

Summary Report on
APEC Workshop on Optimizing Investment Measures in the Asia-Pacific Region
Shanghai, People's Republic of China,
April 11-12, 2019

The APEC Workshop on Optimizing Investment Measures in the Asia-Pacific Region was held in Shanghai, People's Republic of China on April 11-12, 2019.

The workshop was hosted by the Department of International Trade and Economic Affairs, Ministry of Commerce, People's Republic of China, and organized by Shanghai University of International Business and Economics.

Government officials and representatives of relevant agencies from a number of APEC member economies, including Australia; China; Hong Kong, China; Indonesia; Japan; Malaysia; the Philippines; Papua New Guinea; Thailand and Vietnam, attended the workshop. Other participants include representatives of international organizations and institutions, such as United Nations Conference on Trade and Development (UNCTAD), World Trade Organization (WTO), Organization for Economic Cooperation and Development (OECD), and International Institute for Sustainable Development (IISD) and APEC PSU, as well as experts and scholars from the region.

The workshop focuses on sharing best practices and exchange experiences of policies on investment liberalization, facilitation, promotion and protection. The specific objectives of the workshop are:

1. Build capacity on investment liberalization measures, such as applying the negative list for market access;
2. Build capacity on investment facilitation measures, such as providing one-stop shop service for foreign investors;
3. Build capacity on investment promotion measures, such as measures reducing the operating cost of foreign investors in the host economy;
4. Build capacity on investment protection such as safeguarding the lawful rights and interests of foreign investors.

The workshop was conducted in six sessions, as follows:

1. Opening Session
2. Session I: Optimizing Investment Liberalization Measures
3. Session II: Optimizing Investment Facilitation Measures
4. Session III: Optimizing Investment Promotion Measures
5. Session IV: Optimizing on Investment Protection Measures
6. Closing Session

Opening Session

Opening Remarks

Mr. Zhang Shaogang, Director General, Department of International Trade and Economic Affairs, Ministry of Commerce, PRC, made opening remarks. He pointed out APEC economies' active measures to enlarge foreign direct investment (FDI) access and facilitate FDI, such as increased provisions in trade agreements to reduce barriers to FDI, streamlining administrative procedures, offering incentives, providing one-stop service and establishing new special economic zones. He briefly introduced the newly ratified *Foreign Investment Law of the People's Republic of China*, which stipulates a system of pre-establishment national treatment plus negative-list management for foreign investment, steps up the protection of intellectual property rights and spells out the plan to establish and improve a system serving foreign investment in order to better protect the legitimate rights and interests of foreign investors and ensure the establishment of an open, transparent and predictable legal environment for enterprises of various ownerships. In addition, he indicated China has been contributing to the development of economies involved in the Belt and Road Initiative by bringing quality investment to those economies, which has received warm welcome from governments and people along the Belt and Road. He also noted the greater uncertainty for FDI due to rising protectionism.

Welcome Remarks

Mr. Yang Chao, Deputy Director General, Shanghai Municipal Commission of Commerce, PRC, delivered welcome remarks. He highlighted the workshop is a concrete action to implement Lima Declaration on Free Trade Area of the Asia-Pacific (FTAAP). He noted that the very first pilot free trade zone (PFTZ) in China was established in Shanghai in 2013 and since then, Shanghai PFTZ led the efforts to pilot pre-establishment national treatment plus negative list and introducing filing system for FDI. Thanks to the enactment of China's new foreign investment law, Shanghai would accomplish three major tasks, i.e. the expansion of Shanghai PFTZ in its area, the launch of the science and technology innovation board at Shanghai Stock Exchange and promotion of integrated development of the Yangtze River Delta Region, and building one primary platform that refers to the China International Import Expo.

Ms. Chen Jie, Vice President, Shanghai University of International Business & Economics (SUIBE), gave welcome remarks. After her brief introduction to SUIBE, she expected the discussions at the workshop would be beneficial for international investment rule-making and academic studies in this area. SUIBE would make its best efforts to ensure smooth conduction and success of the workshop.

Keynote Speech

Mr. Chen Fuli, Member of the Standing Committee, the National People's Congress of People's Republic of China, made the keynote speech with the question that *Why Foreign Investment Law is a friendly legislation for foreign investment in China?* He underscored the following aspects reflected by the law:

- The law for the first time incorporated a system of Pre-establishment National Treatment plus negative list for the whole economy, which will extend those National Treatment from post-investment stage to the market access phase which includes establishment, acquisition and expanding;

- Half of the new law is targeting on how to promote and protect the foreign investment;
- China will adhere to the national basic policy of opening up, and create a stable, predictable, transparent and fair competition business environment for foreign investment;
- China will strengthen the IPR protection and ensure a fair competition market environment;
- As is well stipulated in the law, during the process of investment-related legislation including laws, administrative regulations and rules in the future, the drafters need to solicit the opinions from foreign investors;
- China will establish and improve the working mechanism to promote foreign investment, to provide consultation and services on legislation, policy and business information;
- China will establish a national complaint and service center, which will accept any complaint, or any dispute faced by foreign investors.

