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Date: 18 May 1999
Meeting: Tokyo, Japan

From the Desk of Chairman APEC-IEG



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Date: 9 April, 1999

The Honourable Philip Burdon
Chairman
ABAC
Asia 2000 Foundation
109, Featherson Street
P.O. Box 10-144
Wellington
New Zealand

Dear Mr. Burdon,

Re: Assessment and Implication of Implementing The Menu of Option

I would like to inform you that I have been appointed as the new chair to the APEC Investment Expert Group (IEG) replacing Dato' J. Jegathesen the Deputy Director General I of MIDA who will be retiring from government service very soon. I would also like to take this opportunity to congratulate you on your appointment as the new Chairman to the APEC Business Advisory Council 1999.

As you are aware, the IEG's main deliverable for 1998 was the option for Investment Liberalization and Business Facilitation to strengthen the APEC Economies – for Voluntary Inclusion in Individual Action Plans. This was done through a series of deliberations among the group taking into account the diverse economies of the APEC economies and the need to progressively implement the Non-Binding Investment Principles as emphasis by ABAC in the proposal to the leaders. The option paper was approved by the Trade Ministers at their last meeting in Kuala Lumpur 1998.

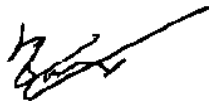
At the last meeting of the IEG in Wellington, New Zealand, the group has agreed to seek the views of ABAC and other business sectors on their assessments of the menu of option and its implication on implementation. In view of this and on behalf of the IEG, I am pleased to extend a copy of the Menu of Options for the consideration of ABAC.

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I hope that the Menu of Options will be one of the topics for discussion at your next meeting in Tokyo. I look forward to receiving ABAC's views and suggestion so that we can incorporate them in our implementing programmes.

Thank you,



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Annex II: INVESTMENT

OPTIONS FOR INVESTMENT LIBERALIZATION AND BUSINESS FACILITATION TO STRENGTHEN THE APEC ECONOMIES FOR VOLUNTARY INCLUSION IN INDIVIDUAL ACTION PLANS

APEC leaders and ministers at Bogor, Osaka, Subic and Vancouver have committed their economies to create free and open investment by 2010 and 2020. They endorse Individual Action Plans (IAP's) as a core instrument in this process. They have called for transparency in, and the annual improvement of IAP's. ABAC has also called on APEC economies to make the progress in the investment area.

In response to both government and business, the Investment Experts Group, at St. Johns, Canada, undertook to compile a "menu of options" for helping economies to identify policy measures that member economies may include unilaterally in their IAPs for implementation of this objective. There was a consensus that the project should focus on concrete measures, rather than on continued philosophical debate. APEC ministers endorsed the "menu" initiative at Vancouver.

With these instructions in mind, the following document is a non-exhaustive "master menu" of investment-liberalizing and business-facilitating measures from which economies may voluntarily select any of a number of options to make progress toward creating a free and open investment regime. It is intended as a reference tool that economies may refer to when updating their IAPs.

The APEC approach to liberalization and facilitation of trade and investment, as reiterated APEC Leaders at Vancouver, recognizes the diversity that exists among APEC economies. This "menu of options" is consistent with this recognition of diversity, providing members with a broad range of choices suitable for different circumstances. The items are not prescriptive and, where chosen, may be modified to suit particular circumstances. The menu is not designed to set out the steps in the liberalization process and will evolve over time.

The IEG intends to update this menu on a regular basis, starting in 1999, so as to capture the benefit of APEC economies' increasing experience and changing views.

- Broaden definitions of investment and foreign investment in existing legislation, regulations and administrative procedures to permit the widest variety of forms of investment and allow for newly emerging forms to be covered, without a need for future changes in domestic legislation/ regulations.
- The definition might include - illustratively-not just new ("green field") investments, but also acquisition of shares of domestic enterprises, management contracts, long-term leases, all forms of business organization (e.g., wholly owned, subsidiaries, partnerships, branches, joint ventures, smart partnerships, strategic alliances), certain kinds of debt instrument, intellectual property, etc.
- Permit and promote all forms of investment through means other than, or additional to, broadening the definitions of investment and foreign investment in existing legislation, regulations and administrative procedures.
- Commit to locking in current treatment for investors in specific sectors (i.e., standstill on restrictions).

