

# **APEC GROUP ON SERVICES**

*MENU OF OPTIONS FOR  
VOLUNTARY LIBERALIZATION, FACILITATION AND  
PROMOTION OF ECONOMIC AND TECHNICAL  
COOPERATION IN  
SERVICES TRADE AND INVESTMENT*

**20 AUGUST 2001**

## **Background**

The *Menu of Options for Voluntary Liberalization, Facilitation and Promotion of Economic and Technical Cooperation in Services Trade and Investment* is designed to advance the core objective of the APEC Group on Services, that is to foster the liberalization and facilitation of services trade and investment, along with the promotion of capacity building in the services and investment areas. The major purposes served by the *Menu of Options* are as follows:

- i. to provide an organizational framework for the work of the GOS on services;
- ii. to set out an indicative list of measures to assist APEC members in understanding what types of measures they may wish to include in their Individual Action Plans; and
- iii. to assist in the discussion of how APEC member economies may achieve free and open services trade and investment.

The *Menu of Options* is structured according to the three pillars of APEC: trade liberalization; trade facilitation; and economic and technical cooperation (ECOTECH). It has been developed according to the guidelines set out in Annex I.

This document represents an extension and further development of the Prototype *Menu of Options* agreed by the APEC Group on Services (GOS) as one of its deliverables for the year 2000, through the inclusion of a summary of the discussions and main points of consensus of the GOS achieved during its work on the *Menu of Options* for the year 2001. The document is structured using the Prototype *Menu of Options* as its basis. It first describes in a non-legal manner the ideal situation with respect to the twelve components of the three pillars of the *Menu of Options*, then provides brief information to put the various components in context, followed by an illustrative list of measures relevant to each component. The main points of the discussion by the GOS for each component are then summarized, and the consensus reached during the discussion is indicated.

The discussion of the twelve components of the *Menu of Options* during Phase II was carried out on the basis of issue papers listed in Annex II to this document. The issue papers were elaborated with the following objectives:

- i. To further elaborate on the ideal situation for each component as defined under the Prototype document for development of the *Menu of Options*;
- ii. To provide further understanding of the background of the issues and a brief discussion of how the issues have been carried out in practice;
- iii. To discuss in more detail the illustrative list of measures for each component, from the point of view of the costs and benefits that would be involved in bringing the measures closer to the ideal situation.

Further work on the *Menu of Options for Voluntary Liberalization, Facilitation and Promotion of Economic and Technical Cooperation in Services Trade and Investment* will take place during Phase III (year 2002). This work will focus on building human resource capacity in selected key components of the three pillars of the Menu agreed by members of the GOS.

## **I. TRADE LIBERALIZATION**

### **A. Most-Favored-Nation (MFN) Treatment**

#### ***Ideal Situation***

Most-Favored-Nation treatment applying to all services and to all services providers without any exceptions.

#### ***Background***

Most-favored-nation (MFN) treatment is the cornerstone of an open international trading system. MFN means that all trading partners – whether rich or poor, weak or strong<sup>1</sup> -- are obliged to provide all services and services providers with the same treatment as that provided to their most favorable trading partner, and this on a non-discriminatory basis. Under GATS, if a WTO member allows foreign competition in a sector, it must accord to services and service providers of any other member treatment no less favorable than that it accords to like services or service providers from any other member. Due consideration should be given to the conditions under which APEC member economies can achieve the “Ideal Situation” for MFN treatment, particularly in light of the growing number of preferential regional trading agreements.

#### ***Illustrative List of Measures Affecting MFN***

- preferences deriving from bilateral/regional preferential agreements,
- mutual recognition agreements for qualification and certificates,

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<sup>1</sup> Service providers mean any person who provides services. Local branches or representative offices who supply services are also defined as service providers.

<sup>2</sup> GATS (Article I) defines four modes of service supply: mode (1) cross-border trade; mode (2) consumption abroad; mode (3) commercial presence; and mode (4) presence of natural persons.

- reciprocity requirements, such as those for prudential measures;
- bilateral agreements for the entry of workers.

***Main points of GOS discussion on MFN Treatment***

***a. Unconditional and universal MFN obligation***

The GATS obliges a WTO member to treat other members no less favorably than the treatment accorded to like services and services suppliers of any other member. MFN treatment covers all services sectors and services suppliers (except most air transport services). This is a principle of general application under the GATS.

***b. MFN exemptions under GATS***

The GATS Annex II on MFN exemptions allows WTO members to list service sectors and measures that are exempted from unconditional and universal MFN treatment on a one-time basis. In principle, such exemptions should not exceed a period of ten years.

***c. Grandfathering measures***

Grandfathering measures and their relationship to the MFN principle were discussed. Grandfathering may indicate that the country is not yet ready to bind in the WTO the relatively liberal treatment it has provided to current market participants. It certainly could be viewed as a step backwards if that country made a binding in the WTO that is less liberal than its current regime, and then forced existing participants down to that lower, bound level. This approach would not appear to be in line with the “progressive liberalization” mandate of the GATS.

***d. Economic needs tests***

Economic needs tests may be carried out in practice in such a way as to allow service suppliers from different WTO members access to the national market on different terms and thus may be inconsistent with MFN and/or national treatment.

***e. Economic integration agreements***

These preferential agreements are departures from the MFN principle. Theoretically, when a preferential agreement covers substantially all trade in services and all modes of supply, the amount of trade created should be greater than the amount of trade lost. On this basis, GATS Article V stipulates conditions with which economic integration agreements must comply. However, countries have disagreed on the practical meaning of several key criteria in the article. All economic integration agreements should be notified to WTO; in practice, however, the number of notifications has been extremely low.

