



**Asia-Pacific
Economic Cooperation**

Survey on Investment Liberalization and Facilitation

Obstacles to FDI in the APEC Economies:

A Study Based on the JMC Firm Survey

APEC Investment Experts Group

APEC Committee on Trade and Investment

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FOREWORD

The continuous growth of Foreign Direct Investment (FDI) inflows and stocks in all APEC economies depends largely on further liberalization and facilitation policies taken by each APEC economy. Despite the substantial liberalization and facilitation of FDI policies, there is still great room for further liberalization and facilitation in APEC economies.

The aims of this survey project are:

- To identify specific issues concerning investment liberalization and facilitation (clarifying investment-related regulations, and so on) to be preferentially addressed in each APEC economy on the basis of the results of surveys conducted by business and industrial organizations in the APEC economies.
- To compare the results of the above surveys with those of other surveys conducted by the WB, IMD and WEF, and to account for the perspectives of foreign-owned companies in APEC economies in order to identify the issues.
- To apply the results of the survey to develop and utilize policy guidelines/frameworks and to implement capacity building projects, and, in particular, to seek to achieve substantive improvement of investment environments in the coming years by providing APEC economies that desire it, with technical cooperation after 2008 in order to remove barriers to the increase of investment.

I believe that the output of this survey project has contributed fully to APEC activities through the presentation of the survey outcomes at the Symposium on Investment Liberalization and Facilitation held in Tokyo, Japan on May 29, 2007.

Moreover, we hope that this report will make a useful contribution to developing and utilizing policy guidelines/frameworks and implementing capacity building projects in order to solve issues related to investment liberalization and facilitation that have been highlighted by the survey.

Finally, I am grateful to Professor Shujiro Urata, Ph.D, Waseda University, Assistant Professor Mitsuyo Ando, Ph.D, Keio University, and Assistant Professor

Kazuyori Ito, University of Shizuoka who have played leading roles in compiling this survey report in the ad hoc study group that was established jointly with members of the private sector to conduct this survey.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke, positioned above the printed name.

Yoshikatsu Seki

Director

Japan Machinery Center for Trade and Investment

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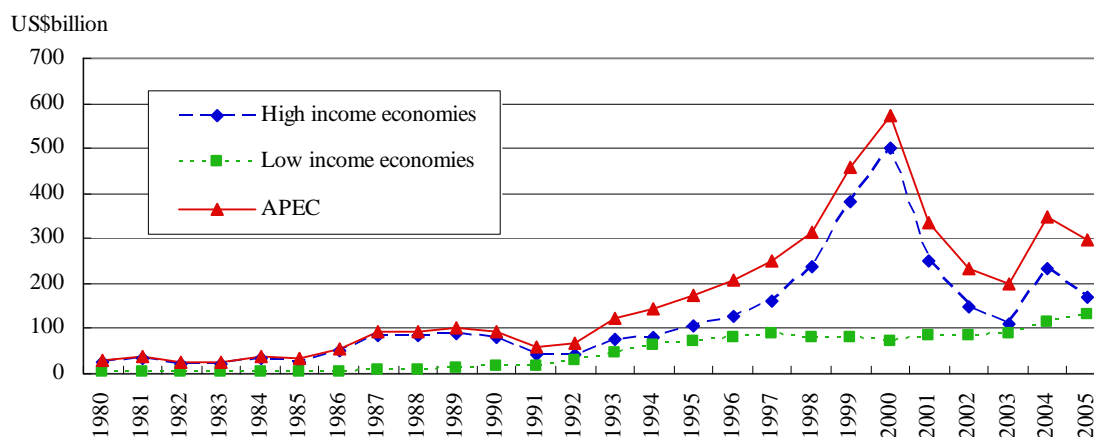
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I. Introduction

Foreign direct investment (FDI) inflows to the APEC economies increased continuously until 2000 before declining sharply in the early 2000s (Figure 1.1). The decline stopped in 2003 and investment began to increase in 2004, but the upward trend was again reversed in 2005. A closer look at the FDI trends reveals that the large fluctuations in the early 2000s are attributable to developments in the high-income economies. FDI inflows to low income economies increased steadily from 1980 through 2005, with one slight decline in the late 1990s that was largely attributable to the financial and economic crisis.

Figure 1.1 FDI Inflows to APEC Economies



Data source: authors' calculation, based on UNCTAD (2007).

Despite notable fluctuations in the early 2000s, it appears reasonable to identify an upward trend in FDI inflows to the APEC economies. The growth of FDI inflows is attributable to several factors. Technological progress and deregulation of communication services have reduced the cost of international communication, facilitating multinational corporations (MNCs) to conduct international business through FDI. Liberalization in FDI policies by many countries also contributed to growth in FDI. Several have studies found that many APEC economies have liberalized their FDI policies since the 1980s. Japan PECC (2002) reported that the degree of restrictions on FDI inflows in many APEC economies declined, by assessing their FDI regimes.

Despite the substantial liberalization of FDI policies, there still remains much

room for further liberalization. In addition, other kinds of impediments to FDI inflows are deterring their growth. A lack of transparency in implementing FDI policies, excessive worker protection, and underdeveloped infrastructure are, for example, viewed as considered as obstacles to FDI by foreign investors. These obstacles are classified as FDI facilitation problems, because they can be effectively dealt with by implementing FDI facilitation measures, such as by making policy enforcement transparent, revising labor laws, and improving infrastructure, and not by FDI liberalization measures.

The objective of this study is to assess the FDI environments in the APEC member economies. We conduct an assessment by evaluating the FDI environment with a focus on the current conditions in the areas of FDI liberalization and FDI facilitation. Our analysis employs the information obtained from MNCs operating in the APEC economies under study by means of a questionnaire survey. Specifically, we use the information on barriers to trade and investment available from the survey compiled by the Japan Machinery Center for Trade and Investment (JMC), (JMC survey hereinafter).¹ One of the problems with using the JMC Survey for analysis of the APEC economies is a lack of information on Japan. To cope with this problem, we employ the information obtained from different sources such as the EU and the United States.

It would be possible to conduct a study by evaluating the policy frameworks, such as the contents of FDI policies and labor laws. We did not take this approach, because such a study may, in our judgment, fail to the true problems/obstacles. It is indeed well known, especially in developing countries, that the existence of a law does not mean that the law is actually enforced.

Many APEC economies are keen on attracting FDI, as they recognize that FDI inflows would bring various benefits to FDI host economies. FDI is likely to promote economic growth, since it not only brings funds for fixed investment, but it also generates employment. FDI also brings in various networks, such as input procurement and output sales networks. Furthermore, FDI is likely to transfer technology and management know-how, which play crucial factors in promoting economic growth.

We hope that this study identifying FDI impediments and providing some propositions for overcoming the impediments will prove for policymakers with a keen interest in attracting FDI. The structure of the study is as follows. Section 2 reviews

¹ See section 3 for the detailed explanation of the JMC survey.

earlier studies/reports that examined FDI environment to set a stage for our analysis of FDI impediments. Section 3 reports and analyzes the results of our survey on FDI impediments, while section 4 examines the obstacles from a legal perspective. More specifically, we examine how and under which legal framework these impediments are dealt with. Section 5 presents some concluding remarks.

2. Classifications of barriers and impediments to FDI and business environment

Various classifications have been adopted to identify barriers and impediments to FDI.² The APEC Committee on Trade and Investment (2003), for instance, uses the following categories as key items for assessing FDI liberalization and facilitation: i. transparency, ii. most-favoured-nation (MFN) treatment, iii. national treatment, iv. repatriation and convertibility, v. entry and sojourn of personnel, vi. taxation, vii. performance requirements, viii. capital exports, ix. investor behavior, x. competition policy, and xi. other measures.³ In the classification of FDI barriers proposed by UNCTAD, 21 types of FDI barriers are classified into three broad categories: i. restrictions on market entry, ii. ownership and control restrictions, and iii. operational restrictions.⁴ Furthermore, an interesting attempt has been made by the APEC Business Advisory Council (ABAC) [ABAC (2006)].⁵ ABAC proposes a checklist called

² Other classifications include those introduced in Section 4. Section 4 also discusses how various international instruments correspond to each of the 10 major issues.

³ APEC member economies are supposed to submit reviews according to this classification. See APEC Committee on Trade and Investment (2003, Annex I) for details of classification.

⁴ Category i consists of bans on foreign investment in certain sectors, quantitative restrictions (e.g. limit of 25 percent foreign ownership in a sector), screening and approval, restrictions on the legal form of foreign entity, minimum capital requirements, conditions on subsequent investment, conditions on location, administration taxes. Similarly, category ii is composed of compulsory joint ventures with domestic investors, limits on the number of foreign board members, government-appointed board members, government approval required for certain decisions, restrictions on foreign shareholders' rights, mandatory transfer of some ownership to locals within a specified time (e.g. 15 years), and category iii is of performance requirements (e.g. export requirements), local content restrictions, restrictions on import of labor, capital and new materials, operational permits or licenses, ceiling on royalties, and restrictions on repatriation on capital and profits. See APEC Economic Committee (2005, pp.10) for UNCTAD classification of FDI barriers.

⁵ See ABAC website for activities of ABAC (<http://www.abaconline.org/v4/>).

“Barriers and Impediments to Foreign Direct Investment (FDI): Checklist and Recommended Policy Response”.⁶ Although the checklist was originally constructed to identify impediments in the financial sector, it has been extended to cover other sectors, including manufacturing. Categories in the checklist consist of the following: i. restrictive conditions of market entry and operation, ii. lack of National Treatment and MFN, iii. restrictions on asset management, iv. lack of transparency, predictability and openness in legal and regulatory regimes, v. weak regulatory and legal infrastructure, vi. capital controls, vii. weak governance, viii. poor property rights protection, and ix. restrictions on the movement of natural persons. While there are some common categories, variety of classifications used by different studies/surveys indicates the abundance and the complexity of FDI barriers that distort investment decisions and prevent investment directly and indirectly.

This section reviews the results of several studies by international organizations and think-tanks that have analyzed the business environment in the APEC economies. Specifically, we take up the following studies: *Doing Business Database* compiled by the World Bank (World Bank, 2007), *Global Competitiveness Report 2006-2007* published by the World Economic Forum (World Economic Forum, 2006), and *IMD World Competitiveness Yearbook 2006* issued by the IMD (International Institute for Management Development, 2006).

Table 2.1, constructed from the *Doing Business Database*, presents a ranking of ease of doing business for the APEC economies in 2005.⁷ The overall ranking tends to be high for developed economies: the APEC economies that are ranked the top 10 among 175 are New Zealand (NZ) (1st), Singapore (2nd), the United States of America (USA) (3rd), Canada (4th), Hong Kong, China (HKC) (6th), and Australia (9th).⁸ The overall ranking is low for developing APEC lower economies, on the other hand, such as Indonesia (131st), the Philippines (121st), People's Republic of China (PRC) (108th), Viet Nam (98th), and, Russia (97th).

⁶ The checklist proposed by ABAC is available from the following website:
<http://www.abaconline.org/v4/content.php?ContentID=3086>.

⁷ Information on Brunei is not available.

⁸ Japan's ranking, 12th, is the lowest among developed economies.

Table 2.1 Ranking of ease of doing business for APEC economies, 2005

	Australia	Canada	Chile	People's Republic of China	Hong Kong, China	Indonesia	Japan	Korea	Malaysia	Mexico	New Zealand	Papua New Guinea	Peru	Philippines	Russia	Singapore	Chinese Taipei	Thailand	United States of America	Viet Nam	Average	
Overall ranking (out of 175)	9	4	4	24	108	6	131	12	23	25	62	1	53	78	121	97	2	43	19	3	98	46
Ranking for 10 factors																						
Starting a business	2	1	28	141	5	161	87	105	66	93	4	67	118	99	38	11	86	23	3	89	61	
Dealing with licenses	24	32	45	151	62	129	3	26	134	28	2	101	116	112	164	10	146	6	18	28	67	
Employing workers	11	12	59	77	15	141	28	108	37	110	8	18	159	118	88	4	155	46	1	137	67	
Registering property	32	25	28	21	57	118	35	65	68	73	1	62	29	91	40	12	22	16	10	30	42	
Getting credit	3	7	33	117	2	76	13	19	3	59	3	96	59	96	160	7	41	41	7	76	46	
Protecting investors	43	5	18	114	3	58	12	58	3	133	1	33	18	151	58	2	58	33	5	170	49	
Paying taxes	35	21	38	169	5	129	89	50	49	128	12	87	133	96	111	8	77	54	55	116	73	
Trading across borders	23	8	40	35	15	55	20	26	41	77	12	49	87	61	137	2	43	97	10	68	45	
Enforcing contracts	8	15	70	59	10	144	6	18	78	82	16	85	106	50	25	23	60	43	4	90	50	
Closing a business	14	4	93	69	13	126	1	12	47	21	20	94	70	143	80	2	5	36	16	105	49	

Data source: Doing business database, available from <http://www.doingbusiness.org/>.

Note: Average ranking is calculated for a comparison among 10 factors

The *Doing Business Database* evaluates the following 10 aspects of the business environment: i. starting a business, ii. dealing with licenses, iii. employing workers, iv. registering property, v. getting credit, vi. protecting investors, vii. paying taxes, ix. enforcing contracts, and x. closing a business. The problems that need to be solved vary among the APEC economies. For the APEC region as a whole, however, the most serious problems are in the areas of paying taxes (73rd on average), dealing with licenses (67th), employing workers (67th), and starting a business (61st), whose ranking is significantly lower than the overall average of 46th. The survey results shown in Table A.2.1 in the Appendix reveals that the length of time required for “starting a business”, “dealing with licenses”, and “paying taxes” is too long. Many procedures are necessary, particularly for obtaining certain licenses, which may cause complexity and/or delays of procedures. High minimum capital levels also discourage starting a business in economies such as the PRC, Korea, and Chinese Taipei (CT). Many sorts of tax payments are necessary in economies such as the Philippines (59), Peru (53), Mexico (49), and the PRC (48), causing complexity and additional costs for firms. Regarding employing workers, difficulties of hiring workers, firing costs (weeks of wages), and rigidity of working hours are particularly troublesome.

Table 2.2, compiled from the *Global Competitiveness Report*, shows the problematic factors involved in doing business in the economies concerned. The figures in the upper portion of the table indicate the percentage of respondents representing the presence of the problem for the item concerned, while those in the lower portion indicate the ranking of the severity of the problem for the 14 items in the economy. In the upper portion of the table, the figures registering 10 percent or above 10 percent are highlighted.⁹ As in the case of the *Doing Business Database*, restrictive labor regulations and tax regulations are recognized as among the most serious problems for many APEC economies. In addition, inefficient government bureaucracy and policy instability are regarded as high priority problems requiring improvement to facilitate business.

Table 2.3 and Table 2.4, in turn, present global/world competitiveness by economy and by category, obtained from the *Global Competitiveness Report* and *IMD*

⁹ To construct this table, respondents were asked to select the five most problematic for doing business in concerned economy, among 14 factors listed in the table, and to rank them from 1 (most problematic) to 5. The results were tabulated and weighted according to the ranking assigned by the respondents.

