must first undergo one yeal legal training at the Legal Training Institute of PNG and must be certified by the institute for him or her to qualify for admission to practice by the National and the Supreme Courts of PNG. Foreign Lawyers who possess a Bachelor of Laws Degree and has been admitted to practice law by a legal institution in his or her economy and had practiced in that economy for 3 years and possess a current practicing certificate may qualify for admission by the National and Supreme Court of PNG to practice in PNG. Both the National and the Foreign Lawyers who has been admitted by the National Courts in PNG and were issued a practicing certificate by the Law Society of PNG do not need to obtain a seperate Certificate of Approval by the Attorney General under the Attorney General's Act to make an appearance in the National Courts and Supreme Courts of PNG.

Foreign or overseas-based lawyers who has not been admitted by the National and Supreme courts of PNG and has not been issued a practicing certificate by the PNG Law Society, but has been admitted to practice in a foreign economy and holds a current practicing certificate in that foreign economy is required to obtain a Certificate of Approval from the Attorney General before he or she can be allowed to appear before the courts in PNG. Certificate of Approval granted by the Attorney General is not for the foreign lawyer to practice in PNG, but for that Foreign Lawyers to make an appearance in PNG Court in a one of instance and only for a specific case briefed to him at his place of practice overseas.

These procedures have already been esblished under the Lawyers Act of 1986 including the Lawyers Admission Rules of 1990 and the Attorney Generals Act of 1989. It was only the misunderstanding (or misintepretation) and misapplication of these set of proceedures that led to the judicial proceeding in OS No. 293 of 2008.

Therefore, there is no need for the court decision to be made into a formal legal provision in a Statute. The provisions already exist. As I have mentioned earlier, it was the misintepretation and mispplication of

the procedures, especially Section 15(1) of the Attorney General's Act that led to the proceedings of OS No. 293 of 2008.

. The procedures and standards provided under the Lawyers Act 1986 and the Lawyers Admission Rules of 1990 for Foreign Lawyers to be admitted for practice in PNG by the National and Supreme Courts of PNG are as follows:

(i) The foreign lawyer interested in practicing in PNG must be from a Common Law jurisdiction - especially, UK, Australia and New Zealand;

(ii) He or she must have a degree of Bachelor of Law from a University or a recognised academic institution; have been admitted to practice law in his economy and has practiced in that economy for 3 years; and has a current practicing certificate in that economy and has no disciplinary acting pending against him.

(iii) If he or she meets the above qualification, he or she may make an application to the National Court of PNG by way of a Notice of Motion. A Judge presiding over his application may accept his application and enter his or her name in the Lawyers Roll maintained by the National Court.

(iv) He or she is then required to apply and obtain from the PNG Law Society an annual practicing certificate for him or her to practice law in PNG.

22. Have the comprehensive reviews of competition and the general market practice in the Fire and General Insurance Industry, as well as the wholesale and retail sector of goods and services completed? If yes, what recommendations have been made in the final reports?
23. To what extent has the recent world-wide financial crisis impacted the financial sector of PNG?
24. The 2008 IAP indicates that new foreign entry incentives were announced in the tourism and travel sector in 2007. Could PNG please introduce the new incentives in detail?
25. After the comprehensive reviews of the marine and air transport industries, has the PNG government taken effective measures to eliminate market-entry impediments and further liberalize the sectors? If not, what measures are expected to be taken in the near future?

Response

The Government began undertaking institutional and legislative reforms as part of its 10 year National Transport Development Plan in 2001, which also sought to open up the sector.

Institutional reforms have taken place with the establishments of Modal Authorities to which the regulatory functions have been transferred to, while the Department of Transport retained Policy oversight Responsibilities. These authorities being:

- the Civil Aviation Authority (CAA) in the Aviation sector,
- National Maritime Safety Authority (NMSA) in the Maritime sector, and
- National Roads Authority (NRA) to be responsible for the maintenance of National Roads and the creation of a Road Fund through the imposition of User Charges and other forms of levies.

As well, the National Road Safety Council was also established to be responsible for maintaining Road Safety Compliance and Education.

In terms of legislative reforms, this is continuing. Some of the laws are outdated and need to be reviewed for amendment or replacement while completely new legislations are required on other fronts. This is being undertaken through Technical Assistance provided by AusAID (Australian Government) under the PNG / Australia Transport Sector Support Program (TSSP).

PNG is signatory to international conventions and is obliged to ensure that it appropriately responds to its international commitments. Part of this is to move towards more competitive markets.

PNG has established a competition watchdog in the form of the Independent Consumer and Competition Commission (ICCC). PNG has introduced competition into the aviation and the maritime industries. In the maritime industry, Cabotage arrangements are being dismantled through the permitting of foreign registered vessels into coastal trade.

In the aviation sector, an open sky policy is in operation but there have been lack of responses apart from the Code – Share Arrangements. In both industries, responses are more related to commercial decisions as to whether money could be made in operating into PNG Ports / waters and skies {low traffic (passenger and freight) volumes}.

In terms of measures currently expected to be undertaken, the Department of Transport has embarked on the development of its National Transport Strategy and competition and access to the transport sector are expected to be addressed more in its preparation. The nature of specific measures are yet to be determined and will have regard for delivering the best long term economic and social outcomes for Papua New Guinea.

26. Please indicate whether Papua New Guinea's telecommunications regime is in conformity with its WTO obligations, or alternatively indicate the steps that are needed to bring it into conformity, and any plans to undertake these steps.

INVESTMENT

Australia

27. IEG has undertaken studies on barriers to investment in the APEC region in 2006/07 and issued two reports, namely *Enhancing Investment Liberalisation and facilitation in the Asia Pacific Region (Stage 1): Reducing Barriers to Investment across APEC to Lift Growth and Lower Poverty* and *Enhancing Investment Liberalisation and facilitation in the Asia Pacific Region (Stage 2): Reducing behind-the-Border Barriers to Investment*. These studies clearly show that barriers at the border and behind-the-border are still very high in APEC's developing economy members. PNG in particular is clearly lagging behind on many important investment-related indicators. Could PNG please describe in detail the plans/strategies to address those barriers to investment?

APEC Review Team

28. Since its adoption in 2004, has the *Cottage Business Activities List* been reviewed and streamlined? If not, would it be further streamlined in the near future?

Response

It is the provision under the Investment Promotion Act 1992 for Reserved Activity List (RAL) to be reviewed every two years, or as and when necessary. In 1994, a nationwide survey was conducted by the Investment Promotion Authority to determine the effectiveness and usefulness of the RAL. A number of activities were freed up for direct foreign competition after that review. It is important to note that even though the Government had provided the protection required there was no meaningful participation by the citizens in those activities.

The RAL was again reviewed in 1995, following the Government's decision, which calls for market liberalization as a condition of the then twenty six points Structural Adjustment Program imposed by the World Bank and the International Monetary Fund. The same decision also called for the liberalization of the legal framework that restricts foreign direct investments into PNG. In that review the activities under the Manufacturing and Construction Sectors were removed from the RAL. The removal of the activities was gazetted on 7 August 1995.