On prior authorization requirements:

- Eliminate or phase out prior authorization requirements. If appropriate, replace them with post-establishment notification.
- Make approval within any existing prior-authorization mechanism automatic except in limited specified situations.
- Raise the threshold (value of an investment) above which prior authorization is required. If appropriate, announce progressive raising of the threshold, according to a schedule with a certain date to eliminate most or all prior authorization requirements.
- Limit the requirements for prior authorization to selected sector. If appropriate, replace it with post-establishment notification.

Involving other economies

- Sign or establish (or, as appropriate, sign or establish additional) bilateral, regional, and/or multilateral agreements or arrangements for the protection of investment that provide commitments to the current level of protection and openness for investors/ investment.
- Sign or establish (or, as appropriate, sign or establish additional) bilateral, regional and/or multilateral agreements or arrangements for the protection of investment with enhanced protection and openness for investors/ investments (e.g., fewer restricted sectors of an economy, fewer restrictions within sectors, stronger mechanisms for resolving disputes).

TRANSPARENCY

- Make available to investors timely updates of changes to investment regimes, including via the APEC Secretariat (who will use it for the APEC investment guidebook).
- Publish and/or make widely available through other means, on a timely basis, information on an economy's investment code, investment laws and regulations, and procurement procedures, with an eye ensuring transparency in the administration of investment laws, regulations and procedures at federal/central, provincial/state and local authority levels.
- If screening is used, publish and/or make widely available through other means the guidelines for evaluating and scoring projects for their approval.
- Conduct briefings (in appropriate fora) on the current investment policies and future directions to be undertaken by the government.
- Give advance notice of proposed regulations and laws, and provide an opportunity for public comment.
- Clarify procedures and practices regarding application, registration, government licensing and procurement by:
 - Publishing (and widely disseminating) clear and simple instruction, and an explanation of the process (the steps) involved in applying/ bidding/ registering;
 - Publishing (and widely disseminating) definitions of criteria for assessment of investment proposals;
 - Publishing (and widely disseminating) contact points for inquiries on standards, technical regulations, and conformity requirements;
 - Conduct periodic reviews of prior authorization requirement procedures to ensure they are simplified and transparent;
 - Make available to investors all rules and information relating to investment promotion schemes.

NON-DISCRIMINATION

Related to MFN

- Commit to MFN treatment economy-wide, except in a few limited cases as may be specified by individual member economies, immediately or over a publicly announced period of time.
- For economies that have already committed to MFN treatment, review where MFN exceptions to it taken in the past can be eliminated or reduced (in other words, review whether the "few limited cases" of exceptions to MFN can be narrowed even further).

Related to National Treatment or both MFN and National Treatment

Sectors

- Extend national treatment now (or starting on a particular date) in one or more sectors.
- Extend national treatment economy-wide except in a few limited cases now, or starting on a certain date; or
- Progressively extend treatment to one more sectors.
- Open additional sectors to participation by foreign investors, or permit foreign investment economy-wide with only limited exceptions. In other words, reduce the size of the list of sectors that are closed or partially restricted to foreign investment.
- Eliminate or phase out sectoral restrictions on a foreign investment.
- Review existing agreements, treaties, and laws to see if any exceptions to national treatment can be eliminated.