### ***Areas of GOS consensus on MFN Treatment***

#### ***a. Evolving nature of the GATS Agreement***

The GATS is a very young agreement, still in the process of being developed and perfected. It is important in this context that attention be paid to the type of reforms that would make it more effective, particularly through a stronger application of MFN and national treatment.

#### ***b. Unconditional and universal application of MFN***

It would be desirable to apply the MFN principle on an unconditional and universal basis, taking into account that there are instances in which MFN exemptions are allowed to provide flexibility to address concerns unrelated to trade.

#### ***c. Removal of MFN exemptions***

Consistent with the above, the existing lists of MFN exemptions under the GATS should be reviewed and eliminated to the greatest extent possible.

## **B. National Treatment**

### ***Ideal Situation***

No discrimination applied in treatment as between foreign services and service providers and domestic services and service providers on either a *de jure* or a *de facto* basis, and this without any exceptions.

### ***Background***

National treatment is a principle that requires that no discrimination be provided as between foreigners and nationals. In services, it means that foreign services and service providers are not discriminated against in fact or in law compared to domestic services providers who provide essentially the same service. The main objective is to ensure that foreign service providers and their services can compete on equivalent terms with domestic providers. [Note: In GATS, national treatment for services trade only applies to the extent a WTO member has made a specific commitment for a particular service sector. This contrasts with the way the national treatment principle is applied in the GATT for goods – once a product has crossed a border and been cleared by customs officials it must be given national treatment even if the importing member has not made any commitment to bind the tariff rate.]

Due consideration should be given to the conditions under which APEC member economies can achieve the “Ideal Situation” for national treatment, thereby facilitating effective competition in domestic markets.

### ***Illustrative List of Measures Affecting National Treatment***

- Economic needs tests if applied discriminatorily,
- Restrictions on temporary entry of natural and business persons,
- restrictions on the nationality of staff ,
- discriminatory charges for awarding licenses,
- government discrimination in awarding contracts,
- technology transfer requirements,

- restrictions on the use of foreign names or trademarks,
- restrictions on the sending of remittances abroad by foreigners,
- restrictions on the number of foreigners on boards of directors,
- restrictions on the advertising of services offered by foreigners,
- restrictions on access to transport and communications,
- currency exchange restrictions,
- restrictions on procurement of foreign products or services,
- tariffs imposed only on foreign firms,
- obligatory waiting and practice periods for foreigners,
- concession requirements for data processed abroad,
- restrictions on international data exchange,
- restrictions on imports of equipment,
- limitations on the type of services that foreigners can supply
- discriminatory subsidies for local firms/institutions,
- existence of cross-subsidies,
- discriminatory licensing, standards and qualification requirements,
- discriminatory access to travel passes and financial assistance,
- additional qualifications test,
- requirement to enroll in national associations
- discriminatory and/or arbitrary registration requirements,
- requirement to obtain legal or permanent residency in order to practice a service profession,
- performance requirements (local content and training requirements),
- legal representation requirements,
- local education requirements,
- language requirements,
- authorization requirements
- unreasonable or excessively costly network access fees applied to foreign service providers,

### ***Main points of GOS discussion on National Treatment***

#### ***a. National treatment obligation***

While the GATT applies to cross-border trade but not to investment in manufacturing, the GATS applies to cross-border trade and investment in services. In this sense, the GATS definition of national treatment applies on a broader basis than under the GATT. National treatment under the GATS is a specific, not a general obligation and is limited to those sectors included in national schedules.



***b. Overlap between national treatment and market access limitations***

In the GATS scheduling convention, discriminatory market access measures are often covered by national treatment as well.

***c. Confusion in scheduling rule***

GATS Article XX:2 requires measures inconsistent with both national treatment and market access to be inscribed in the market access column. This rule creates confusion and makes the schedules difficult to interpret. At present it is impossible to ascertain whether measures in the market access column are discriminatory or non-discriminatory.

***Areas of GOS consensus on National Treatment***

***a. Move towards general national treatment obligation***

It would be desirable for the GATS to move towards a situation where national treatment would be a general obligation, universally applicable, except for cases where exceptions are otherwise indicated.

***b. “Status quo” binding would be desirable***

It would likewise be desirable for commitments made under national treatment to be bound at “status quo”, or at the level of actual practice, in order to increase effectiveness of national treatment.

***c. Scheduling overlap should be clarified***

It would be desirable to clarify which measures listed under market access in the GATS schedules are also inconsistent with national treatment. When measures inconsistent with both GATS Articles XVI and XVII are inscribed in the column relating to Article XVI (as provided for in Article XX:2), members could indicate that this is the case (e.g. by stating “also limits national treatment” in the market access column) as recommended in the new scheduling guidelines adopted by the GATS Council for Trade in Services on 23 March 2001.

*d. Provision of more information*

Providing more details in the GATS schedules of commitments under national treatment on the difference between the included measures and the situation of actual practice would help to bring about greater transparency.

## **C. Market Access**

### ***Ideal Situation***

Domestic market which is contestable for a given service activity, without entry or exit barriers and with appropriate regulatory structures in place.

### ***Background***

Market access refers to the absence of entry barriers and/or special requirements related to the ability of service providers to sell their services to domestic consumers with respect to all modes of supply.<sup>2</sup> Its main characteristic is the easy ability for service providers to enter and participate in a given economic activity. Effective market access means that the ability of a service supplier to provide a given service is not undermined by the regulatory structure.