A further consultation was conducted between the private sector, other government agencies and the IPA in July/August 1998 on the RAL. This review subsequently led to the repeal of RAL in the Regulation and replacement of RAL with a much smaller list called the Cottage Business Activities List (CBAL). The CBAL came into operation on or from the 1st of January, 2005.

It is important to note that the economy was required to liberalise its market base to allow free market competition to occur when market distortions are removed. It allows for competition to thrive and that players can succeed in their quest to outdo one another. The justification to liberalise the market and allow competition provides for a broader economic base to encourage investments that will directly contribute to job creation opportunities for the increased number of unemployed in the economy and to provide income earning opportunities to the people and to the State through taxes. A case in point is the used car business. After the activity opened up, there are more car dealers, and the prices of cars dropped significantly. That is why it would seem that Port Moresby has too many cars on the road contributing to traffic jams every single day.

All the foreign companies intending to conduct business in PNG are first required to be certified by IPA under Section 28 of the Investment Promotion Act before they proceed to carry on business in the economy.

The Authority certifies the specific business activities to be conducted by these enterprises, and the locations where they will conduct their business activities. Every time the certified foreign companies intend to expand or diversify their business activities to new locations or to include additional activities in the economy, they are required to apply back to IPA for approval before they proceed. In this way IPA keeps track of the operations of all foreign companies in the economy, to ensure they are not operating illegally or in the restricted business activities. Companies also have six monthly reporting obligations to IPA on their operations, where inconsistencies are verified and default companies advised of their compliance obligations accordingly.

The IPA also conducts annual Provincial Database Surveys to the provinces every year to visit the business houses in the provinces. During the surveys IPA validate business

information on the ground against those held by the Authority. Companies found to be operating illegally are advised of their compliance obligations and assisted where required to comply. The IPA also relies on the members of the public to report illegal business practices in the economy for it to institute appropriate investigations into such cases.

Companies operating illegally in businesses reserved for citizen enterprises are normally prosecuted in the National Court, where relevant Court Decisions are obtained on such defaults including penalties and discontinuation of such illegal operations. The Investment Promotion Act provides for an arbitration process through the National Court to resolve disputes such as illegal operations in reserved businesses and does not provide for automatic deportation if foreigners are found to be operating in reserved businesses.

The current policy stance of government is to broaden the economic base through liberalization of RAL to provide business opportunities for expansion in private investment for economic growth. The NEC Decision 177/2004 removed RAL and replaced RAL with a smaller Cottage Business Activities List (CBAL).

The same decision provided for the relevant government agencies to formulate approaches for the establishment of a strong business support programmes to be put in place to support citizens in businesses. The policy intention behind this decision is to encourage the ease of entry by citizens in businesses taking into consideration the prevailing impeding factors. Additionally, it was envisaged in this policy decision that citizens with the strong business support backing will compete in the open market which will in turn build a strong and vibrant citizen business class in the economy, simultaneously encouraging competition and growth of the economy.

On the contrary, however, the Investment Promotion Act 1992, the principle legislation that provides for certain businesses to be restricted for citizens provides for the reserved activities to be reviewed every two years, taking into account the prevailing economic conditions. It is therefore, prudent that any further review with a view of restricting further businesses activities in CBAL for citizens must be complemented with strong business support programmes instituted, to encourage the expansion of citizens in those reserved activities and avoid experiences from the past.

29. Please describe PNG's main incentive measures related to investment, especially the taxation incentives.

Response from IPA

The following taxation incentives are the main incentive measures related to investment.

- Accelerated Depreciation: New industrial plant is eligible for increased depreciation up to 100% of cost. The taxpayer may elect the amount to be claimed in any year, but not so as to create a loss.
- Initial Year Accelerated Depreciation: This incentive allows the capital cost of certain new assets to be written down at a faster rate than would otherwise be possible.
- Export Sales Exemption: This incentive allows 100% of the net income derived from export sales of a wide variety of goods for three years to be treated as exempt income.
- Double Deduction for Export Market Development Costs: Expenditures on export market development for manufactured PNG goods can qualify for double deduction provided the tax saving is less than 75% of the cost of expenditure. Such expenditures as overseas

publicity and advertising, market research, tender preparation, samples, trade fair expense, overseas sales and office expenses can qualify for this inducement.

- Rural Development Incentive: This provides for the exemption to businesses in a rural development industry (and those not dependent on exploitation of natural resources) for up to 10 years after the first year of commencement of business.

Response from IRC

There are various tax incentives available to investors wishing to invest in PNG with the incentives being available for investment generally or in specific sectors/industry. The nature of these incentives are found in legislation under the laws administered by the Commissioner General of Internal Revenue Commission (IRC). These laws being: Income Tax Act, Goods & Services Tax Act, Stamp Duties Act, Customs Act, Excise Act. Incentives are available under the following categories:

- General Incentives
- Rural Development Incentives
- Manufacturing Incentives
- Agriculture Incentives
- Tourism Incentives
- Mining Exploration and Development Incentives
- Oil and Gas Exploration and Development Incentives
- Exemptions on imports of capital equipment for resource projects.

30. Please describe the main achievements of PNG in the field of investment facilitation in recent years.

Response

In terms of strategies that have been implemented to attract FDI into PNG, the Government of Papua New Guinea to date believes that the key to economic growth is the development of private sector investment both domestically and abroad. The Government is also aware that in order to attract that investment, it must put in place a policy framework which will bring about that development, including its plans to enhance the manufacturing sector and boost export figures under an export-led Economic Recovery Strategy which is currently being implemented by the Somare government.

The National Investment Policy (NIP) currently implemented by the Authority serves as a means to provide some guidelines in pursuit of economic development through the execution of investment projects in the economy. Since then, it has now become necessary that the NIP goal is reviewed to take into account the new challenges and opportunities that have emerged as a result of the incremental improvement of economic conditions attributed to the stabilised exchange rate, stable macroeconomic environment and improved confidence in the government's performance in recent years.

The Government is in the process of reviewing the National Investment Policy Volume I and II and formulating the National Investment Policy (NIP) Volume III in consultation with all the stakeholders including the private sector. The NIP volume III will define the contemporary core policy objectives and strategies of the commerce sector and further boost economic growth through structural reforms that remove impediments to investment and support infrastructure development.

The Government's Medium Term Development Strategy (MTDS) 2005 – 2010 which is currently implemented has been formulated based on the Government's new visions which charts the course of the public sector reforms and expenditure in the twenty-first century.

The MTDS translates the means to overcome ineffective governance and bring about development as defined under export-driven economic growth, rural outgrowth and poverty reduction. The resource owners in Papua New Guinea are encouraged to mobilise their resources, including land, to drive the development process to achieve higher standards of living.