Mr. Song Yang, CTI Representative of China & Director, Department of International Economic Affairs, MOFCOM of China, served as chair of the opening session.

Session I: Optimizing Investment Liberalization Measures

This session focused on global trends of investment liberalization and the best practices of investment liberalization measures, such as applying the negative list for market access etc., in Asia-Pacific region.

Mr. Stephen Thomsen, Head, Investment Policy Reviews Unit, Investment Division, Directorate of Financial & Enterprise, Organization for Economic Co-operation & Development (OECD) delivered his speech entitled *Global Trends in Investment Liberalization: An Analysis Based on the OECD FDI Regulatory Restrictiveness Index*. He believed that economies worldwide had liberalized substantially over time, with little backtracking, but wide differences still existed worldwide in terms of de jure openness, and APEC economies were, on average, more restrictive than in other parts of the world. Besides, liberalization could be unilateral, plurilateral and multilateral, at the same time international commitments still sometimes lagged behind actual openness on the ground. He pointed out that FDI liberalization had a significant and positive influence on FDI and the driver of investment policy reform from unilateral, plurilateral, and multilateral.

Mr. Zhu Min, Deputy Director of Shanghai Municipal Development and Reform Commission, PRC, delivered his speech entitled *Sustainably Promoting Investment Liberalization and Facilitation*. He introduced China's foreign investment administrative system featuring the pre-establishment national treatment, negative list, related laws and regulations adjustment concerning foreign investment, the negative list system of market access for all participants, and the online service platform to realize the full process integration. He also pointed out that 'all in one net' government service had been performed in the Yangzi River Delta Region, as one example of China's ongoing

efforts to optimize the investment lifecycle management to improve business environment.

Ms. Medina Hajdarevic, Second Secretary (Economic), Department of Foreign Affairs and Trade, Australia, delivered her speech entitled *the Importance of Open and Transparent Investment Regimes: Australian Views*. Besides the importance of foreign investment, and its influence to Australia's growth and prosperity, she also introduced key elements of Australia's open and transparent regime, embedding openness to foreign investment in domestic policies, and investment communications Strategy. She emphasized that Australia supported liberalization globally and believed that good domestic regulation was good for attracting FDI.

Ms. Zhang Xiaolei, Third Secretary, Department of Foreign Investment Administration, Ministry of Commerce, PRC, gave an overall illustration of *China's FDI policy*. China's FDI promotion measures include negative lists, deregulation, investment protection, service improvement, investment platforms, and regional opening-up. She said that Foreign Investment law had defined the negative list scheme for FDI, ensuring a fair competition environment and highlighted investment protection as well as promotion. Meanwhile, the investment opportunity is huge and growing in China.

Mr. Lo Kwan Yung, Trade Officer, Trade and Industry Department, Hong Kong, China, delivered his speech entitled *Scheduling Approaches in Free Trade Agreements - Hong Kong, China's Experience*. The scheduling approaches are classified into three parts: positive, negative, and hybrid. Irrespective of scheduling approaches and their different presentations, all are capable of making commitments of high quality.

Ms. Chuwankorn Sasanabanchakul and Mr. Chanaphai Chenaksara, Trade Officers, Bureau of Trade in Services & Investment Negotiations, Department of Trade Negotiation, Ministry of Commerce, Thailand, delivered their speech entitled *Optimizing Investment Liberalization Measures: Thailand's Experience*. The relevant agencies involved in free trade agreement include the department of trade negotiation, the board of investment and the department of international economics affairs. On the other hand, the investment sectors include agriculture, fishery, mining and quarrying, forestry and manufacturing. They showed the lists that covered those economies they had signed the free trade agreement with.

Mr. Yao Weiqun, Distinguished Professor of Applied Economics & Executive Director, Shanghai Institute for Strategy of International Trade Center, SUIBE, PRC, served as the moderator of this session.

Session II: Optimizing Investment Facilitation Measures

This session focused on global trends of investment facilitation and the best practices of investment facilitation measures, such as providing one-stop shop service for foreign investors, etc., in Asia-Pacific region.