### ***Illustrative List of Measures Affecting Market Access***

- economic needs test, if applied discriminatorily
- quantitative restrictions on service provision (licensing or cross-border),
- restrictions on type of legal entity,
- limitations on the purchase of real estate,
- restrictions on capital participation,
- commercial presence requirements,
- requirement to work in partnership with local firms,
- government approval requirements,
- price controls,
- requirement for authorization by local authorities,

- restrictions on the total value of transactions and assets,
- excessively restrictive regulations on consumer protection, health and safety,
- access for natural persons only,
- restrictions on the movement of foreign professional, technical and administrative personnel
- prohibition of permanent establishment,
- obligation of permanent establishment to provide cross-border services,
- ban on data transmission by foreigners,
- ban on import of materials by foreigners,
- ban on advertising by foreigners,
- screening quotas for foreign investors and service suppliers,
- censorship bodies to scan services on basis of cultural/social criteria
- domestic content restrictions,
- anticompetitive exercise of monopoly power to impede market access

Note: Many of the measures included in the section on National Treatment are also relevant to Market Access.

### ***Main points of GOS discussion on Market Access***

#### ***a. Characterizing barriers to services trade***

Market access may be impeded by barriers of either a discriminatory or a non-discriminatory nature. Adequate transparency disciplines can expose non-transparent barriers in national regulations or in administrative practices.

#### ***b. Distinction between discriminatory and non-discriminatory measures***

Discriminatory barriers to services trade may be eliminated through the lifting of quantitative restrictions affecting foreign service suppliers (of the type set out in GATS Article XVI) or the removal of other elements of discriminatory treatment contained in national regulations. Non-discriminatory measures may be reduced or eliminated through regulatory reform (GATS Article VI) and the appropriate application of competition policy and law (GATS Articles IX and X). Improved transparency would provide service suppliers with the information necessary to evaluate their ability to access and operate in foreign markets, creating conditions for more efficient markets and an attractive environment for investment and

economic growth.

*c. GATS approach to market access*

--Defines services according to four modes of supply

--Obliges WTO Members to progressively reduce or eliminate barriers to market access

--Encourages WTO Members to schedule market access and national treatment commitments

--Provides WTO Members with regulatory autonomy to ensure policy objectives within the parameters of their GATS commitments

--Provides flexibility for scheduling commitments by service sub-sectors and by modes of supply

*d. Different approaches to liberalizing market access*

The GATS adopts a positive list approach to liberalizing market access, to be carried out on a progressive basis through the scheduling of increasing numbers of commitments; some regional agreements adopt a negative list approach that enhances transparency for service providers through the obligation to list all non-conforming and quantitative measures in the annexes (CER; NAFTA; Chile-Canada; Chile-Mexico)

*e. Benefits from liberalizing market access for services*

--Better quality of services

--More efficient inputs/ infrastructure for production and exports

--Better access and incentives for education and technological innovation

*Areas of GOS consensus on Market Access*

*a. Maintain a broad definition for market access*

The definition of market access should be maintained in a broad manner, to cover discriminatory measures as well as nondiscriminatory ones.

*b. Need for greater transparency in GATS schedules*

GATS needs to have better transparency in the schedules as they are difficult to read and interpret for several reasons (i.e. scheduling technique – overlap between market access and national treatment columns, measures not bound at level of practice, and little information provided to explain content of included measures).

*c. More market access at the regional level*

It would be desirable to achieve greater market access for service providers within the APEC region. Some regional trading arrangements have been able to do this and to go beyond the GATS. For example, ANZCERTA and NAFTA, for instance, oblige parties to the agreements to open all service sectors included within the scope to other members, unless the parties list non-conforming measures in the lists of reservations.

## **D. DEREGULATION/ PRIVATIZATION**

### ***Ideal Situation***

Deregulation, often involving privatization, accompanied by increased liberalization and strong enforcement of competition law and policy, with an independent, market-oriented regulatory framework, and based on transparent criteria.

### ***Background***

Deregulation involves the removal of excessive and outdated regulations along with the introduction of an appropriate market-based, efficient regulatory structure.

Deregulation is often, but not always, accompanied by privatization. Privatization involves the transfer of ownership of economic activity and business enterprises from the state to the private sector. The process of deregulation/ privatization, when accompanied by liberalization, introduces the possibility of market access for other domestic and foreign service suppliers.

To be effective, privatization of state-owned enterprises must be accompanied by the introduction of competition so as to enhance economic efficiency and promote consumer welfare. Privatization procedures are best made publicly available, should accord with national treatment and most-favored-nation treatment, and should be transparent. Besides objectives of increased competition and market access, other relevant objectives of deregulation/ privatization may include the pursuance of specific national policy objectives.

***Illustrative List of Measures Affecting Deregulation/ Privatization***

- Limitation on international competition,
- Limitation on the number of new entrants,
- Regulation favoring incumbents,
- Non-transparency of the privatization procedures,
- Monitoring problems of privatized enterprises.

***Main points of GOS discussion on Deregulation/ Privatization***

***a. Cost of regulation***

Regulation may bring more costs than benefits. It is important that the costs of regulation be assessed and a cost/benefit analysis undertaken for any change in an existing regulation or the introduction of a new regulation. This may be done through a “regulatory impact analysis”.

***b. Effectiveness of deregulation***

The effectiveness of deregulation, which consists of the relaxation of government's restrictions on market entry and exit as well as on the firm's conduct, is enhanced through the reform of inefficient regulations, the introduction of actual and potential competition, and the dissipation of rent seeking behavior through unregulated competition.

*c. Privatization to accompany deregulation*

Privatization is the transfer of ownership to the private sector of state owned enterprises (SOEs). The sequential introduction of privatization followed by deregulation and liberalization strengthens competition and enhances efficiency.