Table 2.2 The most problematic factors for doing business and their ranking for APEC economies

	Australia	Canada	Chile	China	Hong Kong	China	Indonesia	Japan	Korea	Malaysia	Mexico	New Zealand	Peru	Philippines	Russia	Singapore	Chinese Taipei	Thailand	United States of	Viet Nam	Average
<i>Percent of responses</i>																					
Access to financing	5.1	11.0	10.4	15.3	9.8	4.7	5.0	13.6	6.0	14.2	1.6	6.0	4.1	10.1	9.6	5.8	7.1	6.1	8.4	8.1	
Corruption	0.6	1.4	0.9	12.0	1.6	4.6	1.8	4.6	8.0	11.6	0.0	9.2	21.5	17.4	0.3	3.6	14.7	4.0	18.8	7.2	
Crime and theft	0.7	1.7	3.5	1.1	2.3	4.6	1.6	0.6	5.4	11.1	0.5	4.9	3.8	7.6	1.4	2.7	0.2	4.4	2.0	3.1	
Foreign currency regulations	1.3	1.9	0.7	3.6	4.1	4.9	1.5	4.8	8.1	0.3	1.5	0.4	0.3	1.3	2.4	3.9	2.0	3.6	3.3	2.6	
Government instability/coups	0.3	0.8	0.1	1.9	5.1	1.9	1.2	2.3	1.1	0.2	0.3	2.0	13.6	2.6	0.5	12.5	7.7	2.7	2.2	3.1	
Inadequate supply of infrastructure	10.7	4.2	4.7	8.7	3.3	20.2	2.3	4.2	5.8	9.3	19.9	9.3	15.2	6.3	6.9	3.9	6.0	3.6	13.5	8.3	
Inadequately educated workforce	7.9	5.8	15.4	6.3	14.5	8.1	2.9	2.5	6.7	3.7	11.4	5.8	0.8	5.6	15.9	3.0	10.2	9.3	9.5	7.6	
Inefficient government bureaucracy	10.6	11.5	14.0	16.7	14.0	14.1	21.1	14.3	15.4	16.0	9.9	12.6	11.8	9.9	6.4	13.7	17.8	9.9	19.0	13.6	
Inflation	0.8	2.2	0.2	2.1	8.9	6.0	0.7	3.7	7.5	0.9	3.0	0.7	2.1	6.6	8.0	2.6	4.3	6.7	2.2	3.6	
Policy instability	3.0	2.3	2.9	12.4	11.4	14.0	6.0	18.4	6.4	6.8	3.1	19.0	15.3	5.5	3.4	22.8	13.9	4.5	0.9	9.0	
Poor work ethic in national labor for	3.8	5.4	6.2	5.4	5.7	1.6	1.6	3.6	6.0	2.0	2.8	1.8	1.1	2.5	8.8	3.1	2.8	7.1	6.9	4.1	
Restrictive labor regulations	15.6	11.3	23.1	2.8	11.8	6.0	13.3	11.9	8.3	9.3	14.5	10.0	2.5	2.2	15.7	9.5	2.6	7.1	2.0	9.5	
Tax rates	21.4	24.3	7.7	4.9	4.0	2.7	20.7	7.0	7.0	6.0	21.7	7.6	4.5	8.2	8.8	4.5	2.5	15.5	3.8	9.6	
Tax regulations	18.2	16.5	10.2	6.8	3.7	10.5	20.5	8.6	8.3	8.5	9.8	10.7	3.7	14.1	11.9	8.6	8.2	15.4	7.7	10.6	
<i>Ranking in each economy</i>																					
Access to financing	7	5	4	2	5	9	6	3	11	2	10	8	7	3	4	6	7	8	5	5.9	
Corruption	13	13	11	4	14	11	9	8	5	3	14	6	1	1	14	9	2	11	2	7.9	
Crime and theft	12	12	9	14	13	10	11	14	13	4	12	10	8	6	12	13	14	10	12	11.0	
Foreign currency regulations	10	11	12	10	9	8	12	7	4	13	11	14	14	14	14	11	9	13	13	10.7	
Government instability/coups	14	14	14	13	8	13	13	13	13	14	13	11	4	11	13	3	6	14	10	11.3	
Inadequate supply of infrastructure	4	8	8	5	12	1	8	9	12	6	2	5	3	8	8	8	8	12	3	6.8	
Inadequately educated workforce	6	6	2	7	1	5	7	12	8	10	4	9	13	9	1	12	4	4	4	6.5	
Inefficient government bureaucracy	5	3	3	1	2	2	1	2	1	1	5	2	5	4	9	2	1	3	1	2.8	
Inflation	11	10	13	12	6	7	14	10	6	12	8	13	11	7	7	14	9	7	10	9.8	
Policy instability	9	9	10	3	4	3	5	1	9	8	7	1	2	10	10	1	3	9	14	6.2	
Poor work ethic in national labor for	8	7	7	8	7	14	10	11	10	11	9	12	12	12	12	6	11	10	5	7	
Restrictive labor regulations	3	4	1	11	3	6	4	4	2	5	3	4	10	13	2	4	11	5	12	5.6	
Tax rates	1	1	6	9	10	12	2	6	7	9	1	7	6	5	5	7	12	1	8	6.1	
Tax regulations	2	2	5	6	11	4	3	5	2	7	6	3	9	2	3	5	5	2	6	4.6	

Date source: GCR 2006-2007.

Note: From a list of the above 14 factors, respondents were asked to select the five most problematic for doing business in their economy and to rank them from 1 (most problematic) to 5. The results were tabulated and weighted according to the ranking assigned by the respondents. The weighted percentage of firms identified the factor as a problematic is expressed in the upper part of this table "percent of repnses". Average ranking is calculated

World Competitiveness Yearbook, respectively.¹⁰ Although the degree of competitiveness of a specific economy may not directly influence the investment activities of firms, competitiveness would have a positive impact on investment decisions. Firms prefer competitive economies to less competitive economies for their operations in the global market when considering investment locations. Similarly to the rankings for the *Doing Business*, the overall rankings for the Global Competitiveness Index (GCI) tend to be low in developing economies: the overall ranking is low in Viet Nam (77th out of 125), Peru (74th), the Philippines (71st), Russia (62nd), Mexico (58th), PRC (54th), and Indonesia (50th), indicating unfavorable business environments in these economies.

The GCI evaluates the competitiveness of countries based on three broad categories with two to four sub-categories. The three broad categories are basic requirements, efficiency enhancers, and innovation factors (Table 2.3).¹¹ The sub-categories include institutions, infrastructure, and others. The sub-categories are further broken down into the much more precise factors shown in Table A.2.2 in the Appendix.¹² The figures in the upper portion of Table 2.3 indicate the ranking of a country among 125 countries for the item concerned (low figures indicate high rankings), while the figures in the lower portion of the table indicate the score (high numbers indicate high scores with 7 as the full score). Based on the average figures shown in the right hand columns in Table 2.3, basic requirements such as institutions and health and primary education are not well developed at the sub-category level in APEC economies compared to the rest of the world. More precisely, factors regarded as lacking competitiveness in many economies in Table A.2.2 involve various public institutions, such as judicial independence and burden of government regulations, infrastructure (particularly the quality of the electricity supply), tuberculosis prevalence, various market

¹⁰ Information on Brunei and PNG is not available from the *Global Competitiveness Report* (Tables 2.2 and 2.3) and information on Brunei, PNG, Peru, and Viet Nam is not from the *IMD World Competitiveness Yearbook* (Table 2.4).

¹¹ Sub-categories are institutions, infrastructure, macroeconomy, and health and primary education for basic requirements, higher education and training, market efficiency, and technological readiness for efficiency enhancers, business sophistication and innovation for innovation factors.

¹² Factors considered as disadvantages are those ranked below 10 for Japan, Singapore, U.S. with an overall ranking in the top 10 economies, those ranked equal to or lower than the economy's overall ranking for HKC, Indonesia, Korea, CT, Thailand, Australia, NZ, Canada, Chile with an overall ranking from 11 to 50, and those ranked lower than 50 for the PRC, the Philippines, Viet Nam, Mexico, and Russia with an overall ranking lower than 51.

Table 2.3 The Global Competitiveness Index (GCI) for APEC economies

	Australia	Canada	Chile	People's Republic of China	Hong Kong, China	Indonesia	Japan	Korea	Malaysia	Mexico	New Zealand	Peru	Philippines	Russia	Singapore	Chinese Taipei	Thailand	United States of America	Viet Nam	Average
<i>Ranking (out of 125 economies)</i>																				
GCI 2006-2007																				
Basic requirements	19	16	27	54	11	50	7	24	26	58	23	74	71	62	5	13	35	6	77	34.6
Institutions	11	13	28	44	4	68	19	22	24	53	16	76	84	66	2	21	38	27	71	36.2
Infrastructure	11	21	25	80	10	52	22	47	18	69	8	96	88	114	4	32	40	27	74	44.1
Macroeconomy	18	13	35	60	3	89	7	21	23	64	27	91	88	61	6	16	38	12	83	39.7
Health and primary education	23	32	7	6	9	57	91	13	31	54	25	49	62	33	8	27	28	69	53	35.6
Efficiency enhancers	21	2	57	55	35	72	1	18	42	31	6	48	82	77	20	25	84	40	56	40.6
Higher education and training	10	15	31	71	11	50	16	25	26	59	21	67	63	60	3	14	43	1	83	35.2
Market efficiency	14	17	40	77	25	53	15	21	32	71	22	72	63	43	10	7	42	5	90	37.8
Technological readiness	11	7	24	56	1	27	10	43	9	48	15	66	57	60	4	22	31	2	73	29.8
Innovation factors	7	17	35	75	13	72	19	18	28	56	23	69	61	74	2	14	48	8	85	38.1
Business sophistication	24	16	33	57	18	41	1	20	22	52	25	68	66	71	15	9	36	4	81	34.7
Innovation	28	18	30	65	13	42	2	22	20	52	26	47	59	77	23	15	40	8	86	35.4
	24	13	39	46	22	37	1	15	21	58	25	92	79	59	9	8	33	2	75	34.6
<i>Score (out of 7)</i>																				
GCI 2006-2007																				
Basic Requirements	5.3	5.4	4.9	4.2	5.5	4.3	5.6	5.1	5.1	4.2	5.1	3.9	4.0	4.1	5.6	5.4	4.6	5.6	3.9	4.8
Institutions	5.7	5.7	5.4	4.8	6.0	4.4	5.5	5.5	5.4	4.6	5.6	4.3	4.2	4.4	6.1	5.5	5.0	5.4	4.4	5.2
Infrastructure	5.5	5	4.9	3.5	5.5	4.0	5.0	4.2	5.1	3.7	5.7	3.3	3.4	3	5.9	4.6	4.4	4.8	3.6	4.5
Macroeconomy	5.4	5.8	4.4	3.5	6.3	2.7	6.1	5.4	5.1	3.4	4.9	2.7	2.7	3.5	6.2	5.6	4.4	5.8	2.8	4.6
Health and primary education	5.1	5	5.7	5.7	5.7	4.5	4.1	5.5	5.0	4.6	5.1	4.7	4.4	5	5.7	5.1	5.1	4.4	4.6	5.0
Efficiency enhancers	6.8	6.9	6.4	6.4	6.7	6.4	7.0	6.9	6.6	6.7	6.9	6.5	6.2	6.3	6.8	6.8	6.1	6.6	6.4	6.6
Higher education and training	5.4	5.4	4.6	3.7	5.4	4.1	5.3	5.0	4.9	3.9	5.1	3.7	3.9	3.9	5.6	5.4	4.3	5.7	3.4	4.7
Market efficiency	5.6	5.5	4.5	3.7	5.1	4.3	5.5	5.4	4.8	3.9	5.3	3.8	4.0	4.4	5.6	5.7	4.4	5.8	3.4	4.8
Technological readiness	5.2	5.3	5	4.2	5.7	4.9	5.2	4.4	5.2	4.3	5.2	4.1	4.2	4.2	5.6	5.1	4.8	5.7	4.1	4.9
Innovation factors	5.5	5.3	4.2	3.1	5.4	3.2	5.2	5.2	4.6	3.5	4.9	3.2	3.3	3.1	5.7	5.3	3.7	5.5	2.8	4.4
Business sophistication	4.7	5.1	4.2	3.7	5.0	4.1	6.0	5.0	4.9	3.8	4.6	3.6	3.6	3.6	5.1	5.4	4.2	5.7	3.3	4.5
Innovation	5.0	5.3	4.9	4.1	5.5	4.5	6.1	5.2	5.3	4.3	5.1	4.3	4.2	3.8	5.2	5.4	4.6	5.8	3.5	4.8
	4.3	4.8	3.6	3.4	4.5	3.6	5.9	4.7	4.5	3.3	4.2	2.9	3.1	3.3	5.0	5.3	3.7	5.7	3.1	4.2

Data source: GCR 2006-2007.

Table 2.4 Ranking of world competitiveness for APEC economies: IMD

	Australia	Canada	Chile	People's Republic of China	Hong Kong, China	Indonesia	Japan	Korea	Malaysia	Mexico	New Zealand	Philippines	Singapore	Chinese Taipei	Thailand	United States of America	Russia	Average
Overall ranking	6	7	24	19	2	60	17	38	23	53	22	49	3	18	32	1	54	25
Economic performance	14	13	16	3	5	61	15	41	11	24	30	52	4	27	21	1	59	23
Domestic economy (size, growth, wealth, forecasts)	18	16	27	2	5	52	4	30	43	44	53	59	13	26	55	1	23	28
International trade	54	25	41	6	3	59	27	40	4	44	56	53	1	32	15	11	17	29
International investment (investment, finance)	9	20	10	27	5	61	12	42	32	43	54	58	13	49	47	1	33	30
Employment (investment and finance)	8	21	38	1	20	45	18	13	26	9	4	49	3	23	6	7	39	19
Prices	16	7	2	12	52	59	56	57	1	14	18	13	10	33	9	19	61	26
Government efficiency	6	9	13	17	1	51	31	47	20	50	12	48	2	24	21	14	44	24
Public finance	22	19	3	1	5	45	30	25	39	16	11	58	12	27	21	41	2	22
Fiscal policy	17	27	32	10	43	7	30	16	13	24	29	15	3	9	4	19	23	19
Institutional framework (central bank, state efficiency)	6	15	19	24	1	55	16	46	13	51	27	54	2	35	25	11	50	26
Business legislation (openness, competition and regulations, and labor regulations)	7	11	8	43	5	59	29	51	31	55	9	49	2	34	33	12	57	29
Societal framework	4	8	38	30	3	55	49	60	41	58	7	28	22	42	39	14	51	32
Business efficiency	8	9	18	30	1	57	23	45	20	54	21	48	7	14	28	4	53	26
Productivity and efficiency	28	19	30	29	1	61	31	42	39	59	49	46	27	17	48	5	51	34
Labor market (costs, relations, and availability of skills)	12	16	9	5	2	32	31	43	4	51	26	15	3	10	6	21	49	20
Finance (bank efficiency, stock market efficiency, and finance management)	15	10	32	51	2	59	21	37	33	57	29	55	19	16	41	1	53	31
Management practices	6	13	8	37	2	57	31	48	22	51	16	40	9	19	26	15	60	27
Attitudes and values	5	7	9	24	2	52	25	40	17	50	14	39	4	8	20	16	55	23
Infrastructure	19	12	43	37	16	61	2	24	31	59	25	48	5	20	48	1	51	30
Basic infrastructure	5	9	32	20	3	53	17	29	35	55	23	61	1	24	38	2	48	27
Technological infrastructure	20	8	52	33	2	61	10	6	21	60	30	37	3	4	48	1	58	27
Scientific infrastructure	23	18	48	17	32	47	2	12	38	61	28	58	16	5	53	1	56	30
Health&environment	18	16	37	51	23	61	11	32	39	56	20	53	15	38	48	22	52	35
Education	12	6	50	51	24	61	23	42	30	55	18	57	13	19	48	11	47	33

Data source: IMD2006.