Ownership

- Allow all investors to choose their form of establishment within legislative and legal frameworks.
- Update regulations to eliminate joint venture requirements for establishment.
- Permit greater foreign equity ownership in sectors partially opened to foreign investment or permit greater foreign equity ownership economy-wide.
 - Prepare a schedule now for future increases in foreign equity ownership.
 - Accelerate implementation of dates for liberalizing sectors where possible.
- Eliminate or phase out conditions for foreign ownership in relation with export ratios or domestic sales.
- Reduce areas with joint-venture criteria under investment promotion schemes to allow greater foreign participation.
- Implement (and announce) a policy of not requiring the divestiture or dilution of the ownership of investments on the basis of nationality. Eliminate or phase out requirements to transfer ownership to local firms over a period of time.
- Eliminate or phase out restrictions for foreign investors on the establishment of local branches.
- Eliminate or phase out restrictions for foreign investors to diversity operations.
- Eliminate or phase out restrictions on foreigners with respect to operational permits and licenses.
- Where a time period for foreign investors to find local partner is specified, extend the period of time.

Financial and Capitalization

- Update regulations to reduce or eliminate restrictions on foreign borrowing by corporations.

- Liberalize foreigners' access to domestic financial instruments (e.g. money market instruments, corporate bond markets).
- With respect to the entry of foreign investment, eliminate or phase out requirements to deposit certain guarantees for foreign investors.
- Reduce, reduce progressively, or eliminate minimum capitalization requirements in sectors where such capitalization requirements are not needed for prudential reasons.
- Eliminate or phase out subsequent additional investment or reinvestment requirements for foreign investors.
- Open existing investment incentive programs to participation by foreign investors, so they are equally available to domestic as well as foreign investors.

Other Measures

- Eliminate or ease discriminatory restrictions on imports needed to support foreign investment.
- Changes policies, guidance, regulations, or laws to eliminate pricing by state-designated monopolies that is discriminatory on the basis of nationality.
- Changes policies, guidance, regulations or laws to eliminate discriminatory access to local raw materials and inputs.

EXPROPRIATION AND COMPENSATION

- Consistent with international law standards/principles, limit permissible expropriation to cases involving a public purpose where expropriation is under taken in a non-discriminatory manner, under due process of law, and accompanied by payment of prompt, adequate and effective compensation.
 - Take steps to amend expropriation laws and regulations based on the above mentioned standards/principles of international law with respect to expropriation.
- Included in bilateral, regional or multilateral investment treaties, agreements, and/or arrangements a commitment on compensation in case of expropriation.
- To improve transparency, define, publish and disseminate to investors the relevant investment treaties and arrangements.

PROTECTION FROM STRIFE AND SIMILAR EVENTS

- Decide - and, as possible, commit in investment agreements/arrangements between governments and private investors and in bilateral/multilateral government-to-government treaties, agreements, and/or arrangements-that the government will accord treatment that is non-discriminatory on the basis of nationality to investments with respect to losses that investments may suffer in the government's territory that are due to war, other armed conflict, revolution, national emergency, insurrection, civil disturbance, or other similar events.

TRANSFERS OF CAPITAL RELATED TO INVESTMENTS

- Remove or reduce restrictions on the transfer to funds related to foreign investment, such as profits, dividends, royalties, loan payments, interest, infusions of additional financial resources after the initial investment has been made, and proceeds from liquidations - all in a freely convertible or a freely usable currency.

- Eliminate or phase out restrictions that impede recovery of profit, such as ceilings on royalties, technical assistance fees or special taxes, restrictions on access to foreign exchange and control over the allocation of foreign currencies.
- Make a binding commitment, in treaties, agreements or arrangements, to eliminate or progressively reduce restrictions on the transfers to funds related to foreign investment, such as profits, dividends, royalties, loan payments, interest, infusions of additional financial resources after the initial investment has been made, and proceeds from liquidation -- all in freely convertible or freely usable currencies.
- Guarantee the right to transfer capital related to an investment in and out of an economy, without delay and at market rates of exchange, with only limited exceptions.