Mr. Yongfu Ouyang, Senior Economic Affairs Officer, Chief of Investment Facilitation, Division on Investment & Enterprise, United Nations Conference on Trade and Development (UNCTAD), delivered his speech entitled *Policy Practices in Investment Facilitation*. He thought that the practices were transparent and predictable rules, efficient administrative procedures and effective stakeholder relations rather than

market access and investment incentives. He concerned that investment facilitation was increasingly making into modern treaties but rarely carried out systematically. The gap in national investment policies could be observed and compared by UNTCTAD's Global Action Menu, thus, the government should take an integrated national strategy considering member economies team and national consensus, to establish a new generation of investment development agencies with SDG-oriented (targeting, screening, monitoring and evaluation).

Mr. Akhmad Bayhaqi, Senior Analyst, Policy Support Unit, APEC Secretariat, delivered his speech entitled *APEC Investment Facilitation Action Plan*. The background includes the aims, principles, regulatory costs and risks of IFAP. He reported the progress and review of IFAP implementation from 2015-2016 about e-transparency, reducing investor risk and simplifying business regulation across APEC member economies by using DB indicators, and concluded that these actions would need to be sustained by taking into account its contribution to the economy's growth and development agenda at the broader level. There is still room for significant improvements. Finally, he proposed five key factors for overseas investment and next IFAP three key priorities.

Ms. Teo Cho Cheng, Assistant Director, Foreign Investment Promotion Division, Malaysian Investment Development Authority, Malaysia, delivered her speech entitled *Investment Opportunities in Malaysia*. She briefly introduced the concept of MIDA including its background, functions, and the investment opportunities about manufacturing sector and services sector in Malaysia.

Ms. Hoang Thanh Tam, Senior Official, Foreign Investment Agency, Ministry of Planning and Investment, Viet Nam, delivered her speech entitled *the Development Progress of Viet Nam ' s Foreign Investment Institution: a Review after 30 Years of Opening for FDI*. He believed that the investment facilitation should be improved under amending 2014 Investment Law, which could be realized through three approaches: first, renovate investment incentive mechanism and policies; second, strengthen the linkage between foreign investment and domestic investment; third, actively open the door to remove barriers of market entry for foreign investors that Viet Nam encouraged or no longer need protection.

Mr. Stephen Thomsen, Head, Investment Policy Reviews Unit, Investment Division, Directorate of Financial & Enterprise, OECD, served as the moderator of this session.

Session III: Optimizing Investment Promotion Measures

This session focused on global trends of investment promotion and the best practices of investment promotion measures, such as measures on reducing the operating cost of foreign investors in the host economy, etc., in Asia-Pacific region.

Ms. Zhang Ruosi, Counsellor, Trade in Services and Investment Division, World Trade Organization (WTO), delivered her speech entitled *Promote Foreign Investment by Reducing Trade Barriers: Policy Implications of 'Trade-Investment ' Nexus*. At present, the trade contains not just goods and services crossing borders but also increasingly companies and factors of production due to the unbundling and globalization of value chains. And the interdependence relationship between trade and investment has been rapidly evolving and blurring for a long time as a result of technological developments, economic liberalization, affecting the developments of global value chains, services

trade and digital economy. Therefore, she pointed out that transition to the digital economy had become a policy priority, trade and investment promotion policies should be a part of digital development strategies and related rule-making.

Mr. Zhang Liang, Deputy Director, Department of Outward Investment and Economic Cooperation, Ministry of Commerce of China, PRC, delivered his speech entitled *China's Experiences in Promoting Outward Investment*. The experiences include simplifying approval procedures, improving public services and strengthening international cooperation. He added that overseas investment should increasingly promote the upgrading of domestic industries for developing economies to foster inclusive and sustainable growth in the Asia-Pacific region.

Ms. Elsa Noviliyanti, Section Head for Investment Promotion Materials for Electronic Media, Indonesia Investment Coordinating Board (BKPM), Indonesia, delivered her speech entitled *Indonesia Investment Updates*. Indonesia, as a big economy has a big opportunity and has shown progressive achievement in the past few years. Considering many common challenges faced by investor on in Indonesia, the government has made lots of efforts to improve this situation. For example, economic policy packages to attract more investment has been issued since 2015. Government developed Online Single Submission (OSS) as integrated online system with data sharing.

Mr. Kazuhiro Wani, Economic Consul, Consulate-General of Japan, Japan, delivered his speech entitled *Promoting Inward Foreign Direct Investment into Japan*. He proposed that the government and Japan External Trade Organization (JETRO) were actively promoting inward FDI by a series of activities ranging from improvement of business environment, investment promotion activities to disseminate information. He also elaborated on JETRO. What he had explained about JETRO included its main activities, global network, accomplishments and successful cases, services, promotion with various languages and materials, seminar and symposia, Invest Japan Business Support Center (IBSC) and Tokyo One-Stop Business Establishment Center (TOSBEC).