Note: Average ranking is calculated for a comparison among components.

distortions such concerning matters as efficiency legal framework and time required to start a business, foreign ownership restrictions, and labor market flexibility such as hiring and firing practices and cooperation in labor-employer relations.

Improving these factors would make economies in the region more competitive, increasing their attractiveness for investors.

The evaluation of an economy's competitiveness by the IMD is based on economic performance, government efficiency, business efficiency, and infrastructure, with five sub-categories under each major category (Table 2.4). According to the rankings, the less competitive countries include Indonesia (60th), Russia (54th), Mexico (53rd), and the Philippines (49th). Japan (17th) is followed by CT (18th) and PRC (19th). Although most developed countries have a much higher ranking, Japan's ranking is low for its income level.

The above evaluation of the business environment and competitiveness of the APEC economies suggests that reducing the complexity and time required for institutional procedures, increasing labor market flexibility (reducing the burden of labor regulations), improving taxation regulations, and developing infrastructure are particularly important to promoting investment facilitation. At the same time, it indicates that lower income countries are likely to require more substantial improvement in terms of FDI liberalization and facilitation than higher income countries.

3. Descriptive analysis of FDI liberalization and facilitation

This section analyzes the current investment climate in 21 APEC economies, using the detailed survey collected and compiled by the Japan Machinery Center for Trade and Investment (JMC), "Issues and Requests for Trade and Investment Activities by Country/Region in 2005", (JMC survey)¹³. This survey is based on the responses to "questionnaire on the problems in trade, investment, and production activities abroad", which was conducted from July to September 2005 by the Japan Business Council for Trade and Investment Facilitation (JBCTIF) with its members of approximately 150

¹³ The JMC survey is available from the URL of JBCTIF <http://www.jmcti.org/mondai/top.html>.

industry associations. The respondents to the questionnaire were its members involved in trade and FDI activities; about 50 industry associations of Japanese firms returned the questionnaire.

In the following, sub-section 3.1 briefly introduces our classification of 10 major categories of problems or obstacles regarding FDI activities. We divide these problems into two categories, those related to FDI liberalization and those related to facilitation. Section 3.2 investigates the current investment environment according to our classification, and addresses the FDI-related problems in the APEC economies. Some policy implications are also presented in section 3.2.

3.1 10 Major categories for FDI liberalization and facilitation

Table 3.1 presents 10 major categories of problems to be dealt with in order to promote FDI liberalization and facilitation. This categorization, which consists of four groups of problems related to FDI liberalization and six groups of problems related to FDI facilitation, is based on literature survey, our analysis in sub-section 3.2, and discussions among the members of the committee set up to prepare this report. The committee members are representatives of ABAC Japan, JMC, the Ministry of Trade, Investment, and Industry (METI), and university professors. Detailed discussions of the issues from the legal perspective are provided in Section 4.

Table 3.1 10 major categories of issues to be solved for FDI liberalization and facilitation in APEC economies

<u>FDI liberalization</u>	
i	Restrictions on foreign entry
ii	Performance requirements
iii	Restrictions on overseas remittances and controls on foreign currency transactions
iv	Restrictions on the movement of people and employment requirements
<u>FDI facilitation</u>	
v	Lack of transparency in policies and regulations concerning investment (institutional problems)
vi	Complicated and/or delayed procedures with respect to investment-related regulations (implementation problems)
vii	Insufficient protection of intellectual property rights
viii	Labor regulations and related practices excessively favorable to workers
ix	Underdeveloped infrastructure, shortages of human resources, and insufficient investment incentives
x	Restricted competition and price controls

The four categories of impediments concerning FDI liberalization are i) restrictions on foreign entry, ii) performance requirements, iii) restrictions on overseas remittances and controls on foreign exchange, and iv) restrictions on the movement of people and employment requirements.¹⁴

Category “i) restrictions on foreign entry”, for instance, includes prohibited or restricted foreign entry into specific sectors, regulations on maximum foreign ownership ratios (foreign equity participation), joint venture requirements, minimum capital requirements, restricted forms of commercial presence (regulations on the forms of establishments), restrictions on land ownership by foreign-owned firms. Category “ii) performance requirements” includes local content requirements, export requirements linked with various FDI incentives, and technology transfer requirements. Category “iii) restrictions on overseas remittances and controls on foreign currency transactions” includes restrictions or difficulties in making overseas remittances, restrictions on the possession and use of foreign currencies, difficulties in access to/exchange of local currencies. The last category among impediments concerning FDI liberalization is “iv) restrictions on the movement of people and employment requirements”, which includes difficulties in obtaining and/or renewing necessary visas for foreign representatives, and requirements on employment of local people (or specific types of local people). All of these problems can certainly be impediments to new foreign entry or expansion of investment by existing foreign firms.

The six categories of impediments related to FDI facilitations are as follows: “v) lack of transparency in policies and regulations concerning investment (institutional problems)”, “vi) complicated and/or delayed procedures with respect to investment-related regulations (implementation problems)”, “vii) insufficient protection of intellectual property rights (IPRs)”, “viii) labor regulations and related practices excessively favorable to workers”, “ix) underdeveloped infrastructure, shortages of human resources, and insufficient investment incentives”, and “x) restricted competition and price controls”.¹⁵

¹⁴ The category i) corresponds to 1.restrictions on foreign entry and 21.restrictions on foreign ownership of land in JMC survey. Similarly, the category ii) corresponds to 2.local content requirements, 3.export requirements, and 18.technology transfer requirements, the category iii) 11.foreign remittances, 12.control of foreign exchange, and the category iv) 16.employment in JMC survey.

¹⁵ Category v) corresponds to 5. regulations on policies of supporting industries, 7. implementing

Categories “v) lack of transparency in policies and regulations concerning investment” and “vi) complicated and/or delayed procedures with respect to investment-related regulations” cover issues concerning various investment-related regulations in terms of institutional problems and implementation problems, respectively. Category “v) lack of transparency in policies and regulations concerning investment” is specifically concerned with sudden and/or frequent changes (without notification in advance), non-transparency, ambiguity in various investment-related regulations and lack of certain regulations, while category “vi) complicated and/or delayed procedures with respect to investment-related regulations” covers problems in implementing regulations on establishments, approval of foreign entry, taxation, customs clearance, withdrawal/reorganization of operations, arbitrary and/or inconsistent interpretation and implementation of various regulations, and other such matters. Examples of problems in categories “vii) insufficient protection of IPRs”, “viii) labor regulations and related practices excessively favorable to workers”, “ix) underdeveloped infrastructure, shortages of human resources, and insufficient investment incentives”, and “x) restricted competition and price controls” include the following: insufficient protection of IPRs and issues involving patents for the category vii), non-modern labor regulations that are excessively favorable to workers, such as difficulty in firing workers, drastic/frequent changes in minimum wage levels, never decreasing wages, and restrictions on temporary workers for the category viii), underdeveloped physical infrastructure and logistics, shortages of human resources such as management staff and engineers, and high turnover ratios for category ix), and oligopolistic market structure and monopolistic pricing for category x).

Most of the problems classified into categories iv) to x) are not necessarily discriminatory measures to foreigners but are, rather, domestic problems within the

procedure for Foreign Capital Act, 8.issues of FDI hosting agencies, 9.regulations on export/import activities and customs clearance, 10.restrictions on activities in free trade zones (FTZs)/special economic zones (SEZs), 14.taxation, 19.(industrial) standards and conformity, 22.issues of environmental pollutions and waste disposal, 24.lack of legal regulations/sudden changes in regulations, and 26.others in JMC survey. Note that some of issues in these categories in JMC survey are classified as those in category vi) when they are the issue of implementation. In addition to them, category vi) includes 4.regulations on withdrawal of operations and 23.inefficient administrative procedures of various regulations in JMC survey. Category vii) is composed of 17.problems of IPRs, the category viii) consists of a part of 16.labor, the category ix) includes 6.diminished incentives to FDI, 13.finance, 16.labor (human capital-related), and 26.others (infrastructure-related), and category x) are 15.price control and 20.monopoly.

borders. These impediments could, however, directly and indirectly prevent potential investment from entering the economy. In other words, if an economy solves these problems and improves the investment climate, it would receive a larger amount of investment than that without such an improvement. Out of 10 major categories for FDI liberalization and facilitation, six are those concerning for FDI facilitation. We emphasize the importance of implementing FDI facilitation measures, in addition to FDI liberalization measures, as will be discussed in the following sub-section.

3.2 Evaluation of the investment climate and its implications

Sub-section 3.2 investigates the incidents of direct and indirect impediments to FDI to evaluate investment climate in 21 APEC economies, using the JMC survey. Since the JMC survey does not cover the information on investment climate in Japan, the following sources are used for Japan: ①*EU Proposals for Regulatory Reform in Japan* (October 2005), prepared for the FY2005 Japan-EU Regulatory Reform Dialogue Tokyo Meeting, ②*United States-Japan Investment Initiative Report 2005* (July 2005) and 2006 (June 2006), prepared for U.S.-Japan Economic Partnership for Growth, ③*Recommendations on Regulatory Reform and Competition Policy by the Government of the U.S. to the Government of Japan* (December 2005), prepared for the Fifth-Year Dialog under the Japan-U.S. Regulatory Reform and Competition Policy Initiative, ④*Program for Acceleration of FDI in Japan*, prepared for 8th Meeting of the Japan Investment Council, and ⑤*11th Survey on Foreign Firms' Perspectives to Investment in Japan* (In Japanese) by JETRO (March 2006). In addition, corresponding information on investment climate in the U.S. are separately used for the U.S.: ①*United States-Japan Investment Initiative Report 2006* (June 2006), prepared for U.S.-Japan Economic Partnership for Growth”, ②*Recommendations on Regulatory Reform and Competition Policy by the Government of Japan to the Government of the U.S.* (December 2005), prepared for the Fifth-Year Dialog under "the Japan-U.S. Regulatory Reform and Competition Policy Initiative”, and ③*United States Barriers to Trade and Investment Report for 2006*, European Commission (February 2007).¹⁶

Table 3.2 summarizes the results of our analysis of the investment climate in the APEC economies: the number of incidents by category and economy. Since the JMC

¹⁶ Sources ① and ② do not cover issues on labors (corresponding to viii) and infrastructure (ix).

survey deals with precisely the problems raised by many industrial associations of Japanese firms, which are members of the BCTIF, we first collect all the information on the economies concerned and identify the problems by country. We then classify these problems into 10 categories and collate them for all the economies, as shown in Table A.3.1 in the Appendix. Table 3.2 is constructed based on Table A.3.1.

Four points should be kept in mind in interpreting these results. First, some problems can be classified into different categories from those in Table A.3.1. Some may be classified into two or more categories. In constructing Table A.3.1, such problems are classified into the most relevant categories in our classification. Second, the number of incidents in the tables indicates the presence of direct and indirect barriers to FDI (at least those identified), but it does not directly imply the degree of seriousness of the barriers distorting investment decisions. Third, there is a possible bias in the identification of the problems in that the number of incidents tends to be high in economies, where a large number of FDI projects are undertaken. As mentioned above, the respondents to the questionnaire on which JMC survey is based are those having trade with and/or investment in the economies concerned. Economies in which Japanese firms are more active in trade and investment may tend to have a larger number of incidents since they are more likely to face various problems through their operations (Table 3.3). At the same time, economies with a fewer number of problems identified here do not necessarily receive a large amount of investment. Economies with a smaller number of Japanese firms involved may have a larger number of issues, in practice, than those identified here if firms were not able to enter those economies due to certain impediments, and the actual investment climate was not very well known. We will consider this point in interpreting the results for the individual economies below. Fourth, most problems identified are those related to manufacturing activities. Since the major activities of most respondents are manufacturing, impediments to FDI in non-manufacturing sectors might be underestimated.

Table 3.2 and Figure 3.1 give a vivid overall picture of direct and indirect impediments to investment in the Asia-Pacific region. Various sorts of indirect barriers to FDI exist in the region: 79 percent of the total problems identified (570 out of 721) are concerned with FDI facilitation. This finding indicates that there is plenty of room to improve FDI facilitation in order to promote more active investment activities in the Asia-Pacific region. In particular, more than half the problems fall into two categories

Table 3.2 Investment climate in the APEC economies: the number of issues by category and economy

	Australia	Brunei Darussalam	Canada	Chile	People's Republic of China	Hong Kong, China	Indonesia	Japan (Government level)	Korea	Malaysia	Mexico	New Zealand	Papua New Guinea	Peru	Philippines	Russia	Singapore	Chinese Taipei	Thailand	United States of America	USA (Government level)	Viet Nam	Total	Share by category (%)
i) Restrictions on foreign entry	2	0	1	0	8	0	5	3	4	4	3	1	0	0	6	2	1	1	6	3	7	5	55	7.6
ii) Performance requirements	1	0	1	0	6	0	2	0	0	5	0	0	0	0	2	1	0	1	1	2	2	5	27	3.7
iii) Restrictions on overseas remittances and controls on foreign currency transactions	0	0	1	0	5	0	1	0	2	4	0	0	0	0	1	2	0	3	3	0	0	4	26	3.6
iv) Restrictions on the movement of people and employment requirements	1	0	4	0	6	1	2	2	1	4	0	0	0	0	2	4	2	3	6	3	5	2	43	6.0
v) Lack of transparency in policies and regulations concerning investment (institutional problems)	15	1	8	5	25	5	14	12	8	10	10	3	0	7	10	10	1	10	14	6	18	6	180	25.0
vi) Complicated and/or delayed procedures with respect to investment-related regulations (implementation problems)	7	0	7	1	27	3	21	4	6	14	10	2	0	2	12	13	0	4	24	20	13	14	191	26.5
vii) Insufficient protection of intellectual property rights	0	0	0	1	5	5	4	2	6	3	1	0	0	0	1	2	0	3	2	6	9	2	43	6.0
viii) Labor regulations and related practices excessively favorable to workers	2	0	1	0	1	1	3	0	10	5	4	1	0	2	6	2	3	0	3	5	0	2	51	7.1
ix) Underdeveloped infrastructure, shortages of human resources, and insufficient investment incentives	7	0	2	3	7	0	8	4	0	4	13	3	0	1	8	7	2	1	9	2	0	8	89	12.3
x) Restricted competition and price controls	1	0	0	0	1	1	2	3	0	0	1	1	0	0	0	0	0	0	1	3	6	2	16	2.2
Total	36	1	25	10	91	16	62	30	37	53	42	11	0	12	48	43	9	26	69	50	60	50	721	100.0
Share by economy (%)	5.0	0.1	3.5	1.4	12.6	2.2	8.6	4.2	5.1	7.4	5.8	1.5	0.0	1.7	6.7	6.0	1.2	3.6	9.6	6.9	-	6.9	100.0	

Data source: Authors' calculation, based on JMC survey.