*d. Regulatory evaluation process*

A regulatory evaluation process, where feasible, to examine regulations is a good means to enhance the effectiveness of regulatory policies. The process should be transparent.

*Areas of GOS consensus on Deregulation/ Privatization*

*a. Assessment of the costs and benefits of regulation*

As the cost of regulation may be higher than benefit derived from it, an assessment should be made of new and changed regulatory measures. This should be carried out through a "regulatory impact analysis".

*b. Creation of a competitive market*

Deregulation/privatization should be accompanied by the introduction of competition, maintained through an effective enforcement of competition policy and/or laws.

*c. Transparency*

It is important to ensure transparency throughout the regulatory reform process.

*d. Sequencing of reforms*

The question of the sequencing of economic and regulatory reforms is an important one and should be determined in the context of each given situation and desired objective.



## **II. TRADE FACILITATION**

### **A. Transparency**

#### ***Ideal Situation***

To make all laws, regulations, procedures, and other measures, which affect trade in services, publicly available.

#### ***Background***

Transparency means making full, clear and accurate information available about the nature and scope of all legal, regulatory and prescriptive measures that have a positive or negative effect on foreign services or foreign service providers. Member economies should make all measures (new and amended ones, including those in international agreements) affecting trade in services publicly available in a timely fashion. In order to disseminate information to service providers upon request, member economies should establish information centers which should be composed of experts on the relevant laws and regulations. Web sites providing information on such laws and regulations increase transparency as well. Transparency is critical in order to facilitate services trade as most barriers to services trade are in the form of domestic laws, regulations and procedures.

#### ***Illustrative List of Measures to Promote Transparency***

- Publication of all laws, regulations, procedures, and other measures affecting trade in services,
- Notification of all such relevant laws, regulations, and procedures (new or amended),
- Establishment of one or more inquiry points to provide specific information to other trading partners on measures affecting trade in services,
- Endeavour to ensure that information on all measures affecting trade in services is made publicly available, such as through web site posting.

### ***Main points of GOS discussion on Transparency***

#### ***a. Definition of transparency***

Transparency involves making full, clear and accurate information available about the nature and scope of all legal, regulatory and prescriptive measures, current and proposed, that have a positive or negative effect on foreign services, foreign service providers, consumers and other concerned parties.

#### ***b. Role of transparency***

- Enhance services trade
- Ensure economic efficiency and good governance
- Foster fair competition
- Promote rules-based approach to trade policy at national level
- Facilitate monitoring compliance with trade obligations
- Provide information to services providers

#### ***c. Transparency obligations under the GATS***

- Obligation to publish, or at least make publicly available at the national level, all relevant laws, regulations, and administrative requirements.
- Obligation to notify various forms of governmental action to the WTO
- Establishment of enquiry points for the provision of information
- Establishment of contact points by developed country WTO members to provide information concerning commercial and technical aspects of the supply of services, information on professional qualifications, and on the availability of services technology

#### ***d. Electronic publication***

One suggestion for the improvement of transparency is to make available domestic laws, regulations, and administrative procedures on official or governmental web sites for easily accessible access.

*e. Central registry for regulations*

Another suggestion for the improvement of transparency is to develop a central registry system to act as a coordinating point and/or repository for all laws and regulations affecting services trade that would be interactive and coordinate with official or governmental enquiry points and would assist in providing information to all interested parties.

*Areas of GOS consensus on Transparency*

*a. Current multilateral obligations for transparency quite weak*

The obligations with respect to transparency under the GATS are weak and do not provide for information to be provided or accessible to service providers in a timely and efficient manner.

*b. More timely and complete notification desirable*

More timely notification of new or amended measures affecting services trade (within three months time prior to their entry into force) could be targeted in order to facilitate information to services providers and other interested parties. The publication of the explanation or the rationale behind such measures would be helpful in promoting informed comments and public understanding and in avoiding services trade disputes.

*c. Possibility for prior comment desirable*

It would be desirable to allow for prior comment through the creation of a prior consultation mechanism. This would benefit services providers and other interested parties by allowing regulators to be better informed about the potential impacts of their policies and approaches on the different market participants.

*d. Current enquiry point system not functioning well*

The current enquiry point system under the GATS is little consulted, and is not intended for use by private service providers. Additionally, one single enquiry point cannot capture the broad-based nature of service activity. Thus greater transparency through an improved mechanism is highly desirable.

*e. Electronic publication*

It would be desirable to make available domestic laws, regulations, and administrative procedures on official or governmental web sites.

*f. Transparency being promoted by the APEC process*

The diligent completion of the information required on services in the electronic IAP format within APEC will go a long ways towards providing greater transparency for the services area for APEC member economies

## **B. Domestic Regulation**

### ***Ideal Situation***

Domestic regulations that do not impede services trade and are not be overly burdensome to economies or more restrictive than necessary. Domestic regulations that are based on objective and transparent criteria.

### ***Background***

Domestic regulations fall into three categories: economic regulations; social regulations; and administrative regulations (“red tape”). These are designed to correct market failures, to protect areas of public interest such as health, safety and the

environment, and to collect information. However, they may constitute a significant means of impeding services trade, particularly when they are not administered in a reasonable, transparent, objective and impartial manner, or when they are carried out by non-independent regulatory agencies/ institutions. Qualification requirements and procedures, technical standards and licensing requirements are examples of possible barriers to trade in services. In designing disciplines for domestic regulation, it is important to ensure that domestic measures do not unduly restrict services trade and that they not be overly burdensome to economies. Such disciplines should be based on objective and transparent criteria.