The introduction and implementation of development policy initiatives contained in the MTDS has now called for a major overhaul of the existing investment policy initiatives to incorporate the requirements of the MTDS. Thus, the need to realign the NIP to ensure their linkages with the MTDS without compromising Papua New Guinea's position with respect to its international trade obligations.

The Government decided to have in place an Investment Incentives Guideline which came about as a result of too many project proposals through the various government departments and agencies requesting for special incentives from the government despite the existing incentives approved by the government. The Government directed the relevant agencies to come up with an Investment Incentive Guideline to be adopted to assess investment projects and appropriate approvals accordingly. The Government will not entertain requests for incentives particularly with respect to taxes and tariff, especially so when the decision has been legislated and form part of the Structural Adjustment Program.

The main thrust of the Government's economic development and industrial policies is aimed at increasing the value and volume of value-added products.

Government policies encourage the development of Papua New Guinea's non-mining sectors, including manufacturing, and renewable resources, agriculture and business services, to promote economic self sufficiency. The promotion of non-mining sectors of the economy ensures that economic growth can be sustained after the depletion of the mineral resources. The policies focus on the industries and businesses, particularly the private sector investments, to create employment and achieve economic growth.

The implementation of industrial policies remains the responsibility of the various statutory authorities which were established for that purpose within the Ministry of Trade and Industry. They are the Investment Promotion Authority (IPA), the Small Business Development Corporation (SBDC) and the Industrial Centres Development Corporation (ICDC). Quality control procedures for exports are being addressed through the Papua New Guinea National Institute of Standards and Industrial Technology (NISIT). New ventures can rely upon the NISIT for research assistance and information on development and transfer of technology.

The Small to Medium Enterprise (SME) policy currently implemented was established in 1998 to promote the development of Small to Medium Enterprises in Papua New Guinea in relation to the transfer and adoption of appropriate technology and the encouragement and strengthening of the linkages between SMEs and their support institutions. The main objective is to instill business culture within the SMEs and ensure their long-term sustainability.

The government is also committed to a privatisation policy that will ensure that the Government's involvement in commercial activities are minimised or extracted and transferred to the private sector.

The Government of Papua New Guinea recognises the importance of the private sector to the economy's development and guarantees the security of foreign investment.

The security of investment in Papua New Guinea is paramount. The government made an undertaking to minimise the perceived risks including expropriation, repudiation of contracts and discrimination through granting of most favoured nations treatment to investors particularly from economies of the Asia Pacific Economic Cooperation and the World Trade Organisation.

Papua New Guinea's seriousness in fair play and in protecting investors and their investment in the economy is also evident since it became a member of the World Bank's Multilateral Investment Guarantee Agency in 1990.

Investment disputes can be settled through diplomatic channels or through the use of local remedies before having such matters adjudicated at the International Centre for the Settlement of Investment Disputes (ICSID) or through another appropriate tribunal of which Papua New Guinea is a member.

The Investment Promotion Act 1992 that is administered by the Authority also protects against expropriation, cancellation of contracts and discrimination through granting of most favoured nation's treatment to investors.

31. How many bilateral Investment Promotion and Protection Agreements have PNG signed, and with which economies? And please also list the economies with which PNG have signed Avoidance of Double Taxation Agreements?

Response

Papua New Guinea has negotiated and signed the bilateral IPPAs and double taxation agreements with Australia, Canada, China, Germany, Malaysia, Singapore, South Korea, Indonesia and the United Kingdom.

Papua New Guinea is still negotiating the IPPAs and double taxation agreements with the United States, New Zealand, Philippines and Thailand.

STANDARDS AND CONFORMANCE

Canada

32. Could Papua New Guinea provide some specific examples of how the principles and features of Good Regulatory Practice are present in its regulatory regime? For example, does Papua New Guinea use a Regulatory Impact Assessment (RIAS), guides on the use of standards in regulations, or have plans to enter into regulatory cooperation initiatives?

RESPONSE:

PNG has not formally adopted the principles and features of Good Regulatory Practices to date though at present most of its established legal and administrative processes in the design and development of legislations (acts and particularly technical regulations) principally embrace most of the ideal characteristics and principles of GRP.

The concept of RIA is new and is not widely known in PNG. Hence, the Regulatory Impact Assessments have never been conducted in a formalized manner for many of the existing as well as new Technical Regulations. However, some structured approaches in policy issues and problem identification are always conducted in bringing a balance assessment into the need for establishing Technical Regulations.

PNG at present does not apply a formalized system of RIAs and therefore the need to adopt such mechanism is highly recommended. NISIT through consultation with the wider regulatory regime will have to look into the possibility of formally adopting the GRP and the RIA. NISIT's emphasis at the moment is on improving is networking with regulators, conducting standards & conformance awareness/trainings, and assisting regulators where and when required in our economies priority areas in trade. To properly implement RIAs, will require changes to current legislations that govern standards and conformance work in PNG.

PNG will require further technical assistance on how to conduct Regulatory Impact Assessments on its technical regulations. A good start would be on the current regulations it is involve in formulating, now and in the future.

The current practice has been through stakeholder consultation by way of public seminars, forums etc. Apart from a couple of recent seminars conducted regarding 'standards and technical regulations', 3 technical regulations have been documented in recent times with input from NISIT namely; the Bio-Safety Regulation (2008), Food Sanitation Regulation (2007), and PNG Standard for Fish and Fishery Products (2009).

There has not been any formal initiative to look into the possibility of forming a regulatory cooperation initiative in PNG. Likewise, the regulatory regime in PNG is not aware of such initiative as their involvement in the SCSC Fora has been non-existent with only NISIT being the sole participant. Whilst NISIT is the lead agency for Standards and Conformance work in PNG, its efforts has been limited to the development and adoption of voluntary standards. Very minimal input and involvement is made in the development of technical regulations.

Recently, NISIT embarked on entering into several organizational MOUs with several key players in PNG which have regulatory jurisdiction and powers for the purpose of information sharing, consultation and cooperation purposes. Some of which are listed below:

- (i) Existing MOU between NISIT and PNG Power on the implementation of Electrical Standards which is basically the Australian and IEC Standards.
- (ii) Existing MOU between NISIT and the Independent Consumer Commission on implementation of Consumer/Product Standards.

33. What is the current number and percentage of Papua New Guinea's standards that are aligned with international standards?

RESPONSE:

(a)	ISO	125	14%
(b)	IEC	54	6%
(c)	ASTM	22	3%
(d)	CODEX	67	8%

(e)	API	1	0%
(f)	ANSI/AWWA	15	2%
(g)	BS	21	3%
(h)	AS/NZS	480	54%

Note that the balance consists of PNG's own published Standards and other national or industry/association standards. PNG has approximately 900 Standards.

Hong Kong China

34. We note and appreciate the efforts of Papua New Guinea in aligning their standards with international standards such as adopting ISO, IEC and Codex standards. As Papua New Guinea mentioned that they also adopted Australian and New Zealand standards, we would like to know the rationale behind such adoption.