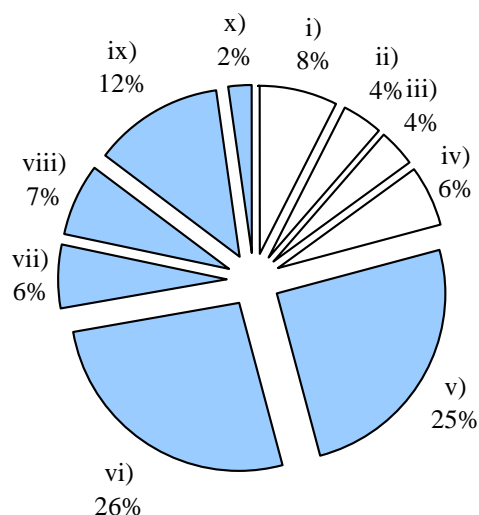
Note: The number of issues for Japan and USA (government level) are calculated, based on various reports at the government level. See the text for details of these sources.

Table 3.3 Link between the number of issues and Japanese investment

	Number of issues	Number of Japanese firms with investment	Number of Japanese affiliates	GDP per capita in 2005
Australia	36	298	402	34,932
Brunei Darussalam	1	3	8	25,754
Canada	25	225	266	35,105
Chile	10	31	45	7,351
People's Republic of China	91	2200	4404	1,716
Hong Kong, China	16	915	1108	26,000
Indonesia	62	571	672	1,309
Japan (G-level)	30	n.a.	n.a.	35,672
Korea	37	564	677	16,444
Malaysia	53	608	771	5,042
Mexico	42	177	219	7,447
New Zealand	11	70	79	38,618
Papua New Guinea	0	1	1	675
Peru	12	18	14	2,917
Philippines	48	367	449	1,154
Russia	43	48	59	5,323
Singapore	9	609	1034	26,879
Chinese Taipei	26	776	901	15,224
Thailand	69	1152	1529	2,707
United States of America	50	1687	3414	41,960
Viet Nam	50	246	249	638

Data source: Table 3.2 for the number of issues, Toyo Keizai (2006) for the number of Japanese firms and their affiliates, and IMF (2007) for GDP per capita.

Figure 3.1 Decomposition of the incidents into 10 categories



Data source: Table 3.2.

Note: i) to iv) indicates four categories for FDI liberalization and v) to x) indicates six categories for FDI facilitation. Figures express shares of each category. See Table 3.1 for 10 categories.

v) institutional problems (lack of transparency in policies and regulations on investment) and vi) implementation problems (complicated and/or delayed procedures with respect to investment-related regulations, as these accounted for 25.0 percent and 26.5 percent of the total incidents, respectively. Although neither institutional nor implementation problems are necessarily discriminatory to foreign firms, as discussed above, they need to be improved to promote investment activities in the region.

The major problems identified in many economies for category v) are underdevelopment, lack of transparency, ambiguity, sudden changes, frequent changes, and uncertainty of various legal regulations and institutions, particularly those concerning taxation, safety and environmental standards and conformity, and transfer pricing. The major problems for category vi) are complexity, delay, difficulty, and inefficiency of various administrative procedures, arbitrary interpretation in implementing regulations, and corruption; particularly complicated customs clearance procedures, delayed, difficult, inefficient, and complicated and delayed procedures of visa application and its renewal, import tariff reimbursement/exemption, value-added tax exemption (including non-implementation) procedures, taxation, and withdrawal of business, arbitrary and/or inconsistent interpretation and implementation of safety certification, customs clearance, and arbitrary tax collection.¹⁷

Categories v) and vi) are followed by another category classified under FDI facilitation, category ix) underdeveloped infrastructure, shortages of human resources, and insufficient investment incentives (12.3 percent of total incidents). It suggests that access to necessary infrastructure, human resources, and investment incentives is also an important factor for firms in making the decision to entering a new economy or expand operations in a host economy. Major problems in category ix) are as follows: difficulty in hiring and securing human resources due to shortages of management staff and engineers, high turnover ratios, underdevelopment of industrial infrastructure such as electric power, paved roads, ports, and industrial waste disposal, rapid increases in utility rates, insufficient investment incentives, and immaturity of the financial markets.

Categories other than v), vi), and ix) are arranged in descending order in terms of the percentage of the total number of incidents: category i) restrictions on foreign entry (7.6 percent), viii) labor regulations and related practices excessively favorable to

¹⁷ Delayed procedures of regulations are sometimes induced, due to the complicated procedures.

workers (7.1 percent), category iv) restrictions on the movement of people and employment requirement and category vii) insufficient protection of IPRs (both, 6.0 percent), category ii) performance requirements (3.7 percent), category iii) restrictions on remittances abroad and controls on foreign currency transactions (3.6 percent), and category x) restricted competition and price controls (2.2 percent). Although the categories for FDI liberalization with relatively low percentages imply that issues involving direct barriers to FDI (problems preventing FDI liberalization) are not so serious as those involving indirect barriers to FDI (problems preventing FDI facilitation) in the Asia-Pacific region, they are critical impediments in some-low income economies.

Major problems for category i) include prohibition of or restrictions on foreign entry (for specific sectors), restrictions on foreign ownership ratios, joint venture requirements (with specified business partners), and restrictions on foreign ownership of land. The problems for category viii) include difficulty in firing workers, wage-related issues such as rapidly rising wage levels, dramatic increases in minimum wage levels, and labor regulations and related practices that are excessively favorable to workers. The problems for category iv) include a nationality requirement for directors, restrictions on hiring of foreigners including requirements of hiring local people (or specific types of local people), and difficulty and tightened issuance conditions in obtaining and/or renewing visa. The problems for category vii) include widespread counterfeiting of goods and pirated copying due to insufficient protection of IPRs, lack of intellectual property rights treaties, and infringements of trademarks rights and patents. Those for category ii) include local content requirements, particularly for parts, and their strengthening, export requirements linked with investment incentives, and performance requirements linked with investment, exporting, or production. Those for category iii) include restrictions on overseas remittances, difficulty in accessing local currency exchanges, and restrictions on the amounts, payment by, and use of foreign currencies. Those for category x) include insufficient enforcement, extraterritorial application, and non-disclosure of anti-trust laws and an oligopolistic market structure.¹⁸

¹⁸ In general, anti-trust laws themselves do not exist or are not effectively implemented even if they exist in lower income countries. Therefore, respondents are unlikely to address such issues on these matters. On the other hand, they are more rigorously implemented in higher income countries such as Japan and USA, and respondents have more concerns on competitive market structure and implementation of anti-trust laws than in lower income countries.

To capture the features of the overall investment climate more precisely, let us analyze the patterns of pervasiveness of the identified problems, decomposing 21 APEC economies into low- and high-income economies. Low-income economies are defined here as 11 economies with low GDP per capita in 2005 and high-income economies as 10 economies with high GDP per capita (see Table 3.3).¹⁹ Figure 3.2 (a) presents a breakdown of the problems into 10 categories by two groups of countries with different income levels; the inside/outside graph expresses sharers of 10 categories for low-/high-income economies, and Figure 3.2 (b) shows a breakdown of problems into these two groups by 10 categories. The figure reveals several interesting insights. First, low-income economies tend to have more FDI impediments directly and indirectly. The low-income group is identified with a larger number of barriers and impediments to FDI as a whole, 66.5 percent of total incidents, while the high-income group exhibits a lower number of incidents (Figure 3.2(b)).

Second, FDI liberalization is required in addition to FDI facilitation, particularly in low-income economies. The proportion of four categories for FDI liberalization is larger in low-income group (22.3 percent) than in high-income group (18.2 percent), though the proportion of six categories for FDI facilitation is much larger than the corresponding proportion for FDI liberalization in both income groups (Figure 3.2(a)). In addition, a large proportion of FDI impediments is observed in lower income economies: 71 percent for category i), 81 percent for category ii), 77 percent for category iii), and 60 percent for category iv) (Figure 3.2(b)). These observations suggest that further FDI liberalization is required in addition to FDI facilitation, particularly in low-income economies, to activate investment activities in the region.

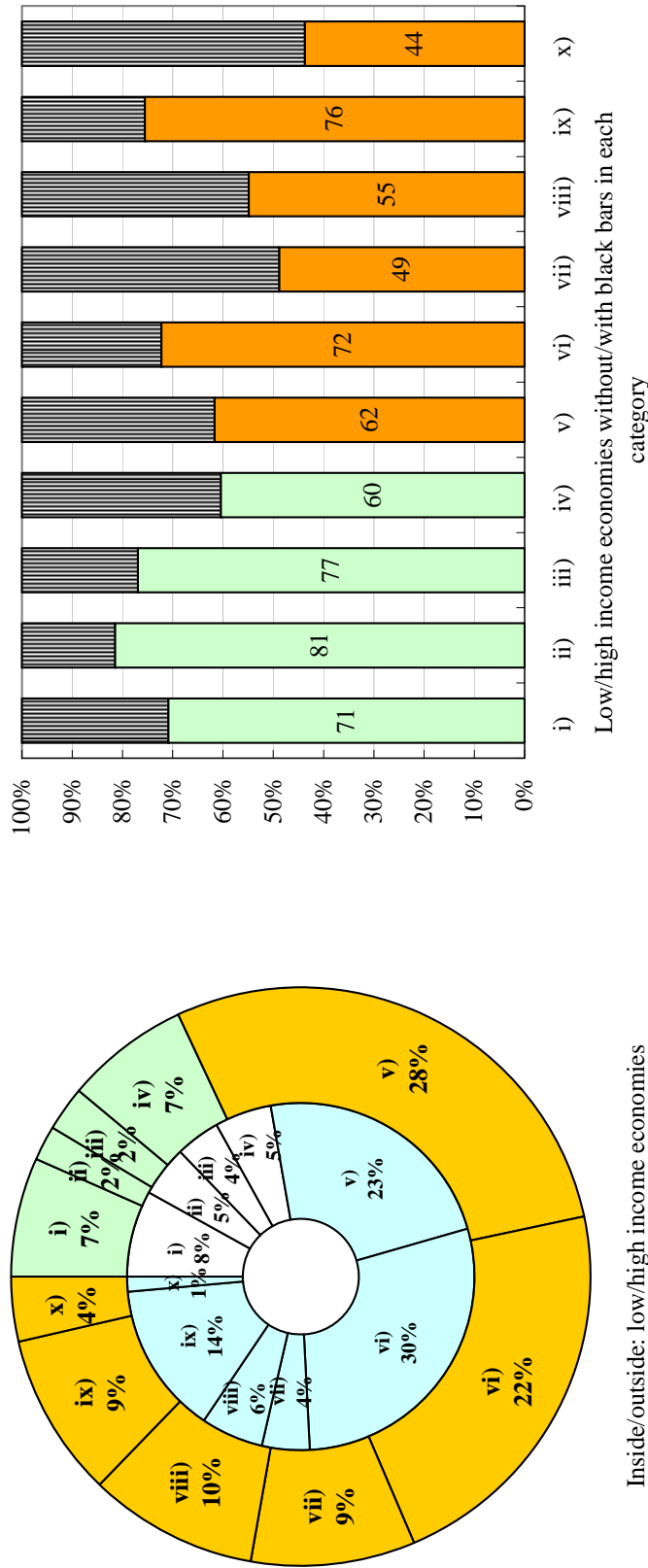
Third, the problems whose improvement is a high priority among the categories for FDI facilitation are different between the two income groups. A need for substantial improvement of institutional problems and implementation problems is common to both income groups. After categories v) and vi), however, the priorities vary. In low-income economies, category ix) has the third highest share of 14.2 percent, followed by category

¹⁹ Low income economies here are Viet Nam, Papua New Guinea (PNG), the Philippines, Indonesia, People's Republic of China (PRC), Thailand, Peru, Malaysia, Russia, Chile, and Mexico, while high income economies are Chinese Taipei (CT), Korea, Brunei Darussalam (Brunei), Hong Kong, China (HKC), Singapore, Australia, Canada, Japan, New Zealand (NZ), and the United States of America (USA).

viii) with a lower share of 5.8 percent (Figure 3.2(a)). Moreover, a large proportion of the problems in category ix), 75.6 percent, is observed in lower

Figure 3.2 Decomposition of the problems and low and high income economies

(a) Decomposition of the problems into 10 categories: low/high income economies (b) Decomposition of the problems into low/high income economies: 10 categories



Data source: authors' calculation, based on Table 3.2.
 Note: low/high income economies are 11/10 APEC economies with GDP per capita of less than US\$10,000 in 2005 (see Table 3.3 for GDP per capita).

income economies (Figure 3.2(b)). Categories vii) to ix), on the other hand, have almost the same share (9.1 percent for vii) and ix) and 9.5 percent for viii), following categories v) and vii), in the high-income group. Furthermore, the shares for the high-income groups are over 50 percent for two of 10 categories vii) (51.2 percent) and x) (56.3 percent). These findings indicate that for FDI facilitation, a priority should be placed on solving problems such as underdeveloped infrastructure, and shortages of human resources in addition to institutional and implementation problems for low-income economies, while no such priority is considered necessary for high-income economies.

The features of the investment climate and major problems identified by our analysis in this section are basically consistent with the discussions and findings of the studies on the business environment and competitiveness reviewed in Section 2. In addition, the ranking of the investment climates based on our analysis is statistically and positively correlated with the rankings from the previous studies. Table 3.4 presents the rank correlation matrix for the five surveys: three surveys discussed in Section 2, the previous study based on JMC survey (indicated as JMC2000), i.e., [Japan, PECC (2002)], and our analysis (indicated as JMC2005).²⁰ It suggests that the ranking of the investment climate based on our analysis is very similar to those obtained from other studies.

Particularly important issues to be improved include institutional problems, complicated and delayed procedures, underdeveloped infrastructure, inflexible labor market conditions such as difficulty in hiring and firing workers and burdensome labor regulations, and difficulty in closing or reorganizing operations, and problems involving taxation regulations (including double taxation problems due to lack of double taxation treaties). At the same time, low-income countries are more likely to require substantial further FDI liberalization through the removal of direct barriers to FDI, in addition to promotion of FDI facilitation, than high-income economies.