#### ***Illustrative List of Measures to Facilitate Good Regulatory Practices***

- Establishment of independent regulatory agencies,
- Regulations that promote competition, fulfill prudential objectives, and improve services quality,
- Regulations that are based on transparent and objective criteria,
- Regulations that are not more burdensome than necessary to fulfill legitimate objectives and that do not themselves constitute a restriction to the supply of a service.

#### ***Main points of GOS discussion on Domestic Regulation***

##### ***a. Objectives of domestic regulation for services***

Domestic regulation in the services area is the response of government to problems of market failure. These problems are generally of three types and can be described as: lack of information on the characteristics of the service sector as between consumers and producers (the case of financial or professional services); the presence and/or tendency of a service sector toward natural monopoly (the case of network services like transport or telecommunications); or the presence of negative externalities (the case of environmental services).

***b. Costs of regulation***

Regulations impose costs, including those involved in operating the system as well as any distortions introduced on innovation or competition. Thus the costs of regulations must be weighed against the benefits they bring.

***c. Benefits of regulation***

Appropriate regulation should avoid impacts of market failure. Good regulation respects the legitimacy of government intervention in the case of market failure but recognizes the risk of impeding trade and investment. In certain cases no regulation may also be the most appropriate choice.

***d. Fundamentals of good regulation***

Good regulation respects the legitimacy of government intervention but tries to minimize any potential trade-impeding effects. Contributions to a ‘good regulatory’ outcome are i) regulatory review process; and ii) construction of horizontal disciplines.

***e. Domestic regulation under the GATS***

Disciplines on domestic regulation are in the process of being developed in the context of Article VI:4 of the GATS. The main concepts being discussed at the multilateral level include necessity, transparency, use of international standards, and the equivalence of licenses and qualifications. Issues remain about the coverage of this provision. In this context, a wider rather than a narrower scope would be valuable.

***Areas of GOS consensus on Domestic Regulation***

***a. Need for improvement of regulatory practices***

It is important to improve the quality of domestic regulation in the services area. For this purpose, it would be helpful to obtain basic information on regulatory regimes and on the techniques that may be used to evaluate regulatory performance.

*b. Analysis of regulatory impact*

Regulatory impact analysis (RIA) is important in developing good regulations. The conduct of RIAs may be carried out by an independent body or by respective government authorities, whichever is more appropriate for member economies. When adopting new regulations or modifying existing ones that have an important impact on its economy, an analysis of regulatory impact should be undertaken. Rigorous regulatory impact analysis would help to clarify the concepts being discussed in the context of GATS Article VI:4, namely terms such as ‘least trade restrictive’ and ‘not more burdensome than necessary’.

*c. International standards*

When performing cost-benefit analysis of domestic regulations, one may adopt relevant international standards.

*d. “Good regulatory practices”*

“Good regulatory practices” should be developed, taking into account the existing analyses and experience obtained from the national regulatory impact assessments as well as what has been done in other APEC fora such as the SCSC. It would be helpful to do this in the APEC regional setting in order to benefit from collective experience.

*e. Horizontal principles*

A horizontal approach for the development of principles within APEC for transparency/domestic regulation for services would have the advantage of economizing negotiating effort, reducing the possibility of regulatory capture, and achieving a broader coverage.

*f. Capacity building and future work*

In order to assist in the understanding of what is “good regulatory practice”, capacity building should be promoted within APEC. Future work includes how to make the concepts of “good regulation” operational. Here capacity building has a key role to play. The Menu of Options, Phase III, will carry out capacity building in the context of good regulation and regulatory impact analysis by means of holding two workshops in 2002. The first workshop will be devoted to exploring the criteria of good regulation and the advantages and/or disadvantages of horizontal vs. sectoral disciplines on domestic regulation. The second workshop will consist of a practical exercise involving the development of guidelines on regulatory impact analysis.

**C. Recognition**

***Ideal Situation***

Recognition of diplomas, qualification, licenses and certificates obtained in other economies on the basis of clear and objective criteria.

***Background***

Recognition is one of the most important means to enhance and facilitate services trade. The non-acceptance of foreign diplomas, qualifications, licenses and certificates impedes the mobility of natural persons. When an APEC economy recognizes the education, experience, training, licenses and certificates of a foreign service supplier obtained abroad through accepting the standards or criteria of another trading partner as equivalent to its own, this serves to facilitate services trade through allowing the mobility of professional service suppliers. Such recognition may be based upon mutual



recognition agreements or arrangements (MRAs) between the economies concerned or may be accorded autonomously.

***Illustrative List of Measures to Promote Mutual Recognition***

- Working toward established international mutual recognition guidelines in specific service sectors,
- Opening MRA negotiations to other interested member economies,
- Development of objective criteria for regulations to facilitate mutual recognition,
- Publication of existing/new/amended recognition measures,
- Preparation of inventories on national services regulations,
- Establishment of a program in which the APEC member economies could develop mutual recognition processes in specific service sectors.

***Main points of GOS discussion on Recognition***

***a. Definition of recognition***

Recognition means acceptance of the equivalence or compatibility of qualifications, training, and/or diplomas/titles for specific service activities granted within another economy's regulatory system.

***b. Favorable environment for MRAs***

MRAs are more likely to be achieved between economies at comparable levels of economic developments and between economies that share commonalities in the form of educational, legal, and regulatory structures.

***c. Conclusion of MRAs***

MRAs containing recognition disciplines may be concluded bilaterally or plurilaterally between economies or may be accorded autonomously. They may be concluded at the level of governments or by non-governmental professional bodies such as trade associations.