RESPONSE (NISIT):

As a background to our present practice of standards adoption, in the recent past NISIT was not able to become an affiliate member to ISO and other international standards development organisations, hence our participation and links with international standardization bodies were on ad-hoc basis. Indeed, in the most recent past, this situation has improved thus, adopting of international standards will become the policy regarding standards alignment and equivalence in the case of PNG Standards.

In addition, adoption of Australian and New Zealand Standards in total as PNG Standards is done on the basis of compatibility of codes. That is, most of our practices in the various sectors of our economy have been similar due to the bilateral relations between PNG and Australia/New Zealand. The following examples are provided for clarity:

- (i) Some of our technical regulations, for example, the PNG Fire Code are a 'direct' adoption of the Australian Building Code which require adherence to relevant Australian Standards.
- (ii) In many instances, most companies/organizations operating in PNG are Australian or New Zealand based who are familiar with the application of their own national Standards.
- (iii) NISIT has an existing MOU with Standards Australia and Standards New Zealand for technical cooperation with regard to standards development.

Response by Department of Transport to Questions 33 and 34

There is no requirement to provide Regulatory Impact Assessments (RIAS) for legislation or regulation in the Transport Sector therefore unable to provide the exact number or percentage of PNG's Standards that are aligned to international standards.

In the Transport Sector, works on ISPS Code and ICAO requirements are ongoing and must always meet the prescribed standards. Audits are conducted periodically.

APEC Review Team

35. Please describe PNG's efforts in promoting the implementation of *APEC's Trade Facilitation Action Plan* (TFAP I and TFAP II) in the field of standards and conformance.

RESPONSE RELATING TO TFAP II ONLY:

- (i) Continue with our on-going awareness and services to industry. We will still require a lot of technical advice and assistance from the SRB's as well as our own local alliances to progress our efforts under TFAP II.
- (ii) Initial assessment by APLAC for PNG Laboratory Accreditation Scheme to be signatory to APLAC MRA.
- (iii) Preparation in the advance stage to participate in Part 1 of the APEC EE MRA.

OTHERS OUTSIDE THE TFAP II:

- (i) Measurement Standards Laboratory (MSL) under the Metrology Division of NISIT is the only accredited Calibration Laboratory by NATA in PNG.
- (ii) Papua New Guinea Certification Services (PNGCES), a national Certification Body, under the Certification Division is preparing for JAS-ANZ Accreditation towards end of 2009 to become an accredited Conformity Assessment Body in PNG.

36. PNG indicates in the 2008 IAP that almost all PNG Standards are adopted from ISO, IEC, Codex, Australian and New Zealand Standards. Could PNG please make it clear whether there are still adopted standards not based on international standards but reflecting local conditions, and what are the examples?

RESPONSE:

- (iv) All the Standards are 'direct' adoption of the ISO, IEC, Codex, Australian, and New Zealand Standards.
- (v) Only a handful, including the Construction Standards (namely concrete, masonry, and structural design codes), Timber Treatment, Timber Structures Code, Green Coffee, Aflatoxins, and a few more are developed taking into account PNG local conditions.

CUSTOMS PROCEDURES

Perú

37. We would like to know on progresses reached in your Customs Administration regarding the following issues:

- Dissemination of public information.
- Implemented improvements on paperless trade.
- Implemented standards and procedures to appeal customs provisions.

- Progress in the alignment of customs legislation regarding the adoption of the WTO Value Agreement.
- What mechanism is used in order to promote customs integrity and ethical values among personnel from your administration.

Response

Dissemination of public information.

Making available and disseminating information on Customs systems, processes and decisions to the public is aimed at achieving transparency of Customs processes and predictability for business decisions. Customs has adopted several measures to achieve these objectives:

- Customs Website developed and launched in 2006
- Development and distribution of Customs Fact sheets also made available on Website.
- Annual Customs to Stakeholder Forum to provide awareness on new developments as well as raise issues of concern.
- Monthly Customs to Business meetings to raise and resolve issues of concern.

Implemented improvements on paperless trade.

Customs requirement for submission and retention of paper documents has been further reduced with implementation of the Direct Trader Input (DTI) system of the current ASYCUDA Clearance system. It will be further reduced when both the Manifest Module and Electronic Funds Transfer (EFT) systems are fully implemented throughout the economy.

Implemented standards and procedures to appeal customs provisions.

Amendments to the Customs Act and Regulations in 2007 made provision for the inclusion of a new Section 177 to the Customs Act which establishes a Customs Review Tribunal that is independent of the Customs to deal with appeals from the decision of the Customs.

Progress in the alignment of customs legislation regarding the adoption of the WTO Value Agreement.

The *Customs (Ad Valorem Duties) Regulation* legislated in 1989 is principally based on the WTO Valuation Agreement with valuation of goods for Customs import duty purposes based primarily on Cost Insurance and Freight (CIF).

What mechanism is used in order to promote customs integrity and ethical values among personnel from your administration

The integrity of staff and ethical values to which officers have subscribed to are contained in the Customs Code of Ethics and Conduct that was launched in 2004. The establishment of a Disciplinary Committee for the IRC further ensures that officers are dealt with immediately in the event of a breach occurring.

38. We were informed that there is no change in your tariff provisions since 2005 but that you are considering to accede into the Revised Kyoto Convention in a near future. We would like to know what are the plans for such implementation.

Response

The 2007 HS Tariff was implemented by Customs in PNG in January 2008. As part of the APEC technical assistance programme, Japan Customs conducted a training workshop for staff in August of the same year. To date, PNG is using the 2007 HS Tariff for import duty purposes.

39. According to the Common Action Plan of the Revised Kyoto Convention, has Customs of Papua New Guinea considered within the implementation of the Advance Rulings System any regulatory system referred to the Advance Rulings of Customs Valuation and Tariff Classification?

Response

Provision for Advance Rulings in Tariff and Valuation matters has been implemented through enabling legislation in 2006. Advance Ruling is currently available under the Customs Act. Approval of the administrative guidelines for implementation is expected to take place this year.

40. We would like to know the progresses of your administration in automated risk techniques and what would be the functions of the Risk Management Coordination Unit that your Customs requires. What would be the profile and the capacity building you consider that the personnel responsible of that unit should have?

Response

The Risk Profiling functionality of the ASYCUDA system currently serves as the Automated Risk Management System for Customs with the establishment of both Regional Profiling Committees and a National Profiling Committee to receive, collate and input profiles onto the system. An approved structure for the IRC includes a unit responsible for coordinating all risks and risk-related issues within the organization.

41. Could you inform us on the arrangements and considerations that your Administration is taking into account for including the WCO Istanbul Convention provisions into the national legislation?

Response

At the moment we have not undertaken any work related to accession to the Istanbul Convention. Our current work has been concentrated on acceding to the Revised Kyoto Convention. Accession to the Istanbul Convention remains an integral part of PNG's reform and modernization programme in line with development and enhancement of the ASYCUDA system for Express Consignments

APEC Review Team

42. Please describe PNG's efforts in promoting the implementation of APEC's Trade Facilitation Action Plan (TFAP I and TFAP II) in the field of customs procedures.