Ms. Zhang Juan, Associate Professor, Institute of International Business, Shanghai University of International Business and Economics, delivered her speech entitled *Investment Promotion Measures and Best Practices in APEC Economies*. She outlined the overall policy environment of investment promotion, and introduced IPAs' Role, Special Economic Zones (SEZs) and Tax as the three investment promotion measures in APEC economies. She concluded that recognizing the diversity in APEC economies' development level was very important to understand their investment promotion measures, and would be helpful for them to look for joint work to promote investment in APEC region; IPAs' role was updating with the development goals and investment strategies of economies and technology innovations, SEZs also evolved their types to meet the trends; although tax incentives were the most common and direct measures to attract FDI, economies were aware that profit-based tax incentives were better than the cost-based ones, and there should be a balance between tax incentive and tax revenue.

Mr. Song Yang, CTI Representative of China & Director, Department of International Economic Affairs, MOFCOM of China, served as the moderator of this session.

Session IV: Optimizing on Investment Protection Measures

This session focused on global trends of investment protection and the best practices of investment protection measures, such as safeguarding the lawful rights and interests of foreign investors, etc., in Asia-Pacific region.

Mr. Howard Mann, Senior International Law Advisor, International Institute for Sustainable Development (IISD), delivered his speech entitled *APEC Workshop on Optimizing Investment Measures in the Asia-Pacific Region*. He concluded that "optimization" depended on objectives, and optimization for promoting sustainable development required careful drafting and balance. He added that key decision points were quality of investment quantity only, and quality of investment required ongoing regulation and investment treaties to ensure respect for those regulations.

Ms. Xing Houyuan, Deputy Director and Research Professor, China Outsourcing Institute (COI), PRC, delivered her speech entitled *Optimize Investment Protection and Prevent Abuse of "Protection"*. She found that the past experience in investment protection was effective which could be demonstrated that insurance or guarantee for the overseas investment implemented by the governments with capital outflow had become a basic investment protection measure and "Bilateral Investment Treaty", signed by the capital outflow side and the inflow side governments, and were still the major mode of cross-border investment protection. She also took an example of China's foreign investment law on optimizing the investment protection measures. She considered that some economies should take protective measures against foreign investment in the name of preventing threatening their national security, but also worried that the "protection of national security" provision was being abused. To prevent the abuse, international society has reached a consensus and joint optimizing measures through negotiations, consultation, clarifying the definition of "national security" and adopted measures to limit the specific situation.

Mr. Desmond Pokajam, Senior Investment Officer, Investment Promotions Unit, Investment Promotion Authority, Papua New Guinea (PNG), delivered his speech entitled *Legal Reform Drives Confidence in Papua New Guinea*. Based on the aspiration for an investment regime that was transparent, predictable, stable and compatible with international best practice conducive for foreign investment, PNG has the need for reform and international arbitration which is likely to increase FDI and address issues identified as limiting investment. To sum up, PNG would take mediation and arbitration to the next level- Global standards. PNG judiciary is now providing the leadership and facilitating for this process that was and is empowering communities. Process of mediation is important for both high and small business and vulnerable groups. Investment in any economy that possessed dispute resolution in a more transparent and effective manner would install confidence.

Ms. Liang Danni, Associate Professor, School of Law, Sun Yet-Sen University, PRC, delivered her speech entitled *China's Recent Policy and Treaty Practice on Investment Protection and Harmonization of IIAs in Asia-Pacific*. She pointed that there were so many overlapping treaties containing costs and complexity which had caused troubles in interpretations of substantive provisions and procedural rules by tribunals. She also explained that Chinese reform agendas aimed to improve the business regulatory environment which mainly focuses on increasing the efficiency of business processes and improvement of investment protection measures. She argued that there was a convergence in recent treaty practice and try to prove it with a list of provisions of supporting liberalization and protection of foreign investment.

Mr. Gong Baihua, Professor, Law School, Fudan University & Chair of International Law Section of Shanghai Law Society, PRC, served as the moderator of this session.

Closing Session

Mr. Song Yang made concluding remarks. He pointed out that the program of the workshop had been fulfilled. Participants exchanged views as expected and learned a bountiful of interesting findings on how to carry forward the investment agenda and the FTAAP process. He looked forward to further discussions on optimizing investment measure in APEC, with a view to fostering an investment environment that is open, transparent, predictable and competitive in the Asia-Pacific region and worldwide.