*d. Sub-regional agreements and recognition*

Members of sub-regional agreements (SRAs) have been more pro-active in the area of developing recognition agreements than has been the case at the multilateral level, and have encouraged or even mandated such arrangements.

*e. Approaches to MRAs*

The ‘governmental’ approach assigns a prominent role to government or regional institutions in initiating and driving the process of recognition. The ‘non-governmental’ approach leaves most of the MRA process to non-governmental bodies. SRAs have on the whole opted for the ‘bottom-up’ approach to recognition.

*f. Benefits of MRAs*

MRAs can facilitate trade through mutual trust, enhancement of mobility of professional skills, improvement of quality and uniformity of domestic regulatory measures and of foreign professional and educational training.

*Areas of GOS consensus on Recognition*

*a. Importance of recognition in services trade*

Recognition of equivalence of foreign standards can provide solutions to overcoming regulatory barriers in the services area, such as licensing and qualification requirements and technical standards. However, analogies to use of conformity assessments for goods may not be appropriate.

*b. MRAs reached by professional bodies*

MRAs concluded between authorized professional bodies can be equally as effective as those concluded between governmental bodies.

## **D. Competition policies/laws**

### ***Ideal Situation***

A contestable economic environment that induces business investment, technological innovation and long-term economic growth.

### ***Background***

Competition policies/laws go beyond the market access principle and comprise the set of measures and instruments used by governments to promote and protect the “conditions of competition” in domestic and international markets. Important elements of competition policies/laws include antitrust laws (e.g., to sanction cartels and anticompetitive mergers and monopolies), privatization, deregulation, and policy with respect to subsidies. The main objective of competition policies/laws is to safeguard the competitive process, in order to enhance efficiency and increase consumer welfare.

### ***Illustrative List of Policies to Enhance Competitive Markets***

- Measures to facilitate domestic entry and exit,
- Deregulation of sectors,
- Imposition of hard budget constraints on public enterprises,
- Deregulation/ privatization and encouragement of both domestic and foreign investment,
- Reliance on market forces to determine the allocation of productive resources,
- Observation of transparency and objective criteria,
- Development of laws and independent institutions to implement and enforce competition frameworks,
- Review of regulations in order to promote competition on the basis of efficiency and innovation to sectors and networks.

## ***Main points of GOS discussion on Competition Policies/Laws***

### ***a. APEC Competition Principles***

The “APEC Principles to Enhance Competition and Regulatory Reform” set out as their objective the promotion of merit-based business competition through four elements, namely: i) comprehensiveness; ii) non-discrimination; iii) transparency; and iv) accountability.

### ***b. Features of the APEC Principles to Enhance Competition and Regulatory Reform***

--Flexibility: the principles do not advocate adoption of a particular form or framework of competition at the national level and may draw upon various elements, such as competition law, open trade policy, IPR protection, and privatization. Such a framework can differ from economy to economy.

-- Coherence: the APEC Principles to Enhance Competition and Regulatory Reform advocate coherence in policy making.

--Market-based: the principles are based on rules of market economy.

--Broad application: The principles have broad application to economic activities and to the output of both goods and services.

### ***c. Application of the APEC Principles to Enhance Competition and Regulatory Reform to services***

-- Comprehensiveness: broad application in terms of all service sectors

-- Non-discrimination: Application of competition and regulatory principles in a manner that does not discriminate between or among economic entities in like circumstances, whether these entities are foreign or domestic.

-- Transparency: publication of competition laws, regulations and other non-confidential measures related to aspects of competition policy.

-- Accountability: ensuring implementation of the APEC Principles to Enhance Competition and Regulatory Reform.

***d. Competition provisions for services in the GATS***

GATS contains only limited provisions on competition *per se*. Such provisions can also be found in the Reference Paper of the Agreement of Basic Telecommunications which has been adopted by some but not all WTO members.

***e. Costs and benefits of competition policies***

-- Benefits from competition policy can be realized through: (i) improved resource allocation and greater consumer welfare, (ii) the promotion of contestable markets; and iii) the enhancement of efficiency.

-- Costs from competition policy can be present in the form of: (i) transitory unemployment; and ii) absorption of specialized and human resources.

***Areas of GOS consensus on Competition policies/Laws***

***a. Broad application***

Competition principles apply in a broad-based way to economic activities including both goods and services.

***b. Importance of benefits of competition policy***

The benefits to be had from competition policy are important, and the lack of competition policy for an economy can carry high costs.

***c. Principles-based approach***

A general, principles-based approach to competition policy fits well with the need for flexibility. Such principles are instrumental in forming national policies that advance consumer welfare. Efficiency and optimum allocation of resources need to be high priorities for policy makers.

***d. Establishment of independent competition policy body***

Establishing an independent competition policy body assures impartiality in decision-making. The ability to do so is related to ECOTECH and the need for institutional capacity building.

*e. Regulatory Impact Analysis (RIA)*

The consideration of how to conduct a Regulatory Impact Analysis (RIA) is a good way to begin implementing the “APEC Competition Principles” and is related to the discussion of what is “good” domestic regulation.

## **E. Application of Electronic Technology and Simplification of Customs and Other Administrative Procedures**

### ***Ideal Situation***

Elimination of customs and other administrative procedures no longer needed, and streamlining and simplifying those procedures by adopting electronic technology.