Response

All the measures and initiatives sought to be implemented since TFAP 1 (currently categorized in Stage 3 and Stage 2 CAP items) have been fully implemented by PNG with

current activities designed to implement those items in TFAP II (Stage 1 CAPs). The establishment of a Customs Modernisation Management Team (CMMT) to coordinate and manage reforms within Customs ensures that Capacity Building efforts are prioritized based on the Key Focus Areas. The activities of APEC SCCP plays a prominent role in this regard.

43. Please describe PNG's efforts in fully implementing the 2007 Harmonized System.

Response

In August 2008 PNG received technical assistance through Japan Customs by way of a national workshop in PNG to train officers in the 2007 HS which was concluded successfully. PNG is currently implementing the 2007 HS.

44. Could PNG please describe the efforts in acceding to the Kyoto Convention and the WCO Istanbul Convention?

Response

Papua New Guinea had since 2007 completed the mandatory requirements for accession to the Revised Kyoto Convention. Currently the process for Constitutional and Diplomatic process are being pursued and it is anticipated that once this is completed, PNG will be able to accede. The Istanbul Convention will remain on the agenda until PNG has acceded to the Revised Kyoto Convention. The Customs Act makes provision for temporary imports and the clearance of express consignments. More work is expected to be put into developing the necessary mechanisms to implement the Istanbul Convention when the Customs Modernisation Management Team deals with the Specific Annexes to the Revised Kyoto Convention from this year onwards.

45. Could PNG please describe the implementation of the Advance Classification Ruling System and the Pre-clearance System?

Response

Legislation to implement an Advance Classification Ruling System has been in place since 2006. Administrative Guidelines had not been formulated resulting in the delay to carrying out awareness regarding the system. This has now been completed and it is expected that from this year onwards, Advance Ruling will be introduced and implemented.

Lodgment of a Customs Goods Declaration and payment of applicable duties can be done and cleared from Customs five (5) days prior to the arrival of the vessel in the economy. Goods that are subject to necessary checks on the basis of a risk profile are not allowed to be delivered for home consumption until outstanding queries are satisfied.

COMPETITION POLICY

APEC Review Team

46. Please outline the investigative and enforcement powers of the ICC. To what extent have these powers been used over the past four years? If possible please briefly summarise the details.

Response

In carrying out its enforcement functions under the ICCC Act, the ICCC is invested with investigative powers. In most cases the ICCC will undertake its investigations without using any coercive powers – it will receive complaints, ask questions of the complainant and the target of the complaint, and talk to other parties who may be able to provide information relevant to the ICCC’s investigation.

However, the ICCC has the power under the Act (Section 127) to summon a witness to appear before it to give evidence and to produce documents, books and papers to the ICCC at that hearing. Also, the ICCC may require a person to furnish information to the ICCC or to answer questions put to him by the ICCC’s officer (Section 128). The difference between these powers is that the former is to summons a person to attend at the ICCC to give evidence, whereas the latter will generally be exercised by an officer of the ICCC going to someone’s business premises and giving them a list of the information required to be provided. That request will normally take some time, for the party to assemble the information and furnish it to the ICCC.

The ICCC may also exercise powers of entry and search (Section 129), similar to a search warrant which may be used in police investigations. Like other search warrants under other laws, ICCC can only exercise this power of entry and search if it has first obtained a warrant from a Magistrate.

The ICCC has so far only invoked section 128 of the Act.

47. Please summarise the findings of the ICCC reviews of aviation, telecommunications, coastal shipping, and stevedoring, indicate the extent to which recommendations emanating from these reviews were implemented, and the reasons for any non-implementation of the recommendations.

Response

See Annex 6

48. What are perceived to be the main obstacles to increasing the effectiveness of competition policy in Papua New Guinea?

Response

Competition Culture/Advocacy

PNG’s Competition Policy is enshrined into an Act of parliament referred to as the Independent Consumer and Competition Act 2002 (the ICCC Act). The ICCC Act was only recently passed in 2002.

Competition policy in PNG is therefore relatively new. The initial publicity and education focus for competition law was directed to the business community, through business associations such as Chambers of Commerce and the like. This was difficult in PNG where there is no significant consumer organisation and business organisations are also limited.

Whilst the formal economic sector has been largely responsive, the informal economic sectors, including some small-medium businesses in the formal economic sector are still ignorant of the ICCC Act. It is only now, some five years after the competition law came into effect, and that awareness of the law within the business is becoming widespread and the general public gradually understand the law.

One measure of general awareness of the law is the level of litigation – the Act provides for private right of action for anti-competitive conduct – but to date there have been no proceedings brought by any private litigant for breaches of the ICC Act. Similarly, the level of complaints to the Commission is still very low. On those measures, public awareness is still low. It is not that there is resistance to the new competition rules; there just remains an unfortunately high level of ignorance about the existence of competition law.

Nevertheless, general awareness is improving. The Commission is now more often consulted on government policy development where competition issues may arise and industry generally seems more aware of the existence of competition law, as does the media, than used to be the case. The Commission is now well known within all levels of PNG society, though that is more to do with the Commission's other responsibilities such as price regulation and telecommunication regulation. The Commission's competition functions are becoming better known through some recent applications for authorisation of mergers or anti-competitive arrangements where the Commission facilitates through a wider public consultation process.

Resources

The Commission is funded by annual government grants and by license fees from the various industries where the Commission is the industry specific regulator and licensing authority (telecommunications, electricity, and ports and harbours). In the early phases of economic regulation, it is difficult to persuade government to focus on the regulator's needs, and there is no natural constituency which is going to push government to increase the resources made available to the regulator.

There is no easy answer to this. Government funding is limited, and there is much competition for available resources. The Commission is fortunate that more than half of its annual funding comes from license fees, as noted above, which provides a stable level of income for the Commission. However its competition regulatory activities are primarily government budget funded and thus remain continually under pressure.

The main resource difficulty faced by the Commission is not finance related, but is the unavailability of top quality human resources. The Commission is constrained in its salary policies by government rules, which means that it has difficulty in retaining high quality staff, who are continually being lured away to the private sector with much higher salary packages which the Commission cannot match. The Commission has been able to recruit excellent quality staff, and has given these personnel excellent training, but that has made those staff more attractive for private firms. Whilst that may be a compliment to the Commission's staff selection and training policies, it is a continuing problem for the Commission to retain top quality personnel.

49. Please outline the extent to which the ICC is still involved in price control.

Response

The ICC's primary objective is the enhancement of consumer welfare, while the protection and promotion of competition is one means towards achieving that end. PNG is a small economy and competition is not always possible but consumer protection is essential. There may be circumstances where price regulation or other government intervention is needed to protect consumers and make sure that they have access to best value goods and services.