PERFORMANCE REQUIREMENTS

- Publish and implement a phase-out plan for WTO TRIMs-inconsistent programs identified on 'TRIMs' illustrative list.
- Reach consistency with WTO 'TRIMs' illustrative list by 2000. Take steps to accelerate implementation of phase-out plans where possible.
- Eliminate, phase out, or relax unilaterally and/or through governments-to- government agreements and treaties, on an economy-wide or sectoral basis, requirements such as:
 - local hiring requirements,
 - local training requirements,
 - requirements to manufacture locally,
 - local sales requirements,
 - required technology transfer,
 - required local research and development,
 - export requirements (e.g., those expressed as requirements to generate foreign exchange or achieve a particular export target).

ENTRY AND STAY OF PERSONNEL

- Consistent with an economy's visa laws regarding the entry and stay of personnel, allow the temporary entry and stay of personnel needed to establish, develop, administer or advise on the operation of an investment of theirs (i.e. investor and key managerial or technical personal and advisers).
- Offer visas for investors that facilitate entry and reentry (or identify other ways, consistent with domestic laws and policy, to facilitate investors' ability to enter and reenter for investment purposes).
- Take steps to permit investors/project sponsors to hire the top managerial advisory talent of their choice, regardless of nationality.
- Take steps to permit investors/project sponsors to hire the top technical. and/or advisory talent of their choice, regardless of nationality.

SETTLEMENT OF DISPUTES

- Develop effective mechanisms for resolving disputes and mechanisms for enforcing the solutions found to those disputes.
- Take steps to become a member of the International Convention on the Settlement of Investment Disputes (ICSID) and/or other widely recognized international arbitration bodies.

Note: We defer to the APEC Dispute Mediation Experts Group for specific menu options for LAP related to improvements in dispute mediation.

INTELLECTUAL PROPERTY

- Develop adequate protection for intellectual property.

Note: We defer to the APEC Intellectual Property Rights(IPR) Group for specific menu options for LAP's related to IPR improvements.

AVOIDANCE OF DOUBLE TAXATION

- Sign, where appropriate, bilateral avoidance of double taxation agreements that are in conformity with international norms. Expand coverage of such agreements as appropriate.

COMPETITION POLICY AND REGULATION REFORM

- Ensure consistency between investment policies and competition and regulatory reform policy.

Note: We defer to the APEC Competition Policy Group for specific menu options for LAP's related to improving competition.

BUSINESS FACILITATING MEASURES TO IMPROVE THE DOMESTIC BUSINESS ENVIRONMENT

- Reduce discriminatory use of bureaucratic discretion, by means such as:
 - preparing and distributing written in-house guidelines for administrative practices related to the handling of application, registrations, licensing, etc.
 - establishing in-house decision appeal mechanism, as well as appeal mechanisms available to the public.
- Streamline application, registration, government licensing and government procurement procedures by:
 - simplifying forms;
 - simplifying the submission (e.g. permitting electronic submission, or centralizing approval offices in a "one-stop shop");
 - shortening processing time of such applications/registrations, and
 - reducing unnecessary steps.
- Take positive steps to assist investors by measures such as:
 - establishing an office to serve as a clearinghouse (one-stop agency/unit) for interested investors to learn market opportunities and potential investment partner;
 - providing a network of all the government agencies that the investors or businesspersons have contact with in doing investments;
 - establishing/designating one government agency to handle investors' complaints (e.g., investment ombudsman).
- Examine the role and effects of investment incentives at all levels of governments: federal/central, state/provincial and local.
- Offer incentives which are voluntary, non-discriminatory, and limited in duration, such as:
 - tax breaks,
 - loans guarantees,

- grants, subsidies and industrial development bonds,
 - employment training programs,
 - programs aimed at helping companies achieve greater efficiency,
 - WTO-consistent export promotion programs,
 - small business development,
 - high technology development programs,
 - measures to support development of new industries,
 - industrial linkage programs,
 - mobilization of domestic resources.
- Introduce measures to assist companies seeking to achieve greater efficiency such as:
 - zero inventory
 - just in time program
 - other related programs.