### ***Background***

Services trade can be more complicated than trade in goods as it can be conducted through more than one mode of supply, often simultaneous, and because it is so directly linked to domestic regulations and administrative procedures. Both adopting appropriate domestic regulations and simplifying administrative procedures can facilitate services trade. Other initiatives, such as establishing a centralized place for information on investment, introducing electronic technology where appropriate, and reducing duplication of document requirements by different competent authorities, are also very useful means to facilitate services trade. Customs regulations and standards may act as barriers to services trade as well. The more simplified are these measures, the more services trade can be enhanced.

***Illustrative List of Measures to Promote Application of Electronic Technology and Simplification of Customs and Other Administrative Procedures***

- Creation of one-stop center for information on investment,
- Streamlining red-tape procedures,
- Elimination of customs and administrative procedures no longer needed,
- Adoption of on-line system for administrative procedures.

***Main points of GOS discussion on Application of Electronic Technology and Simplification of Customs and Other Administrative Procedures***

***a. Definition of administrative barriers***

Administrative barriers to trade can apply to both goods and services. Customs and administrative procedures, covering goods, immigration, and business mobility or presence of natural persons are also important to transportation and logistic services.

***b. Need to reduce administrative barriers to trade***

The business impact of administrative barriers to trade is considerable but is hard to measure quantitatively. A number of studies have been done whose results vary depending on the bases used.

***c. Agreements on customs and administrative procedures***

Measures on customs and administrative procedures can be found in various multilateral agreements. Multilateral and regional bodies have made efforts to set forth modern customs procedures and administration. The best example is the recently revised Kyoto Convention.

***d. Application of electronic technology***

E-technology can facilitate trade in services, particularly distribution, transportation and logistics services. It benefits cross-border trade and foreign direct investment (FDI) through the publication of laws and regulations electronically. It creates electronic databases and automatic, on-line payment of duties and taxes as well as procurement methods and procedures.

*e. Requirements for modernization of customs/ administrative procedures*

The role of governments is important in the electronic modernization of customs and other administrative procedures. There exist some critical factors in carrying out such modernization, namely partnership between governments and business, adequate infrastructure and funds, and inter-governmental coordination. Perhaps most important, though, is governments having the political will to undertake the necessary steps to change on-going practices. The means to electronic modernization would be through the widespread use of electronic technology and the internet, application of best customs practices and creation/ improvement of required infrastructure.

*Areas of GOS Consensus on Application of Electronic Technology and Simplification of Customs and Other Administrative Procedures*

*a. Broad definition of administrative barriers*

The definition of administrative barriers to trade applies to goods and services.

*b. Electronic modernization of administrative systems*

E-commerce based initiatives for administrative systems will benefit small and medium-sized enterprises (SMEs) which will reap important benefits. However, at early stages of development and use of e-means, SMEs may have funding and expertise shortage problems.

*c. Role of governments*



While development of e-technology involves large amounts of physical investment and human expertise, increasing the costs of automation have dropped with the onset of open systems and off-the-shelf technology. It is important to foster a mindset of increased efficiency for important governmental functions such as customs administration and enforcement.

*d. Gains from standardization of customs and administrative procedures.*

There are considerable gains to be realized from coordinated and standardized customs and administrative procedures.

### **III. ECOTECH**

#### **A. Development of Human Resources**

Technological development is desperately needed in developing economies. Such development can be facilitated, particularly through human capacity building. APEC should discuss how such capacity could be built in developing economies, and what assistance should be provided.

##### *Illustrative List of Measures*

- Training courses
- Seminars
- Dispatching experts

#### **B. Technical Assistance for the Promotion of Advanced Technologies**

The need for technology is critical for industries in developing economies. From this point of view, APEC should consider ways to assist the development, promotion and diffusion of technologies necessary for the provision of advanced services.

##### *Illustrative List of Technical Assistance Measures*

- Transfer of technology
- Issues related to the ownership of technology
- Relations between
  - a) the development and commercialization of new technology and
  - b) the existence of sizeable markets
- Importance of education in the field of science and technology

***Main points of GOS discussion on Development of Human Resources and Promotion of Advanced Technologies***

***a. Role of ECOTECH***

ECOTECH is a means of working to reduce disparities in intra-regional development and of facilitating progress toward achievement of the Bogor Goals.

***b. Examples of ECOTECH***

Examples of ECOTECH are i) improvement of access to information; ii) conducting personnel training and human capacity building; and iii) creating networks and partnerships.

***c. Services trade and importance of ECOTECH***

With the growing importance of services trade in total trade and the high share of employment accounted for by the service sector, ECOTECH takes on great significance, especially in the area of development of human resources.

***d. Development of human resources***

Human resource development could be carried out in various ways such as conducting personnel training and providing technical assistance. The private sector is an essential contributor to this process.

***e. Institutional development***

Institutional development can also facilitate ECOTECH promotion. In this context, governments should focus on creating the proper policy environment and on designing appropriate and efficient institutions.

***Areas of GOS consensus on Development of Human Resources and Promotion of Advanced Technologies***

***a. Definition of ECOTECH***

ECOTECH is a means to enhance the economic policy framework in the APEC region and allow for available resources to be utilized and distributed effectively,

combining policy development and technical cooperation for human resource development and institution-building. The fundamental purpose of ECOTECH in the APEC context is to reinforce trade and investment liberalization and facilitation (TILF) and contribute to progress toward achieving the Bogor Goals.

*b. Importance of human resource development in services trade*

ECOTECH for human resource development is necessary in the area of services in order to enable economies to undertake effective services trade liberalization.

*c. Private sector involvement in ECOTECH*

The private sector is an essential partner with governments in carrying out ECOTECH activities, particularly those related to training and human resource development.

*d. Necessity of appropriate and efficient institutions*

Governments must create the proper policy environment and design appropriate and efficient institutions in order to best foster the ECOTECH objectives.