Besides these two important insights, we would like to emphasize based on our overall analysis above that among 10 categories of direct and indirect impediments to FDI, the areas with the highest priority for improvement are vi) lack of transparency in policies and regulations concerning investment (institutional problems), v) complicated and/or

²⁰ 17 APEC economies that are available in all of five surveys are used for the analysis of rank correlation.

Table 3.4 Rank correlation matrix for 5 surveys

	Doing Busines	GCI	IMD	JMC2000	JMC2005
Doing Business	1.000				
GCI	0.797 ***	1.000			
IMD	0.750 ***	0.865 ***	1.000		
JMC2000	0.716 ***	0.578 **	0.510 **	1.000	
JMC2005	0.601 ***	0.552 *	0.419 **	0.880 ***	1.000

Note: "***", "**", and "*" express statistical significance at 1%, 5%, and 10% level, respectively. Speaman method is used for 17 countries in all cases above. JMC2005 is our analysis.

	Doing Busines	GCI	IMD	JMC2000	JMC2005
Study by Austral	0.591 **	0.473 *	0.380	0.692 ***	0.631 **

Note: See notes above. Speaman method is used for 14 countries. The ranking in study by Australia is for the degree of FDI barriers.

delayed procedures with respect to investment-related regulations (implementation problems), ix) underdeveloped infrastructure, shortages of human resources, and insufficient investment incentives, i) restrictions on foreign entry, and viii) labor regulations and related practices excessively favorable to workers.

By- economy discussion

In the following, we briefly discuss major problems by economy.²¹ The ranking among 21 APEC economies is indicated after the name of the economy. It should be kept in mind that the economies with active investment by Japanese firms may tend to have a larger number of problems identified as noted above. Therefore, the ranking among APEC economies does not necessarily reflect a relative evaluation of the investment climate.

Australia (11th, 36 incidents)

Major impediments are found in category v) lack of transparency in policies and regulations concerning investment (15 incidents), vi) complicated and/or delayed procedures with respect to investment-related regulations (7), and ix) underdeveloped

²¹ See Table A.3.1 for details of issues.

infrastructure, shortages of human resources, and insufficient investment incentives (7). The examples are double taxation problems and other taxation-related issues, and transfer pricing issues for category v), complicated/delayed administrative procedures for category vi), and shortages of specific specialized human resources and underdevelopment of infrastructure such as road and port for category ix). Indirect impediments to FDI require improvement.

Brunei Darussalam (2nd, 1 incident)

For Brunei, only one problem is identified in category v) lack of transparency in policies and regulations concerning investment: ambiguity of government procurement procedures.

Canada (8th, 25 incidents)

Major impediments are found in category v) lack of transparency in policies and regulations concerning investment (8), category vi) complicated and/or delayed procedures with respect to investment-related regulations (7), and category iv) restrictions on the movement of people and employment requirements (4). The examples are taxation issues, safety and environmental standards and certification issues, and transfer pricing issues for category v), complicated/delayed administrative procedures for category vi), visa-related issues and nationality requirements for directors for category iv).

Chile (4th, 10 incidents)

Category v) lack of transparency in policies and regulations concerning investment (5) is the category with the major FDI impediments: taxation issues including double taxation problems, royalty-related issues, and difficulty in applying for tax exemptions for reinvestment of dividends due to the shortages of period allowed.

People's Republic of China (21st, 91 incidents)

Major impediments are found in category vi) complicated and/or delayed procedures with respect to investment-related regulations (27), category v) lack of transparency in policies and regulations concerning investment (25), category i) restrictions on foreign entry (8), category ix) underdeveloped infrastructure, shortages of human resources, and insufficient investment incentives, and ii) performance requirements. The examples are complexity, delay, difficulty, and inefficiency of various administrative procedures, arbitrary interpretation in implementing regulations, and corruption for category vi), underdevelopment, ambiguity, and sudden and frequent

changes of various legal regulations and institutions for category v), restrictions on foreign entry into some sectors for category i), difficulty in hiring management staff and engineering and high turnover ratios for category ix), and various local content requirements for category ii). These findings indicate that there is plenty of room for direct and indirect barriers to FDI to be improved.

Hong Kong, China (7th, 16 incidents)

Major categories are category v) lack of transparency in policies and regulations concerning investment (5) with mainly taxation-related issues and category vii) insufficient protection of intellectual property rights (5), such as widespread counterfeiting of goods and pirated copying due to insufficient protection of IPRs and insufficient inspections at the borders and issues involving trademark rights and copyrights.²² IPR problems seem to be particularly serious for counterfeiting of goods and pirated copying coming from the PRC.

Indonesia (19th, 62 incidents)

Major categories are category v) lack of transparency in policies and regulations concerning investment (21), category vi) complicated and/or delayed procedures with respect to investment-related regulations (14), category ix) underdeveloped infrastructure, shortages of human resources, and insufficient investment incentives (8), and category i) restrictions on foreign entry (5). Similarly to the PRC, the examples include underdevelopment, ambiguity, and sudden and frequent changes of various legal regulations and institutions for category v), complexity, delay, and inefficiency of various administrative procedures, arbitrary interpretation in implementing regulations, depreciation-related issues, corruption, and high taxation for category vi), restrictions on foreign entry in some sectors for category i), difficulty in hiring management staff and engineers and high turnover ratios for category ix), various local content requirements for category ii).

Japan (10th, 30 incidents)

More than one-third of the problems identified fall into category v) lack of transparency in policies and regulations concerning investment. The examples are

²² According to the statement of the Hong Kong, China's government, it seems that Hong Kong, China has made great efforts to establish legal systems for the IPR protection, to improve the enforcement, and to ensure the transparency in investment and tax-related policies and regulations as a whole.

underdevelopment of the legal system as represented by foreign-language translation of Japanese laws, lack of transparency of a number of regulations including financial regulations, and licensing procedures, and delays in legal reforms to facilitate cross-border M&A.

Korea (12th, 37 incidents)

Major categories are category viii) labor regulations and related practices excessively favorable to workers (10), category v) lack of transparency in policies and regulations concerning investment (8), category vi) complicated and/or delayed procedures with respect to investment-related regulations (6), and category vii) insufficient protection of intellectual property rights (6). Examples include an overburdened retirement benefit system, wage-related issues, labor union issues, vagueness of regulations, standards and conformity-related issues, transfer pricing issues, and patent-related issues.

Malaysia (18th, 53 incidents)

The major categories are category vi) complicated and/or delayed procedures with respect to investment-related regulations (14), category v) lack of transparency in policies and regulations concerning investment (10), category ii) performance requirements (5), and category viii) labor regulations and related practices excessively favorable to workers (5). Examples include complexity, delays, and difficulty of administrative procedures, arbitrary interpretation in implementing regulations, and corruption for category vi), ambiguity, sudden changes, and instability of regulations and taxation issues for category v), local content requirements, performance requirements according to investment, export, and production for category ii), and excessive holidays, absence from work, abuse of medical leaves, labor regulations and related practices excessively favorable to workers, and wage-related issues including rapid increases and lack of a minimum wage system for category viii).

Mexico (13th, 42 incidents)

The major categories are category ix) underdeveloped infrastructure, shortages of human resources, and insufficient investment incentives (13), category v) lack of transparency in policies and regulations concerning investment (10), and category vi) complicated and/or delayed procedures with respect to investment-related regulations (10). The examples are high turnover ratio, shortages of workers in maquiladora, underdeveloped port and waste disposal infrastructure, instability of public utilities, and

insufficient or reduced investment incentives for category ix), lack of transparency, ambiguity, sudden and frequent changes, instability of regulations and taxation issues for category v), and complexity, delay,s and difficulty of administrative procedures for category vi).

New Zealand (5th, 11 incidents)

The major categories are v) lack of transparency in policies and regulations concerning investment (3) and ix) underdeveloped infrastructure, shortages of human resources, and insufficient investment incentives (3), such as uncertainty in continuing existence of carbon tax reimbursement, an accounting system that is inconsistent with international accounting standards, and a rapid increases (instability) of utility costs, and insufficient electric power.

Papua New Guinea (1st, no issue)

No problem was reported. Note that only one Japanese firm has an investment in this country (see Table 3.3).

Peru (6th, 12 incidents)

Category v) lack of transparency in policies and regulations concerning investment is the area with the largest number of issues identified in this country (7), as exemplified by ambiguity and sudden changes in regulations and royalty issues. The ranking indicates a better evaluation of the investment climate in this economy, though the ranking of the business environment and competitiveness of this economy is much worse in other surveys. This gap is probably due to the small number of Japanese investments in this country.

Philippines (15th, 48 incidents)

The major categories are category vi) complicated and/or delayed procedures with respect to investment-related regulations (12), category v) lack of transparency in policies and regulations concerning investment (10), category ix) underdeveloped infrastructure, shortages of human resources, and insufficient investment incentives (8), category i) restrictions on foreign entry (6), and category viii) labor regulations and related practices excessively favorable to workers (6). The issues in the Philippines are spread widely across many categories: complexity, delays, and inefficiency of administrative procedures, arbitrary interpretation in implementing regulations, and corruption for category vi), ambiguity, sudden and frequent changes of regulations and standards and conformity issues for category v), difficulty in hiring and securing human

resources due to shortages of management staff and engineers, underdeveloped infrastructure, and insufficient incentives for foreign investment and supporting industries for category ix), restrictions on foreign entry into specific sectors for category i), and various labor restrictions for category viii).

Russia (14th, 43 incidents)

The major categories are category vi) complicated and/or delayed procedures with respect to investment-related regulations (13), category v) lack of transparency in policies and regulations concerning investment (10), and category ix) underdeveloped infrastructure, shortages of human resources, and insufficient investment incentives (7). Examples include complexity, delays, and inefficiency of administrative procedures, lack of transparency of regulations, tax collection issues, insufficiency, shrinkage and ambiguity of incentives for foreign investors, difficulties in the financial markets, and underdeveloped infrastructure.

Singapore (3rd, 9 incidents)

The category with the largest number of issues for Singapore is category viii) labor regulations and related practices excessively favorable to workers (3). The issues are rapid increases in wage levels, an increasingly heavy burden of employee pensions, and the burden of educational funding.

Chinese Taipei (9th, 26 incidents)

The major category is category viii) lack of transparency in policies and regulations concerning investment (10), with the problems on standards and conformity, lack of transparency and sudden changes in regulations, and taxation-related issues.

Thailand (20th, 69 incidents)

The major categories are category vi) complicated and/or delayed procedures with respect to investment-related regulations (24), category v) lack of transparency in policies and regulations concerning investment (14), and category ix) underdeveloped infrastructure, shortages of human resources, and insufficient investment incentives (9), category i) restrictions on foreign entry (6), and category iv) restrictions on the movement of people (6). Examples include complexity and delays in administrative procedures and arbitrary interpretation in implementing regulations for category vi), underdevelopment and lack of transparency of various regulations and taxation issues for category v), difficulty in hiring and securing human resources due to shortages of management staff and engineers, a high turnover ratio, and issues involving investment incentives for

category ix), restrictions on foreign entry for category i), and a nationality requirement for directors, restrictions on hiring foreigners, and visa-related issues for category iv).

United States of America (16th, 50 incidents and 60 incidents)

The major categories are category vi) complicated and/or delayed procedures with respect to investment-related regulations (20), category v) lack of transparency in policies and regulations concerning investment (6), and category vii) insufficient protection of intellectual property rights (6). Examples include complexity, delays, and inefficiency of administrative procedures, differences in regulations among the states regarding such matters as standard and conformity and taxation and their complexity, abuses and arbitrary implementation of antidumping regulations, arbitrary implementation of customs clearance regulations, and patent-related issues, including issues stemming from the first-to-invent principle.

Viet Nam (17th, 50 incidents)

Major categories are category vi) complicated and/or delayed procedures with respect to investment-related regulations (14), category ix) underdeveloped infrastructure, shortages of human resources, and insufficient investment incentives (8), and category v) lack of transparency in policies and regulations concerning investment (6). The examples are complexity and delay of administrative procedures and arbitrary implementation of customs clearance for category vi), underdeveloped infrastructure and insufficient investment incentives for category ix), and underdevelopment, ambiguity, and sudden changes in regulations for category v).

4. Discussion from the legal perspective

This section briefly analyzes the 10 major issues for FDI liberalization and facilitation specified above from the legal viewpoint. This does not mean, however, that we focus our attention only on legally binding international agreements; on the contrary, we use a number of APEC documents and resources, almost all of which are non-binding, as a frame of reference. This approach reflects the general APEC principle of voluntarism, aimed at providing the member economies with useful guidance on ways of addressing these FDI impediments and creating a favorable investment climate. As a supplementary source, we also refer to the other multilateral instruments, including the Policy

Framework for Investment and the draft text of the Multilateral Agreement on Investment (MAI), both proposed under the framework of the OECD. Bilateral or regional agreements, such as FTAs/RTAs or bilateral investment agreements (BITs), and the WTO agreements are also taken into account to the extent that they are relevant to the issues discussed here.²³

4.1 FDI liberalization

i) Restrictions on foreign entry

i.1. Most-favoured-nation treatment

Although few barriers have been reported in the Asia-Pacific region,²⁴ to ensure most-favoured-nation (MFN) treatment, *i.e.*, to prevent discriminatory treatment against foreign investors on grounds of their nationality, is one of the most essential conditions for encouraging FDI. The second principle of the APEC Non-Binding Investment Principles (NBIP) recommends the following:

“Member economies will extend to investors from any economy treatment in relation to the establishment, expansion and operation of their investments that is no less favourable than that accorded to investors from any other economy in like situations, without prejudice to relevant international obligations and principles.”

Of course, the APEC member economies are not prohibited from maintaining some MFN exceptions, unless otherwise committed by bilateral, regional, or multilateral agreements.²⁵ A frequently discussed issue is whether, and to what extent, MFN treatment should be accorded at the pre-establishment phase, where host economies’ authorities may have high regulatory concerns.²⁶ In this respect, the Menu of Options entry on MFN

²³ See Table A.4.1. in the Appendix for a summary table which describes how these various international instruments correspond to each of the 10 major issues.

²⁴ One of the reported impediments is that investors or investments from one economy are treated by the host economy more favourably than those from other economies, mainly due to the existence of special bilateral agreements between the beneficiary economy and the host economy.

²⁵ “There is in customary international law no clearly established general obligation on a state not to differentiate between other states in the treatment it accords to them.” *Oppenheim’s International Law*, 9th ed.(edited by R.Jennings & A.Watts), Longman, 1992, p.376.

²⁶ The draft MAI text considers that the MFN clause should cover a wider range of investment activities, *i.e.*, with respect to “the *establishment, acquisition, expansion, operation, management, maintenance, use, enjoyment, and sale or other disposition of investments*” (emphasis added). An official commentary to this provision states: “Different views were expressed on the value of a “closed” or “open” list of investment activities to be covered by the National Treatment and MFN

suggests that such remaining restrictions be specified, and subsequently reviewed to determine whether those MFN exceptions can be narrowed down or eliminated (Item 3.01-02). The OECD Policy Framework for Investment also advises that governments should have mechanisms to ensure transparency of the remaining discriminatory restrictions on international investment and to conduct periodic reviews of their costs with respect to their intended public purpose (Item 1.6).