The competitiveness of a market affects the level of consumer protection required. In PNG we strive for competitive and informed markets but that is not always possible and hence substantial reliance on regulatory and price controls.

In circumstances where there is little or no competition in the market (e.g. in a natural monopoly situation such as a telephone or electricity utility, and particularly in small economies that tend to have less competitive markets) there may be greater justification for intervention to ensure that consumer welfare is maintained because competition is not driving the market.

PNG industry regulatory framework relates specifically to government owned monopoly utilities, where there is a “regulatory contract” between each of the utilities and ICCC (on behalf of PNG consumers), which sets a price path for the monopoly services provided by that utility, going forward into the medium to long term future, as well as setting out required service quality standards. Those regulatory contracts with the ICCC exist in relation to electricity, water, ports, telecommunications and postal services.

The regulatory contracts are developed and enforced and reviewed by the ICCC. The contracts relate to pricing, service standards, innovation, capital expenditure plans and increased efficiencies.

Price control has been rolled back in recent years but still applies to some basic commodities used by PNG citizens. For example price control or price monitoring exists in relation to fuel, public transport services, rice and flour.

In addition to its regulatory contracts and price regulation functions, the ICCC conducts regular reviews of sectors of PNG industry and advises the Government on possible changes to regulation or policies generally in those industries. Recent reviews include petroleum, coastal shipping, tourism, general insurance, and the water and sewage industries.

INTELLECTUAL PROPERTY RIGHTS

APEC Review Team

50. The 2008 IAP shows that PNG has established the legal framework for the protection of intellectual property rights and made amendments on the existing IP laws, but effective enforcement remains a challenge. Then, what measures are PNG planning to take to tighten the enforcement of laws protecting intellectual property rights?

Response from IRC (Customs)

Enforcement of IPR at the Border will rely on an organizational restructure that comes into force in 2009. The necessity to establish a dedicated unit with trained personnel is essential to the effective border enforcement of IPR.

51. Could PNG please list the main penalties for infringement of intellectual property rights?

Response from IRC (Customs)

Border enforcement of Intellectual Property Rights is found in Part VI of the *Customs (Prohibited Imports) Regulation* in which Customs has authority to suspend clearance of up to 10 days for “infringing goods”. Customs is also authorized to take ex officio action where goods infringe intellectual property rights without the right owner initiating action for suspension of clearance.

52. Does Papua New Guinea have a policy regarding protection of traditional

knowledge (TK) and access and benefit sharing (ABS)? If so, please describe these policies.

GOVERNMENT PROCUREMENT

Hong Kong, China

53. We note that Papua New Guinea has maintained an open and transparent GP regime. We appreciate that Papua New Guinea will continue to improve its GP regime. (page 2 of chapter 9 of 2004 IAP which was referred by 2005 & 2008 IAP updates)

Chinese Taipei

54. We would appreciate further information on the following :

- a) the threshold for open tendering ;

Response

K300,000.00 or over

- b) the bid bond amount for which the tendering suppliers must pay ;

Response

Depending on the type of procurement and varies between 2 and 10 percent or a flat rate/figure is offered.

- c) the performance bond amount for which the awarded suppliers must pay ;

Response

Depending on the type of procurement and varies between 2 and 10 percent.

Payments are strictly done in the Form of a Bank Guarantee from a recognized

Financial Institution or a Bank Cheques

- d) any regulations regarding “cap on liability and liquidated damages” in the contract.

Response

We are not aware of any regulations regarding question “d” however it is incorporated as a condition of a contract and the penalties to be imposed vary depending on the type of contract (in percent or a flat rate per day).

APEC Review Team

55. Please outline any changes that have taken place in Papua New Guinea’s government procurement system and tendering procedures since 2004.

Response

- The threshold of K100, 000.00 increased to K300,000.00 or over to call for public tenders
- The threshold for Central Supply & Tenders Chairman to execute contracts increased from K5.0million to K10.0million
- Production and distribution of the Good Procurement Manual and Operations Manual to the National Departments, Agencies and Provinces.
- Annual Awareness training to the National Departments, Agencies and Provinces by Central Supply & Tenders Board trainers.
- Financial Management Manual issued in 2006 outlining Operations and accountability of Supply and Tenders Boards

56. How often has Ministerial discretion been used to give preference to national tenderers and local manufacturers?

Response

- No Ministerial discretion is used however the Central Tenders & Supply Board applies its discretion to Government funded projects only.

57. Have steps been taken to address the use of Ministerial waivers and limit the use of Certificates of Expediency, as recommended in the 2005 IAP Peer Review?

Response

- Ministerial Waiver is not practised or used. The Central Supply & Tenders Board restricts the use of Certificates of Inexpediency.

The Board at times uses its discretion to issue Certificates of Inexpediency on certain circumstance apart from Natural Disasters, emergencies of Health, Defence and Civil unrest.

- I. Having limited number of suppliers and to call for public tenders will only attract the same suppliers (motor vehicles and outboard motors being two examples)
- II. Remote location of the project where there may be only one or two suppliers or service providers.
- III. Funds not released in a timely manner to call for public tenders (eg; National & Local Level Government Elections)

58. Are procedures in place to ensure that potential tenderers receive adequate notice of forthcoming tenders, and to provide tenderers with information of the tender outcome?

Response

- More training is required for all stakeholders to provide annual procurement plans that are to be posted on our website.
- Notifications are issued to unsuccessful tenderers and the outcomes are posted on our website and the Government Gazette.

59. Is Papua New Guinea using, or intending to use electronic procurement?

- No and there are no plans to do so because of the lack telecommunication network and electricity infrastructure/supply are yet to cover the whole economy's population. Not the whole population have access to a computer or are familiar with computers let alone a reliable and constant power supply.

DISPUTE MEDIATION

APEC Review Team

60. Please advise any change that has been made in the availability of and procedures for investor-state dispute settlement since the 2005 IAP Peer Review? Briefly comment on Papua New Guinea's experience of using these dispute settlement mechanisms.
61. Please indicate the nature of the dispute settlement provisions in any further Investment Promotion and Protection Agreements (IPPAs) that Papua New Guinea has entered into since the last IPA peer review.
62. Have there been any changes in the availability and operation of Alternative Dispute Resolution (ADR) since the last IPA peer review? Briefly comment on Papua New Guinea's experience of using ADR.

DEREGULATION/REGULATORY REFORM

Canada

63. Could Papua New Guinea provide some specific examples of how the principles and features of Good Regulatory Practice are present in its regulatory regime? For example, does Papua New Guinea use a Regulatory Impact Assessment (RIAS), guides on the use of standards in regulations, or have plans to enter into regulatory cooperation initiatives?
64. Please indicate any changes that have been made in the location of responsibility and the procedures for regulatory review since the last IAP peer review.
65. Please summarise the results of regulatory reviews undertaken recently in Papua New Guinea.
66. How do you assess the effectiveness of regulatory reform in Papua New Guinea, and what steps are being contemplated that could improve the effectiveness of the process?