### **C. Building Infrastructure**

The provision of advanced services necessitates sufficient physical infrastructure, such as in air transportation and telecommunications. Industries in many developing economies have not acquired necessary physical industrial capacity to provide services, particularly advanced services, in the global market. In this regard, APEC should discuss how to give assistance to developing economies to help their industries to acquire such capacity. It may include strengthening of their domestic services capacity, improvement of access to distribution channels and information networks and liberalization in service sectors and modes of supply of export interest to developing countries.

***Illustrative List of Items relevant to help build Infrastructure***

- Identify areas of infrastructure needing strengthening,
- Identify possible measures to help strengthen infrastructure,
- Relations between levels of infrastructure and competitiveness

***Main points of GOS discussion on Building Infrastructure***

***a. Link between infrastructure services and economic development***

The strengthening of infrastructure construction and the improvement of infrastructure services act positively on economic growth and international trade, and contribute to achieving social and economic development goals.

***b. Infrastructure related services sectors***

Building infrastructure is a part of the ECOTECH activities and objectives. Services sectors closely linked to the need for infrastructure are energy, transportation, and telecommunication, all of which are part of the six priority fields for APEC ECOTECH work.

***c. ECOTECH Sub-Committee***

In order to strengthen the treatment of infrastructure issues within APEC, the role of the ECOTECH Sub-Committee, established in 1997, needs to be clarified and reinforced. The role of the APEC Group on Economic Infrastructure in promoting awareness of the importance of infrastructure issues is also important.

***d. Other actions to strengthen infrastructure construction in APEC***

- Infrastructure construction could be carried out in line with trade and investment facilitation activities.
- Diversified sources of financing could be identified.
- Utilization of existing infrastructure facilities could be enhanced.
- Bilateral or plurilateral cooperation within the APEC region could be promoted.

*Areas of GOS consensus on building infrastructure*

*a. Importance of improvement of infrastructure*

Better infrastructure lowers costs and improves efficiency in trade. It also increases competitiveness, expands the possibilities of realizing economies of scale, accelerates economic growth and provides fundamental support to future economic development.

*b. Private sector involvement in infrastructure building*

Private sector involvement is an essential component of infrastructure building, in order to ensure that infrastructure meets the needs of business and that resources are allocated efficiently. A variety of mechanisms and incentives could be developed for this purpose, but a facilitating policy environment that fosters private sector investment in infrastructure is of critical importance.

Note: This document does not attempt to define terms included in the *Menu of Options for Voluntary Liberalization, Facilitation and Promotion of Economic and Technical Cooperation in Services Trade and Investment* from a legal point of view. Therefore, no description contained in the document (in the 'Ideal Situation' boxes or elsewhere), should be taken as constituting a legal text

## ANNEX I

### Guidelines for Development of the *Menu of Options for Voluntary Liberalization, Facilitation and Promotion of Economic and Technical Cooperation in Services Trade and Investment*

The following guidelines were agreed by members of the APEC Group on Services as the basis for the development of the *Menu of Options for Voluntary Liberalization, Facilitation and Promotion of Economic and Technical Cooperation in Services Trade and Investment*. They define the Menu of Options as:

1. A synthesis of GOS work and an organizational framework for GOS work in the future;
2. A product of the GOS;
3. Voluntary in nature and non-binding;
4. Balanced between the three pillars of APEC, which mutually support and reinforce each other;
5. An illustrative listing of measures affecting trade in services;
6. Of a generic nature, not economy-specific or sector-specific;
7. Providing options for APEC members to draw upon for inclusion of actions into their own IAPs;
8. Developing elements that were discussed in depth by GOS members;
9. Contributing to the understanding of issues relevant to the objectives of liberalization and facilitation of trade in services within APEC, and therefore specially tailored in this fashion to address APEC needs;
10. Contributing to advance the work in the services area of the WTO.

## ANNEX II

### Issue Papers on the Components of the *Menu of Options for Voluntary Liberalization, Facilitation and Promotion of Economic and Technical Cooperation in Services Trade and Investment*

Ten issue papers were commissioned from services experts from various APEC member economies during Phase II of the *Menu of Options for Voluntary Liberalization, Facilitation and Promotion of Economic and Technical Cooperation in Services Trade and Investment*. These papers were presented to enhance understanding and stimulate discussion on issues contained in the Menu. The contents of the issue papers represent the views of the authors and do not necessarily reflect the views of the members of the GOS. The issue papers in their revised form can be found at the website of the APEC Group on Services ([www.apecsec.org.sg](http://www.apecsec.org.sg)). The ten issue papers are the following:

- i) *Most-Favoured Nation Treatment (MFN) and National Treatment*, by Malcolm Bosworth
- ii) *Market Access*, by Alejandra Labarca D.
- iii) *Deregulation/Privatization*, by Ramonette Serafica
- iv) *Promoting Transparency in the Services Sector*, by Sherry Stephenson and Soonhwa Yi
- v) *Issues in Domestic Regulation of Services*, by Christopher Findlay and June-Dong Kim
- vi) *Competition Laws and Policies*, by Javier H. Illescas and Kerrin M. Vautier
- vii) *Recognition in the Services Sector*, by Sherry Stephenson and Soohwa Yi
- viii) *Application of Electronic Technology and Simplification of Customs and Other Administrative Procedures*, by Anming Zhang
- ix) *Development of Human Resources and Promotion of Advanced Technologies*, by Motoshige Itoh and Naoki Shimoi
- x) *Building Infrastructure*, by Gong Zhankui and Meng Xia