As concerns the coverage of the MFN clause, many bilateral and regional investment treaties, as well as the NBIP principle, provide that MFN treatment be accorded only when relevant investors or investments are in “like circumstances” or in “like situations” (the *ejusdem generis* principle). This recognizes the possibility that governments may have legitimate policy reasons for according differential treatment to different types of investors or investments. It is notable, however, that, in the case of *Pope & Talbot Inc. v. The Government of Canada*, the UNCITRAL Arbitral Tribunal interpreted NAFTA Article 1102 (national treatment in “like circumstances”) as requiring a comparison between the treatment accorded to foreign-owned and domestic investments “in the same business or economic sector”.²⁷ The same holds true for the “like circumstances” test in the case of MFN treatment. We should note, furthermore, that

provisions, before and/or after establishment. A closed list had the advantage of certainty, but risked omitting elements that could be important to the investor. An open list would cover all possible investment activities, including new activities. But it could also create uncertainties as to the scope of the Agreement and might have adverse effects on the operation of existing bilateral and other investment agreements using a closed list. Several Delegations believed that the list “establishment, acquisition, expansion, operation, management, maintenance, use, enjoyment and sale or other disposition of investments” should be considered a comprehensive one whose terms were intended to cover all activities of investors and their investments for both the pre- and post-establishment phases. In their view, this was the preferable approach” (OECD, *the Multilateral Agreement on Investment: Commentary to the Consolidated Text*, DAF/MAI(98)8/REV1, 22 April 1998, p.11). To give a few examples of the MFN clause covering the pre-establishment stage, see NAFTA Art. 1103, Framework Agreement on the ASEAN Investment Area Art. 8, Japan-Viet Nam BIT Art. 2, etc. In contrast, Thailand-Japan Economic Partnership Agreement Art. 96.1 moderately provides that, “[i]f, after this Agreement enters into force, a Party enters into any agreement on investment with a non-Party, it shall consider a request by the other Party for the incorporation in this Agreement of treatment no less favourable than that provided under the former agreement with respect to the establishment, acquisition and expansion of investments.”

²⁷ Award on Merits, 10 April 2001, para.78. The Tribunal further states that differences in treatment will presumptively violate Article 1102, unless they have a reasonable nexus to rational government policies that (i)do not distinguish, on their face or *de facto*, between foreign-owned and domestic companies, and (ii)do not otherwise unduly undermine the investment liberalizing objectives of NAFTA.

the draft MAI text on MFN treatment carefully places the words “in like circumstances” in brackets, avoiding a potential increase in denials of benefits on these grounds.

i.2. National treatment

Like the MFN principle, ensuring national treatment (*i.e.*, the absence of discrimination between foreign and domestic investors) is also an essential instrument for promoting the inflow of FDI. In the APEC region, however, there are a number of reported cases of foreign investors’ participation being restricted or prohibited, especially in the service sectors (*e.g.*, wholesaling and retailing, the power and energy fields, telecommunications, the culture industry, financial businesses, etc.) and in government procurement contracts. Admittedly, it is difficult to achieve full national treatment, particularly in some politically and economically sensitive sectors. The third principle of the NBIP, therefore, directly accepts the possibility of exceptional restrictions:

“With exceptions as provided for in domestic laws, regulations and policies, member economies will accord to foreign investors in relation to the establishment, expansion, operation and protection of their investments, treatment no less favourable than that accorded in like situations to domestic investors.”

What is important for foreign investors is that, if these restrictions are maintained, they be clearly identified and listed by the host economy. In this regard, it is notable that the Framework Agreement on the ASEAN Investment Area requires each Member State to submit a Temporary Exclusion List and a Sensitive List of any industries or measures affecting investments with regard to which it is unable to open up or to accord national treatment to ASEAN investors (Art. 7.2). The Temporary Exclusion List must be reviewed periodically, moreover, and shall be progressively phased out by the year 2010 (Art. 7.3). In a similar fashion, the Menu of Options suggests that such exceptions to national treatment be reviewed to determine whether the size of the list of sectors that are closed to foreign investment can be eliminated or phased out (Item 3.03-08). Some bilateral agreements, on the other hand, such as the Thailand-Australia FTA Art. 904 and the Thailand-Japan Economic Partnership Agreement Art. 93.1, accord national treatment in the pre-establishment phase only to the sectors designated in the appended list (the “positive list” method).

With respect to national treatment in the service sector, the WTO General Agreement on Trade in Services (GATS) provides in Article XVII that, in the sectors

designated in its Schedule, and subject to any conditions and qualifications set out therein, each Member shall accord to services and service suppliers of any other Member, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers. Such conditions and qualifications on national treatment are to be reduced or eliminated through successive rounds of negotiations, with due respect for national policy objectives and the level of development of the individual Members (Art. XIX).

For sector-specific issues, the GATS' Annex on Telecommunications requires each Member to ensure that any service supplier of any other Member is accorded access to and use of public telecommunications transport networks and services on reasonable and non-discriminatory terms and conditions, for the supply of a service included in its Schedule (section 5(a)).²⁸ With respect to the financial sector, the GATS' Understanding on Commitments in Financial Services provides that, under terms and conditions that accord national treatment, each Member shall grant to financial service suppliers of any other Member established in its territory access to payment and clearing systems operated by public entities, and to official funding and refinancing facilities available in the normal course of ordinary business (section C.1).²⁹ The Understanding further requires each Member to endeavour to remove or to limit any significant adverse effects of certain kind of *non-discriminatory* measures concerning financial service suppliers of any other

²⁸ On the other hand, section 5(e) of the Annex allows each Member to impose conditions on access to and use of public telecommunications transport networks and services when they are necessary (i) to safeguard the public service responsibilities of suppliers of public telecommunications transport networks and services, in particular their ability to make their networks or services available to the public generally, (ii) to protect the technical integrity of public telecommunications transport networks or services, or (iii) to ensure that service suppliers of any other Member do not supply services unless permitted pursuant to commitments in the Member's Schedule. A developing country Member may further place reasonable conditions necessary to strengthen its domestic telecommunications infrastructure and service capacity and to increase its participation in international trade in telecommunications services, as far as such conditions are specified in the Member's Schedule (section 5(g)).

²⁹ Section C.2 further provides that, when membership or participation in, or access to, any self-regulatory body, securities or futures exchange or market, clearing agency, or any other organization or association, is required by a Member in order for financial service suppliers of any other Member to supply financial services on an equal basis with financial service suppliers of the Member, or when the Member provides directly or indirectly such entities, privileges or advantages in supplying financial services, the Member shall ensure that such entities accord national treatment to financial service suppliers of any other Member resident in the territory of the Member.

Member.³⁰ Also noteworthy is the “Checklist of Financial Services Liberalization” developed by the APEC Business Advisory Council (ABAC) in 2005 and revised in 2006 for use in assessing and evaluating the quality of financial services offers in the Doha negotiations. The Checklist includes a detailed description of desirable policies in relation to national treatment.

Government procurement regulations have been outside the scope of the WTO rules for national treatment under both the GATT (Art. III.8) and the GATS (Art. XIII.1). The Agreement on Government Procurement, on the other hand, requires each Party to ensure MFN and national treatment immediately and unconditionally with respect to all laws, regulations, procedures and practices regarding government procurement (Art. III.1). Although only 6 of 21 APEC member economies are Parties to the Agreement on Government Procurement (Canada, HKC, Japan, Korea, Singapore, and the United States), another four member economies have participated in the work of the WTO Government Procurement Committee in the capacity of observer governments (Australia, Chile, PRC, and Chinese Taipei). In addition, some bilateral or regional agreements contain an MFN and national treatment clause in relation to government procurements.³¹

i.3. Restrictions on ownership, finance, and operation

The Menu of Options suggests that the APEC member economies eliminate or phase out restrictions and regulations for foreign investors regarding their form of establishment, joint venture requirements, establishment of local branches, foreign equity ownership, requirements to transfer ownership to local firms, and conditions for foreign ownership in relation to export ratios or domestic sales, etc. (Item 3.09-18). The “Checklist of Barriers and Impediments to FDI” issued by the ABAC in 2006 also

³⁰ Section B.10 specifies measures to be removed as follows: (a) non-discriminatory measures that prevent financial service suppliers from offering in the Member’s territory, in the form determined by the Member, all the financial services permitted by the Member; (b) non-discriminatory measures that limit the expansion of the activities of financial service suppliers into the entire territory of the Member; (c) measures of a Member, when such a Member applies the same measures to the supply of both banking and securities services, and a financial service supplier of any other Member concentrates its activities in the provision of securities services; and (d) other measures that, although respecting the provisions of the Agreement, affect adversely the ability of financial service suppliers of any other Member to operate, compete or enter the Member’s market.

³¹ See, *e.g.*, Australia and New Zealand Government Procurement Agreement (Clause 2(c) and 4); Japan-Chile Economic Partnership Agreement (Art. 137).

attaches importance to the removal of restrictive conditions on ownership, such as foreign equity caps and joint venture requirements. Another important problem often reported in the APEC region involves restrictions on the right of ownership or use of land by foreign investors.

The Menu of Options encourages liberalization of foreigners' access to domestic financial instruments (*e.g.*, money market instruments, corporate bond markets), in conjunction with the removal of deposit requirements, minimum capitalization requirements, and subsequent additional investment requirements (Item 3.19-23).

Stable availability of input and resources for production is of critical interest to foreign investors and entrepreneurs. The WTO Agreement on Trade-Related Investment Measures (TRIMs) requires that no Member applies any measure that is inconsistent with the provisions of Article III (national treatment) or Article XI (prohibition of quantitative restrictions) of GATT 1994, including, for example, a measure which restricts the importation by an enterprise of products used in or related to its local production, generally or to an amount related to the volume or value of local production that it exports (paragraph 1(b) and 2(a) of the Annex to the Agreement on TRIMs).³² Also illustrated in the Annex as an example of a GATT-inconsistent measure is a requirement that restricts the importation by an enterprise of products used in or related to its local production by restricting its access to foreign exchange to an amount related to the foreign exchange inflows attributable to the enterprise (paragraph 2(b)). These measures applied by WTO Members have been reported to the Council for Trade in Goods and successfully eliminated by the end of the transition period, with some exceptions. The Menu of Options also recommends that member economies remove restrictions on imports needed to support foreign investment and on access to local raw materials and input (Item 3.25 and 3.27).

i.4. Further protection and liberalization of foreign investment

As a tool for ensuring a current (or enhanced) level of protection and openness for foreign investors, the Menu of Options suggests concluding bilateral, regional, and multilateral agreements or arrangements for the protection of investment (Item 1.08-09).

³² The OECD Policy Framework for Investment also advises governments to review whether their trade policies raise the cost of inputs of goods and services, thereby discouraging investment in industries that depend upon sourcing at competitive world prices (Item 3.5).

The majority of today's investment treaties contain a provision offering foreign investors "fair and equitable treatment" as well as MFN and national treatment. Whether foreign investors are treated in a "fair and equitable" manner can be judged only on a case-by-case basis, but it will generally be found unjustifiable to implement a manifestly inconsistent, non-transparent, unreasonable (*i.e.*, unrelated to some rational policy), or discriminatory measure which frustrates the investors' underlying legitimate expectations with respect to the required stability and predictability of the business environment.³³

Protection of foreign investment will be further promoted if definitions of investment in the host economies' existing legislation or administrative procedures are broadened to permit coverage of the widest variety or forms of investment. As suggested by the Menu of Options (Item 1.01), the definition might include acquisition of shares of domestic enterprises, management contracts, long-term leases, all forms of business organizations (*e.g.*, wholly owned, subsidiaries, partnerships, branches, joint ventures, smart partnerships, strategic alliances, venture capital), certain kinds of debt instruments, intellectual property, etc. Many bilateral investment treaties have recently extended the coverage of protection to every kind of asset, including portfolio investments,³⁴ while permitting each Party to adopt exceptional safeguard measures in the event of serious balance-of-payments and external financial difficulties, or in cases where movements of capital cause or threaten to cause serious difficulties with respect to monetary and exchange rate policies.

From the viewpoint of foreign investors, it is preferable that the host economies commit to locking in current treatment for investors (*i.e.*, standstill), and endeavor to progressively reduce or eliminate the remaining restrictions *irreversibly* ("ratchet" liberalization). One of the major impediments to be reformed in the pre-establishment phase concerns various types of prior-authorization requirements. The Menu of Options

³³ See, *e.g.*, *CMS Gas Transmission Company v. The Argentine Republic*, ICSID Case No. ARB/01/8, Award of 12 May 2005, paras.273-84; *Saluka Investments BV v. The Czech Republic*, the Matter of an Arbitration under the UNCITRAL Arbitration Rules, Partial Award of 17 March 2006, para.309. The draft MAI text also considers that foreign investments shall receive "fair and equitable treatment" and shall not be impaired by "unreasonable [or/and] discriminatory" measures.

³⁴ For example, New Zealand-Thailand Closer Economic Partnership Agreement Art. 9.2 defines the investment to be protected as "every kind of asset," including shares, stocks, bonds and debentures or any other form of participation in a juridical person including government issued bonds. As a similar example, see Japan-Viet Nam Art. 1.

suggests that these prior-authorization mechanisms be phased out, replaced with post-establishment notifications, or applied in a limited way to selected sectors or large-value investments (Item 1.04-07).

ii) Performance requirements

In addition to the trade-balancing requirements and foreign exchange requirements mentioned above (i.3), other forms of performance requirements also constitute serious impediments for efficient operation of foreign investment in the APEC region. Particularly conspicuous among these are local content requirements, *i.e.*, measures requiring the purchase or use by an enterprise of products of domestic origin, which are supposed to be eliminated immediately in accordance with the WTO Agreement on TRIMs. Other examples are requirements for a given level of investment, scale of production, research and development (R&D), or exportation of products. In some cases, these are combined with a privileged treatment (*e.g.*, preferential tariff rates) granted to those who satisfy the requirements.

The fifth principle of the NBIP recommends that member economies minimize the use of performance requirements that distort or limit expansion of trade and investment. The Menu of Options also suggests the elimination or relaxation of those requirements, particularly when they are inconsistent with the WTO Agreement on TRIMs (Item 7.01-03). The illustrative list attached to the TRIMs Agreement enumerates several measures that are inconsistent with the WTO Agreement (local content requirements, trade balancing requirements, foreign exchange restrictions, and domestic sales requirements) and that are prohibited even when they are required of investors as conditions for obtaining advantages such as preferential taxation. These measures are likewise rejected in the draft MAI text and a number of bilateral or regional agreements, while other kinds of measures (*e.g.*, local hiring requirements, local training requirements, technology transfer requirements, R&D requirements, etc.) are permitted there when imposed in exchange for the investors' receipt of or continued receipt of advantages.³⁵

iii) Restrictions on overseas remittances and controls on foreign currency transactions

³⁵ See, *e.g.*, the draft MAI text, p.22; NAFTA, Art. 1106.4; Japan-Viet Nam BIT, Art. 4.2.