BUSINESS MOBILITY

APEC Review Team

67. The 2005 IAP Study Report indicated that PNG were planning to amend the Migration Act. Could PNG please advise whether the Migration Act has been amended? If yes, what amendments have been made?
68. Please make a much more detailed introduction of the new Foreigner Work Permit Application System of PNG developed in February 2007, and point out the main differences between the old and the new systems.
69. Could PNG please introduce the progress in implementing the APEC Business Travel Card scheme?
70. Has the permanent resident status been established for non-citizens in PNG?
71. Please indicate the purpose of the K250 fee for business visas. Does PNG have any plan to review this charge?

IMPLEMENTATION OF WTO OBLIGATIONS/ROOS

APEC Review Team

72. It seems that PNG has no major actions in this area since the 2004 IAP. Does it mean that PNG has fully implemented its WTO obligations? Are there possibilities of further extension?
73. Please describe PNG's main ROO regulations, including the preferential rules of origin under bilateral and regional trade agreements.

TRANSPARENCY

APEC Review Team

74. Please describe the methods that PNG has taken to implement the transparency standards of APEC, especially transparency in monetary, financial and fiscal policies and dissemination of macroeconomic policy data.

FTAs/RTAs

APEC Review Team

75. Please indicate the current status of PNG's implementation of PICTA.
76. Please indicate the current status of implementation of the MSGTA by PNG and its MSG partners.
77. What proportion of PNG's tariff lines will eventually become duty free under (a) PICTA and (b) the MSGTA?
78. Please advise if the Interim EPA with the European Union is in the process of being implemented. Is PNG able to give any indication of the likely timeframe for finalisation of the "permanent" EPA and/or the likely content of that Agreement?
79. Is PNG a party to any other preferential trade agreements, and/or is it in the negotiation, planning or discussion stage for participating in any other preferential trade agreements?
80. Please indicate the operational status of PATCRA.

2. Please summarise the findings of the ICCC reviews of aviation, telecommunications, coastal shipping, and stevedoring, indicate the extent to which recommendations emanating from these reviews were implemented, and the reasons for any non-implementation of the recommendations.

Reviews	Findings	(Recommendation)	Extent of and reasons for Implementation/Non Implementation
<p>PNG Air Transport Industry Review</p>	<p>Airfares in PNG – the average domestic fare for a fully flexible ticket is roughly 9% higher on a kina per kilometre basis compared to average domestic fares in other nearby countries. However, the analysis undertaken by the Commission has highlighted the fact that the kilometre costs on major domestic routes within PNG are broadly in line with international benchmarks. Competition still exists on many of these main domestic routes, and the current airlines structure in PNG, while having less active operators than in previous years, still benefits from a degree of contestability between existing operators be they regular schedule flights or chartered operations.</p> <p>On international routes, the comparison of the benchmarks for PNG is not as favourable. This may in part reflect the additional costs and special circumstances in PNG.</p> <p>CAA Structure – currently CAA has a broad mix of regulatory, airport operational, air navigational and safety roles. There is potential for conflict between the operational and regulatory roles performed by the CAA. Ideally, in best practice organisational structures for monopoly</p>	<p>None.</p> <p>The Commission recommended that funds be made available from the national budget to assist in funding the accounting separation of the CAA. However the Commission considers that this is only the first stage in the process of reform of CAA. The second stage will be the organisational separation of CAA.</p>	<p>The Commission's recommendations have been presented to the government for its consideration and implementation.</p> <p>For details of information on extent of implementation (or non implementation,) on the CAA Structure and CAA charges refer to the Department of Treasury, Department of Transport and the Civil Aviation Authority.</p>

businesses there is a distinct separation of operational and regulatory roles.

CAA Chargers – Industry has expressed concern about the lack of information available on the rationale for increases in CAA's charges and the service provided by CAA. Concern about the overall performance of the CAA and lack of transparency in the determination of charges creates an environment which is not conducive to the development of the industry.

Fuel Costs – The Commission noted that submissions from all airlines that the impact of rises in the crude oil price has been significant for their businesses. The combination of the retention of existing margins, the domestic freight costs within PNG and the rise in international oil prices at the time of the change over to the Napa Napa refinery (domestic oil refinery) appears to be the reason why the airline industry incurred an increase in fuel prices, while retail consumers in the major towns encountered very little if any change.

The airline industry has also raised concern about the availability of Avgas as fuel type used primarily by piston driven aircraft which provide the majority of services to the smaller, more remote locations throughout PNG. The growing scarcity and higher prices for the Avgas reflects a change in technology whereby most aircraft now operating commercially in PNG use Jet A1 fuel.

The Commission notes that it is better for an independent body, such as the Commission, to play the role of arbitrator in these circumstances rather than a party who may be seen as having a vested interest in the outcomes. The Commission considers that in addition to the changes recommended regarding the separation of the CAA, the CAA legislation should be amended to provide an independent review provision nominating the Commission as the arbitrator should the stakeholders in the industry be unable to reach agreement on proposed fees and changes to charges.

The Commission believes that there may be a case for some form of government subsidy to support a retrofit of this technology for aircraft which are currently solely reliant on Avgas. Any form of subsidy arrangement would however, need to be carefully structured and strictly for conversion purposes. To subsidise the cost of Avgas itself would not have a net beneficial effect for PNG as all it would achieve would be to delay the transfer across to Jet A1 fuel and ultimately prove to be very costly without any longer term benefit to the nation.

Fuel is currently price control. The Commission controls the wholesale and retail margins of refined petroleum products.

Codesharing – The use of Codesharing results in some fundamental competition policy issues. There is a danger that Codesharing may actually be a little more than a duopoly arrangement which operates to the detriment of consumers. At the same time code sharing has the potential to promote competition among carriers on 'thin' routes where it may not be commercially sustainable for multiple carriers to operate services.

More information on findings of this review report can be found in the ICCC website www.iccc.gov.pg/publications.

The Commission noted that the Air Niugini/Qantas codeshare arrangement is due to be reconsidered in 2007. The Commission recommended Air Niugini and Qantas to seek a formal authorisation from the Commission under section 70 of the ICCC Act.

Air Niugini and Qantas have applied to the ICCC for authorisation of the arrangement in 2007. The Commission has determined the authorisation application and granted a conditional approval for 2 years. The code share arrangement between the parties will be reviewed at the end of this year. Refer to ICCC website www.iccc.gov.pg/publicregister/authorisation for more information.

PNG Coastal Shipping Industry Review

The Commission's consultations and public submissions received support to remove the responsibility for the operations of the declared ports from PNG Ports to some form of private sector organisation. These options include; More commercial board representation; Privatisation; Local community ownership; Public private partnerships; Government funding.

Port Infrastructure – There is a strong call within the shipping industry for reform of the operation of the nation's port facilities and the implementation of additional capital expenditure projects by PNG Ports to address perceived shortfalls in the infrastructure at existing ports. In summary, further investment is required as a matter of urgency in many ports servicing the coastal trade in PNG.