The ability to freely transfer all kinds of investment-related capital and payments, including repatriation of earnings and liquidated capital, is of immediate importance for foreign investors. Although the reported impediments are relatively few in the APEC region, some serious problems still remain (*e.g.*, imposition of high taxes or charges on capital transfers, limited access to local currencies, restrictions on foreign currency holdings or ways of using them, etc.). In this respect, the seventh principle of the NBIP states:

“Member economies will further liberalise towards the goal of the free and prompt transfer of funds related to foreign investment, such as profits, dividends, royalties, loan payments and liquidations, in freely convertible currency.”

The Menu of Options additionally requests that member economies 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” (Item 6.01). Today’s bilateral and regional agreements, as well as the draft MAI text, further extend the scope of protection of transfers of capital: these include, *inter alia*, the initial capital and additional amounts needed to maintain or increase investments; profits, interest, capital gains, dividends, royalties and fees; payments made under contracts, including loan agreements; proceeds from the total or partial sale or liquidation of investments; payments of compensation; payments arising from the settlement of disputes; and earnings and remuneration of personnel engaged from abroad in connection with investments. It is equally important for foreign investors that such transfers may be made without delay in freely convertible currencies at the market exchange rate current on the date of the transfer.

If the host economy feels the need to introduce exceptions to prevent transfers, such restrictions are expected to be limited in scope, specific in terms, and applied in an equitable and non-discriminatory manner. It has gradually become common among bilateral and regional agreements to admit exceptions related to such circumstances as the following: bankruptcy, insolvency or protection of creditors’ rights; ensuring compliance with laws and regulations on the issuing, trading or dealing in securities; criminal or penal offenses; or ensuring compliance with orders or judgments in adjudicatory proceedings.

iv) Restrictions on the movement of people and employment

requirements

Foreign investment can be discouraged if the host economy imposes severe restrictions on the entry or deployment of foreign personnel who have the specialized knowledge or experience necessary for the effective management and operation of the investment. The Ha Noi Action Plan 2006 [APEC(2006a)] calls for the improvement in temporary business entry and residence arrangements, particularly through further enhancement of the APEC Business Travel Card (ABTC) scheme.³⁶ In the APEC region, however, a number of impediments have been reported in this regard, such as local hiring requirements (including hiring of top managerial personnel), limits on the number of foreign employees, strict conditions or restrictions on the issuance or renewal of (multiple-entry) visas or work permits, etc.

Of course, each economy has its own legitimate right to control the entry of aliens and to determine whether to grant them work permits in accordance with its immigration and labor policies. Accordingly, the ninth principle of the NBIP makes the following somewhat moderate suggestion:

“Member economies will permit the temporary entry and sojourn of key foreign technical and managerial personnel for the purpose of engaging in activities connected with foreign investment, subject to relevant laws and regulations.”

Similarly, the Menu of Options recommends that the member economies allow the temporary entry and sojourn of personnel needed to establish, develop, administer or advise the operation of an investment of theirs (*i.e.*, investors and key managerial or technical personnel and advisers) in line with their visa laws regarding the entry and sojourn of personnel (Item 8.01). The draft MAI text proposed a more detailed description of the coverage of personnel to be accepted by the host economy: that is to say, (i) investors who have committed, or are in the process of committing, substantial amounts of capital to the host economy, (ii) employees employed by investors in the

³⁶ The ABTC gives accredited business people fast-track entry and exit through special APEC lanes at major airports, and multiple short term entry to these economies for a minimum of 59 days stay each visit, without applying for visas or entry permits each time they travel to any of the participating APEC economies. There are currently 12,000 ABTC, with 17 APEC economies participating in the scheme: Australia, Brunei Darussalam, PRC, HKC, Indonesia, Japan, Korea, Malaysia, New Zealand, PNG, Peru, the Philippines, Singapore, Chinese Taipei, Thailand and Viet Nam.

capacity of executives, managers or specialists and who are essential to the enterprise,³⁷ and (iii) the spouse and minor children of a natural person who has been granted temporary entry.

Nationality requirements for executives, managers, board members, and top technical and/or advisory talent are specifically disfavored in the Menu of Options (Item 8.03-04), as well as in a number of bilateral and regional agreements. With respect to other types of employment requirements or restrictions, host economies are encouraged, as the draft MAI text states, to permit foreign investors to employ any natural person of the investor's choice, regardless of nationality or citizenship, provided that such person holds a valid permit to stay and work delivered by the competent authorities of the host economy and that the employment concerned conforms to the terms, conditions and time limits of the permission granted to such person.

4.2 FDI facilitation

v) Lack of transparency in policies and regulations concerning investment (institutional problems)

v.1. Transparency

A transparent regulatory framework dealing with investment is one of the key determining factors for foreign investors, as it helps predict how the host economy's authorities will treat or respond to them. The first principle of the NBIP emphasizes that:

“Member economies will make all laws, regulations, administrative guidelines and policies pertaining to investment in their economies publicly available in a prompt, transparent and readily accessible manner.”

The Menu of Options also advises member economies to publish and/or make widely available through other means, on a timely basis, information on an economy's investment codes, investment laws and regulations, and procurement procedures at the central and local authority levels (Item 2.02). Likewise, some current bilateral or regional agreements require of each host economy that its laws, regulations, administrative procedures and administrative rulings and judicial decisions with general application as

³⁷ Detailed definitions of “executive”, “manager” and “specialist” are respectively provided in the draft MAI text (p.15). Some delegations further argued that these employees should be required to have been employed by the investor for a specified minimum period, for example one year, though this requirement is put in brackets in the final draft text.

well as international agreements that pertain to or affect investment activities be promptly published, or otherwise made publicly available.³⁸ More specifically, the OECD Policy Framework for Investment considers that foreign investments can be promoted by the following means: consulting with interested parties; simplifying and codifying legislation; drafting in plain language; developing registers of existing and proposed regulations; expanding the use of electronic dissemination of regulatory material; and publishing and reviewing administrative decisions.³⁹ Prompt publication and public availability of relevant laws and regulations are stressed in the WTO Agreements as well: *e.g.*, GATT Art. X; GATS Art. III; Agreement on TRIMs Art. 6; Agreement on Government Procurement Art. 17; etc.

It is also important that the host economy's authorities, upon request, provide information and respond to questions concerning any actual or proposed measures. In this regard, the transparency chapter of the APEC Model Measures for RTAs/FTAs [APEC(2006b)] recommends establishing contact points for inquiries to facilitate communications. Another important suggestion made in that chapter is that the host economies publish any relevant measures being proposed well in advance and provide a reasonable opportunity for interested persons and the other economies to comment on such proposed measures. It will also be preferable to introduce the so-called "no-action letter" procedure, developed in the United States and being disseminated to other economies, which would allow businesses to confirm with the authorities in advance regarding the legality of their planned activities.

The general principles on transparency in trade and investment liberalization and facilitation delivered as the "Leaders' Statement to Implement APEC Transparency Standards" in 2002 effectively sorted out the points needed to enhance transparency.

v.2. Standards and conformance

The alignment of domestic regulatory frameworks with international standards, particularly in areas such as technical, environmental, and sanitary regulations or accounting systems, is one of the most essential prerequisites for a favorable investment and business climate. Section C.5 of Part One of the Osaka Action Agenda formulates the

³⁸ See, *e.g.*, Framework Agreement on the ASEAN Investment Area Art. 11, Japan-Viet Nam BIT Art. 7, etc.

³⁹ *Policy Framework for Investment*, OECD, 2006, p.23.

member economies' objectives in the field of "standards and conformance" as follows:

"APEC economies will, in accordance with the Declaration on APEC Standards and Conformance Framework and with the Agreement on Technical Barriers to Trade (TBT Agreement) and the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) attached to the WTO Agreement: (a) align their domestic standards with international standards; (b) endeavour to actively participate in international standardization activities; (c) promote good regulatory practice for the preparation, adoption and application of technical regulations in the APEC region; (d) achieve recognition of conformity assessment including mutual recognition arrangements in regulated and voluntary sectors; (e) promote cooperation for technical infrastructure development to facilitate broad participation in mutual recognition arrangements in both regulated and voluntary sectors; and (f) ensure the transparency of the standards and conformity assessment of APEC economies."

As the Collective Action needed to implement the above objectives, the Osaka Action Agenda encourages member economies to: (i) identify priority areas for alignment with international standards and report on the progress in their alignment plans every year; (ii) update the consolidation of materials in the Good Regulatory Practice Database; (iii) review the implementation and use of mutual recognition arrangements; and (iv) update the APEC Contact Points for Standards and Conformance Information; etc. The Ha Noi Action Plan has confirmed the APEC economies' continuing support for these goals and activities.

vi) Complicated and/or delayed procedures with respect to investment-related regulations (implementation problems)

Complicated and/or delayed procedure concerning the establishment or operation of foreign investments is one of the most frequently reported obstacles in the APEC region. In particular, trade policies and customs procedures that do not conform to internationally recognized standards delay cross-border deliveries and increase business costs, making it harder to harness efficiency gains from global supply chains and discouraging investment.⁴⁰ Section C.6 of Part One of the Osaka Action Agenda instructs the APEC member economies to simplify and harmonize their customs procedures,

⁴⁰ *Ibid.*, p.33.

primarily by taking into consideration the Guiding Principles of the Action Program of the Sub-Committee on Customs Procedures (FACTS: Facilitation, Accountability, Consistency, Transparency, Simplification), and by making use of information and communication technologies (ICT) as tools to improve productivity. The Menu of Options requests member economies to streamline their application, registration, government licensing and government procurement procedures by simplifying the forms or submissions, shortening processing times, and reducing unnecessary steps (Item 13.02).

These issues were further detailed in the trade facilitation chapter of the APEC Model Measures for RTAs/FTAs adopted in 2005. According to this chapter, the following factors should be taken into account: (i) impartial administration and enforcement of trade procedures; (ii) application of rules and procedures related to trade in a consistent, predictable, and uniform manner; (iii) minimization of the incidence and complexity of import and export formalities; (iv) simplification of import and export documentation requirements; (v) elimination of arbitrary or unnecessary procedural obstacles in relevant laws, regulations, and policies; (vi) modernization of business procedures, particularly by using automated systems and electronic documentation based on international standard formats; (vii) establishment of a “single window” mechanism for submission of required data; and (viii) adoption of express shipment procedures that expedite clearance; etc. This chapter also suggests that the member economies publish details of fees and charges connected with importation and exportation, and that they limit such fees and charges to the approximate cost of the services rendered.⁴¹

As an additional effort, the APEC economies are encouraged to adopt and abide by the principles of the Revised Kyoto Convention on the Simplification and Harmonization of Customs Procedures, which was prepared by the World Customs Organization (WCO) and entered into force in 2006.⁴² It will also be preferable to classify

⁴¹ Similarly, Article VIII of the GATT provides that all fees and charges of whatever character on or in connection with importation or exportation shall be limited in amount to the approximate cost of services rendered and shall not represent an indirect protection to domestic products or a taxation of imports or exports for fiscal purposes. It is also required in that Article that the contracting parties recognize the need for reducing the number and diversity of fees and charges, minimizing the incidence and complexity of import and export formalities, and decreasing and simplifying import and export documentation requirements.

⁴² The APEC economies which have ratified the Convention as at 1 July 2006 are Australia, Canada, PRC, Japan, Korea, New Zealand, and the United States.

goods wherever possible according to the latest version of the Harmonised Commodity Description and Coding System (the Harmonised System) developed by the WCO. At the same time, the value of goods should be determined according to the principles set forth in Article VII of the GATT, which is complemented in detail by the WTO Agreement on Customs Valuation.

The ABAC further recommends that the APEC economies' customs agencies should enable brokers and traders to pre-submit shipment information before shipment arrival and issue shipment releases when specific conditions are met, allowing most goods to be pre-cleared before arrival ("expedited clearance").⁴³ An advance ruling system of this kind is also suggested in the APEC Transparency Standards on Custom Procedures for areas such as the following: (a) tariff classification; (b) application of the provisions set forth in the WTO Agreement on Customs Valuation; (c) application of duty drawback; (d) country of origin marking requirements; (e) application of rules of origin under free trade agreements and other preferential tariff regimes; and (f) admissibility requirements.

The Shanghai Accord endorsed by the APEC Leaders in 2001 has paved the way for the launch of the Trade Facilitation Action Plan (TFAP), which laid down the target of reducing transaction cost by 5% in the APEC region by 2006. The outcomes of the Final Review of TFAP implementation conducted by APEC in 2006 have demonstrated that APEC has met the 2001 Shanghai target. The Ha Noi Action Plan announced that APEC will keep this momentum by heading for the second phase of TFAP (TFAP 2) for a further 5% reduction of transaction costs by 2010.

Another problem that seriously damages business environment transparency is corruption of domestic public officials. As the OECD Policy Framework for Investment suggests, governments should enact penal, administrative and civil law provisions to provide an effective legislative and regulatory framework for fighting corruption, including bribe solicitation and extortion, as well as for promoting integrity, thereby reducing uncertainty and improving business conditions for every investor (Item 10.6). It is further noted that agency-specific guidelines or codes of conduct may need to be developed in parts of the public service that are particularly exposed to corruption, such as law enforcement, public procurement, export credit, and development assistance as

⁴³ *ABAC Report to APEC Economic Leaders 2006*, p.32.

well as customs and tax administration (Item 10.7). The APEC Leaders are also committed to fighting corruption, as shown in the 2004 Santiago Commitment to Fight Corruption and Ensure Transparency [APEC(2004a)], which promotes regional cooperation by such means as encouraging each other to deny safe haven to officials and individuals found guilty of public corruption, those who corrupt them, and their assets.

Last but not least, barriers to the timely withdrawal of investment from the host economy can be an obstacle to new investment and entrepreneurial activity. The twelfth principle of the NBIP states:

“Member economies accept that regulatory and institutional barriers to the outflow of investment will be minimised.”

vii) Insufficient protection of intellectual property rights

A lack of adequate protection of intellectual property rights (IPR) can cause serious damage to the reputation of an economy’s business environment and become an obstacle to the achievement of the APEC goal of trade and investment facilitation. Effective intellectual property protection and enforcement regimes are essential conditions for promoting investment, particularly in the area of research and development.

In Section C.7 of Part One of the Osaka Action Agenda, the APEC member economies are advised to implement such efforts as the following: (i) ensure adequate and effective protection, including legislation, administration and enforcement of intellectual property rights; (ii) foster harmonization of intellectual property rights systems in the APEC region; and (iii) strengthen public awareness activities. As a guideline for implementing these objectives, the member economies are concomitantly instructed to: (i) ensure that intellectual property rights are granted through expeditious, simple, and cost-effective procedures; (ii) ensure the availability of adequate and effective civil and administrative procedures and remedies against infringement of intellectual property rights; and (iii) provide and expand bilateral technical cooperation in relation to areas such as patent searching and examination, computerization and human resources development in order to ensure adequate intellectual property rights protection in compliance with the TRIPS Agreement.