1. **Commercial Board Representations** – the Commission recommended that further consideration be given to the inclusion of members on the board who have strong commercial expertise and background;

2. **Privatisation** – In PNG, the privatisation of national businesses is not on the government's agenda. As such, at this time when the government has not publicly embraced the concept of privatisation, it may be more appropriate to consider other options more in line with the present Government's policy directions, if any short term improvement is to be seen in the activities of PNG Ports.

3. **Public Private Partnerships (PPP)** – the Commission notes the availability of PPP arrangements, but highlights the need for caution in using this form of funding without very careful and precise consideration of all the issues involved in the project to be undertaken in this way, particularly as they relate to the transfer of risks between the various parties involved.

The Commission's recommendations have been presented to the government for its consideration and implementation.

For details of information on extent of implementation (or non implementation) of Port Infrastructure, pilotage and cabotage and licence issuance, refer to the PNG Ports Corporation, Department of Transport, the National Maritime Safety Authority, and the Department of Treasury.

Pilotage – The Commission noted that these services are currently provided by PNG Ports the price of which is not regulated.

Cabotage – PNG has a relatively relaxed cabotage arrangement by comparison to other countries where these types of laws exist. Currently, there are a total of 14 coastal shipping companies in PNG that service ports around the country, providing vital links for remote communities to access goods and services. There are relatively small amounts of trade on some individual routes to justify providing services on a standalone basis for that route. Thus, there is internal industry cross subsidisation between various routes serviced by each companies. In this context, existing coastal shippers argued against the removal of cabotage.

Operation of Coastal Shipping Licences – The Commission considered that the Coastal Trading Committee (CTC) which is an advisory committee to the Minister established under the Merchant Shipping Act, may have a vested interest in not recommending the allocation of an additional coastal shipping licences given the incumbent position of the majority of the

The Commission considered that where a ship captain has considerable experience in navigating a particular port, consideration should be given to waiving the requirements for pilotage services as this monopoly adds to the cost that is ultimately borne by the nation.

The Commission notes that changes to cabotage rules in PNG have the potential to affect the operation of coastal shipping industry in PNG, by possibly allowing lower cost shippers to enter the market. Such potential competitors might be vessels currently operating on scheduled international routes that take the opportunity to ship cargo from one PNG port to another as part of their scheduled visits to those ports. After a thorough assessment of the costs and benefits accruing to the PNG economy from the removal or otherwise of the current cabotage system, the commission recommended that the current system of cabotage in the domestic coastal trade should be retained on the basis of net benefits to the public and the economy.

The Commission recommended that it be the independent body vested with the responsibility of issuing Coastal Trade Licences after an independent assessment of the license application through a fair and transparent process that includes wider stakeholder consultation. The CTC should be retained to provide advice to the Commission in respect of license applications.

	<p>committee members.</p> <p>Price Controls – Provisions exist under the Merchant Shipping Act for the Secretary of Transport to set the maximum price for coastal shipping charges. A maximum freight tariff for coastal shipping was set by the Department of Transport in the mid 1980s. The last time the tariff was reviewed was in 1990 and the recommendation came into force on 1 January 1991.</p> <p>More information on findings of this review report can be found in the ICCC website www.iccc.gov.pg/publications.</p>	<p>The Commission is satisfied that the Merchant Shipping Act provides for an approach to pricing which is consistent with best industry practice. It provides a forum for the industry through CTC to attempt to set prices that are consistent with both market dynamics, including ability of consumers to absorb price increases, and the commercial realities of operating ships in the PNG context.</p>	
<p>Stevedoring and Handling Services Pricing Review</p>	<p>The purpose of the review was to ascertain, (a) Whether price regulation of the Stevedoring and Handling Services industry is necessary, or if price regulation should cease; and (b) If price regulation of the industry were to continue, what form of regulation should apply?</p> <p>The Commission's review found the following:</p> <ol style="list-style-type: none"> 1. Currently all Ports with the exception of Lae, Port Moresby and Kimbe are predominantly serviced by one major stevedoring operator. In Port Moresby, one stevedoring company handles all vessels and handles all coastal shipping. In Lae, there are three operators who share the total market and two are engaged in servicing both the coastal and overseas shipping. 2. There is a high degree of vertical integration between the ownership of the stevedoring companies and the shipping lines that they service. The degree of vertical integration, cross ownership and economies of scale in the industry act as a barrier to 	<p>The Commission findings provide the basis for the Commission decision that there is the need for the continuation of some form of price regulation of the industry.</p> <p>Price monitoring is currently in place for the stevedoring and handling services commencing on 1st June 2008 for a period of 5 years.</p> <p>The Commission however has made the decision that at some time in future, may within the five year period of this determination, recommendation for price monitoring arrangements to be altered and price control to take place should it form the view that prices for the monitored services are moving at a rate not consistent with the movements in the comparator series, and the industry has been unable to satisfy the Commission as to why the prices are behaving in this way.</p>	<p>Stevedoring and Handling Services which are (at present) declared a service for price regulation purposes under the Prices Regulation Act is administered by the Commission. The Commission monitors stevedoring tariffs and the handling charges.</p>

entry, despite the "low" capital and associated set up costs for a new entrant. As a consequence, this has limited entry of potential new operators into the industry;

3. Some new entry into the industry is evident in certain locations, but usually as part of a special arrangement to service particular shipping customers, and under the policy and political incentive of needing to establish links with landowner groups. There is little likelihood of a significant new entrant independent from the existing participants in the market;

4. Countervailing power held by the shipping lines is limited to the point of being nonexistent as a consequence of the vertical integration in the industry;

5. There is very little competition from other forms of transport providers to threaten the existing stevedoring businesses.

More information on findings of this review report can be found in the ICCC website www.iccc.gov.pg/publications.

Review of the Telecommunications Industry

N/A

In February 2008, the PNG Government approved the national Information and Communications Technology (ICT) Policy 2008. This Policy sets the framework for ongoing reform of PNG's telecommunications sector, including the stage introduction of competition therein.

This first phase saw necessary amendments made to the regulatory contract of the incumbent monopoly telecommunications service provider by the ICCC. Following this two mobile phone licenses were issued after

The outcome of this Review resulted in the ICC being stripped of its telecommunications licensing powers.

This Review was undertaken by a consultancy firm "Freehills" which has been contracted by the PNG Government, through the Department of Information and Communication.

For more details, contact the Department of Information and Communication.

a thorough tender process undertaken by the ICC and other key sector stakeholders. Mobile competition has since commenced in March 2007.

The second phase of the ICT Policy is an ICT Review which was recently conducted. The scope of the review focused on the licensing regime, role and function of the industry regulators, development of a Universal Access Scheme (UAS), issues relating to Telikom (PNG) Ltd, the incumbent's internal gateway, interconnection and price regulation.