The fifteenth APEC Ministerial Meeting in 2003 recognized that effective management of IPR is essential to building a knowledge-based economy and, therefore,

endorsed the Comprehensive Strategy on IPR in APEC and the establishment of IPR Service Centers in each economy. In order to move the scheme forward, the member economies embarked in 2004 on IPR Policy Progress Mapping [APEC(2004b)], which categorizes IPR-related measures of the Individual Action Plans (IAP) from year 2003 into four key areas: (i) protection of IPR; (ii) expeditious granting of IPR; (iii) strengthening of IPR dispute settlement; and (iv) strengthening of IPR enforcement.

Under the framework of the IPR Comprehensive Strategy, the Ministers adopted the APEC Anti-Counterfeiting and Piracy Initiative in 2005 with a view to reducing trade in counterfeit and pirated goods, reducing online piracy, increasing cooperation to stop piracy and counterfeiting, and increasing capacity building to strengthen anti-counterfeiting and piracy enforcement. In line with a proposal made in the Initiative, five APEC Model Guidelines have been developed to assist the members' competent authorities and their private sectors in the following: (i) fighting against unauthorized copying in any manner or form, including digital form, in line with the Berne Convention, the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty; (ii) preventing the sale of counterfeit goods over the Internet; (iii) inspecting, suspending, seizing, and destroying goods and equipment used in cases of import, export and transshipment of counterfeit and pirated goods; (iv) ensuring that supply chains are free of counterfeit and pirated goods; and (v) conducting successful campaigns to raise public awareness concerning IPR.

viii) Labor regulations and related practices excessively favorable to workers

Protection of workers' rights is one of the fundamental tasks of today's governments. In particular, the so-called core labor standards set forth in the ILO conventions or other international instruments are considered to be among the basic human rights. These include elimination all forms of compulsory labor, abolishment of child labor, and ensuring freedom of association and the right to collective bargaining. These core labor standards are key elements for the healthy functioning of market economies, creating a level playing field for every investor.⁴⁴

At the same time, the presence of a labor market that facilitates domestic labor

⁴⁴ *Policy Framework for Investment*, OECD, 2006, p.56.

mobility is a critical determinant in investment decision-making, as indicated by the Menu of Options (Item 13.12). The OECD Policy Framework for Investment also considers that badly designed labor market regulations can reduce the opportunities and incentives for businesses to make new investments and expand.⁴⁵ Accordingly, each government is required to strike a delicate balance between promoting social goals and the government's investment attraction strategy, taking into account national labor market conditions. This may be especially true with respect to regulations governing minimum wages, pay reductions, dismissals and layoffs, changes in work conditions, strikes, etc. Better policy design that can reconcile the employers' need for flexibility in employment with the workers' need for adequate security can be achieved through more effective co-ordination and dialogue among workers, employers, and government officials. Some contemporary bilateral investment agreements also refer to the importance of building cooperative relationships between workers and employers as a means of further facilitating investment.⁴⁶

ix) Underdeveloped infrastructure, shortages of human resources, and insufficient investment incentives

ix.1. Infrastructure and human resources

It is emphasized in Section B.6 of Part Two of the Osaka Action Agenda that the pace of economic growth in the Asia-Pacific region depends on the improvement of economic infrastructure. In this regard, the Osaka Action Agenda specifically requests member economies to seek to develop efficient, safe and integrated regional transportation systems, since the ability of transportation systems to handle the movement of people and goods efficiently is critical for maximizing economic productivity, facilitating trade and contributing to the mobility of people.⁴⁷ This Section of the Agenda also encourages the development of telecommunications and information

⁴⁵ *Ibid.*, p.57.

⁴⁶ See, e.g., Korea-Japan BIT, preamble.

⁴⁷ Section B.12 of Part Two of the Osaka Action Agenda. The following efforts are particularly encouraged in this Section: facilitating the harmonization, coordination, and transparency of transport policies, regulations, procedures, and standards; promoting timely rational investment in the transport infrastructure; and promoting, on the basis of fair and equitable access to markets, a more competitive transportation operating environment and cooperating to address institutional constraints which affect the provision of transportation services; etc.

infrastructure based on ten basic principles, such as ensuring open and non-discriminatory access to public telecommunications networks for all information providers and users in accordance with domestic laws and regulations.⁴⁸

The OECD Policy Framework for Investment likewise stresses the significance of good infrastructure for attracting investment, especially in such sectors as telecommunications, electricity services, transport facilities, and fresh water supply (Item 9.3-9.6). It also advises that, in order to improve infrastructure investment performance and delivery, the regulatory authorities and government infrastructure agencies be given operational independence and made accountable for their performance.⁴⁹ Another positive recommendation involves mobilizing private investors to finance and participate in a country's infrastructure maintenance and development, such as through public-private partnerships, as a means of easing the call on public funds and supplement resources for investment in infrastructure development.⁵⁰

Importance must be given not only to material but also to institutional infrastructure. The Menu of Options suggests that member economies (i) establish legal and taxation systems in areas such as stock exchanges, corporate division and mergers and acquisitions to enable flexible corporate reorganization, (ii) introduce accounting and financial reporting systems that follow internationally accepted accounting standards, (iii) develop and streamline bankruptcy law systems that facilitate corporate reorganization, (iv) establish financial systems that enable a variety of financing and capital raising methods, and (v) strengthen and promote improved standards of corporate governance (Item 13.07-11). The OECD Policy Framework for Investment further elaborates these points. First of all, it is important to establish an effective system of contract enforcement that is widely accessible to every investor and, preferably, alternative procedures for dispute settlement, such as arbitration, mediation and conciliation hearings organized by industry bodies or specialized agencies (Item 1.4). Governments are additionally advised to take steps towards the progressive establishment of timely, secure, and effective methods of ownership registration for land and other forms of property that can support the use of property as collateral and expand business access to external sources of credit (Item 1.2, 9.8). The development of effectively

⁴⁸ Section B.9 of Part Two of the Osaka Action Agenda.

⁴⁹ *Policy Framework for Investment*, OECD, 2006, p.59.

⁵⁰ *Ibid.*, p.60.

functioning financial markets that can provide payment services, mobilize savings, and allocate financing to firms wishing to invest is also encouraged (Item 9.7).

With respect to judicial infrastructure, the transparency chapter of the APEC Model Measures for RTAs/FTAs recommends establishing the following: (i) judicial, quasi-judicial, or administrative tribunals or procedures for purposes of prompt review and, where warranted, correction of final administrative actions regarding matters covered by the agreement; and (ii) tribunals that are impartial and independent of the office or authority entrusted with administrative enforcement and that have no substantive interest in the outcome of the matters in question. Article X.3 of the GATT and Article VI.2 of the GATS likewise require each contracting party to maintain, or to institute as soon as practicable, independent judicial, arbitral or administrative tribunals or procedures for purposes, *inter alia*, of prompt review and correction of administrative actions related to customs matters or trade in services.

Finally, it is important to establish a coherent and comprehensive human resources development (HRD) policy framework, since shortages of trained workers constitute an obstacle to expanding investment and make it particularly difficult to attract advanced skill-intensive industries.⁵¹ Section B.4 of Part Two of the Osaka Action Agenda specifies eight priority action areas, as follows: (i) providing a quality basic education; (ii) analyzing the regional labor market to allow sound forecasting of trends and needs in HRD; (iii) increasing the supply and enhancing the quality of managers, entrepreneurs, scientists, and educators/trainers; (iv) reducing skill deficiencies and unemployment by designing training programs for applications at all stages of people's working lives; (v) improving the quality of curricula, teaching methods, and instruction materials for managers and other workers; (vi) increasing opportunities for people seeking to acquire skills; (vii) preparing organizations and individuals to remain productive in the face of rapid economic and technological changes; and (viii) promoting HRD toward the liberalization and facilitation of trade and investment. The OECD Policy Framework for Investment advises governments to use mechanisms that encourage businesses to offer training for employees and to play a larger role in co-financing training (*e.g.*, through tax incentive schemes or subsidies) (Item 8.4).

⁵¹ *Ibid.*, p.55.

ix.2. FDI incentives

The Menu of Options suggests that member economies offer investment incentives that are voluntary, non-discriminatory, and limited in duration (*i.e.*, based upon clear performance targets), such as the following: tax breaks; loans guarantees; grants, subsidies and industrial development bonds; employment training programs; programs designed to help companies achieve greater efficiency (*e.g.*, zero-inventory or just-in-time programs); WTO-consistent export promotion programs; etc. (Item 13.05-06). With respect to venture capital and start-up companies, it makes the following specific requests of governments: to establish legal and taxation systems to assist the development of the venture capital industry and investment banking; and to establish a sound, transparent initial public offering market for small and medium-sized enterprises (SMEs) (Item 15.01).

The OECD Policy Framework for Investment also recognizes the value and necessity of FDI incentives, including the creation of larger, more dynamic markets through market-expanding international trade agreements and the implementation of WTO commitments (Item 3.3). At the same time, however, it advises authorities to evaluate the relevance, appropriateness, and economic benefits of such incentives periodically with respect to their budgetary and other costs, particularly when introducing tax incentives.⁵² The Checklist of Barriers and Impediments to FDI issued by the ABAC in 2006 notes that, while tax incentives geared to attract initial investment are important, the final investment decision is usually based on how an economy's taxation affects the normal operating environment.

As an organizational issue, the Menu of Options encourages the following: establishment of an office to serve as a clearinghouse for interested investors to learn about market opportunities and potential investment partners; provision of a network comprising all the government agencies with which investors and other businesspersons come into contact in conducting investment; and establishment or designation of one government agency to handle investors' complaints (Item 13.03). The OECD Policy Framework for Investment likewise encourages establishment of an investment promotion agency whose structure, mission, and legal status is informed by international good practices (Item 2.2). Such agencies would be expected to facilitate effective

⁵² *Ibid.*, pp.30, 39-42.

communication between investors and the governments and to join regional and international networks aimed at building investment promotion expertise, such as those offered by the World Bank, UNDTAD, or UNIDO (Item 2.5, 2.8, 2.9).

Many governments generally recognize that it is inappropriate to encourage investment by lowering domestic health, safety or environmental standards or relaxing core labor standards, as stated by the fourth principle of the NBIP as well as by the draft MAI text. Some of today's bilateral or regional agreements have also adopted this principle, sometimes with a mechanism for bilateral consultations in cases of such inappropriate encouragement.⁵³

x) Restricted competition and price controls

Section C.8 of Part One of the Osaka Action Agenda requests the APEC economies to enhance the competitive environment to increase consumer welfare in the Asia-Pacific region by: (i) introducing or maintaining effective, adequate and transparent policies and/or laws with respect to competition and associated enforcement policies; (ii) promoting cooperation among the APEC economies, thereby maximizing the efficient operation of markets, competition among producers and traders and consumer benefits; and (iii) improving the abilities of competition authorities through enhanced capacity building and technical assistance. The Menu of Options also requires governments to ensure consistency between investment policies and competition and regulatory reform policies (Item 12.01) and, more specifically, to change policies, guidance, regulations, or laws to eliminate pricing by state-designated monopolies that is discriminatory on the basis of nationality (Item 3.26).⁵⁴ Competition policy is one of the five priority areas listed on APEC Leaders' Agenda to Implement Structural Reform (LAISR) adopted in 2004 [APEC(2004c)], under the framework of which several capacity building projects are due to take place to share APEC's accumulated knowledge and expertise in the area of competition policy.

The OECD Policy Framework for Investment also recognizes that

⁵³ See, *e.g.*, Canada-Chile FTA, Art. G-14.

⁵⁴ Article VIII of the GATS similarly stipulates that each Member shall ensure that any monopoly supplier of a service in its territory does not, in the supply of the monopoly service in the relevant market, act in a manner inconsistent with that Member's obligations under Article II [MFN treatment] and specific commitments.

anti-competitive practices by incumbent enterprises, including state-owned enterprises, can sometimes discourage investment by abusing their market power (Item 4.3). It further draws attention to the adverse impact on the investment environment of industrial policies that promote particular firms, often referred to as “national champions” (*e.g.*, through direct or indirect financial assistance or the granting of special treatment by means of restrictions on foreign direct investment, trade barriers, exemption from competition laws, etc.) (Item 4.5). Under such circumstances, the role of the competition authorities becomes critically important, as described below:

“Competition authorities must often challenge vested interests, such as private firms with monopolistic positions in the market or state-owned firms that fall under the regulatory authority of other parts of government. [...] Political support for competition policy, which includes supplying sufficient resources for effective enforcement, is an important determinant of the potential contribution of competition policy to an attractive investment environment. [...] Criteria that might be considered could include the status of the competition authorities within the government structure and the institutional arrangements for insulating enforcement decision-makers from political direction or influence.”⁵⁵

4.3 Summary

With respect to the four issues concerning FDI liberalization specified in this study, we can easily discern why and how they frustrate the promotion of foreign investment, since they are straightforward “restrictions” clearly aimed at impeding FDI entry and operation. Desirable solutions to these problems are therefore also easy to discover; simply eliminate or phase out such restrictions against foreign investors. This can be accomplished immediately, if a government has this intention, through textual revision of the relevant laws and regulations. Related normative principles have also been sufficiently formulated: ensuring MFN and national treatment in FDI establishment and operation; abolishing WTO TRIMs-inconsistent performance requirements (local content requirements, trade-balancing requirements, foreign exchange restrictions, and domestic sales requirements); permitting investors free and prompt transfers of investment-related funds in freely convertible currencies at market exchange rates; and reviewing the

⁵⁵ *Policy Framework for Investment*, OECD, 2006, pp.36-7.

restrictions and controls on the temporary entry and sojourn of key foreign technical and managerial personnel.

Solutions to the six issues concerning FDI facilitation, on the other hand, cannot be designed in such a clear-cut format as those concerning FDI liberalization. In most circumstances, these impediments stem not from the intent of discriminating against foreign investment but from a lack of knowledge, capacity, or resources for administering and implementing related laws and policies appropriately. Hence, the APEC member economies should make an effort to build up practical regional schemes for technical cooperation and information exchange from a long-term point of view. Institution- and capacity-building in the public sector, in particular, can enhance the transparency and speed of implementing investment-related procedures. With regard to the issues that are closely linked to each economy's regulatory positions (*e.g.*, technical, environmental, and sanitary standards; an appropriate level of IPR protection; labor market regulations; and competition policies), it will be necessary to strengthen the policy dialogue and regulatory harmonization within the region.

In order to address these issues for FDI facilitation, therefore, the member economies should continue and further elaborate the existing APEC endeavors (*e.g.*, Osaka Action Agenda, Non-binding Investment Principles, Menu of Options, Transparency Standards, Trade Facilitation Action Plan, Model Measures for RTAs/FTAs, Comprehensive Strategy on IPR, Leaders' Agenda to Implement Structural Reform, etc.), taking into account the ABAC Checklist of Barriers and Impediments to FDI as well. Close coordination with the OECD Policy Framework for Investment will also be helpful. Additionally, as a complementary instrument to these multilateral attempts, the member economies are encouraged to accelerate the conclusion of bilateral or regional agreements, such as RTAs/FTAs and BITs, which can enhance the credibility and predictability of a host economy's investment climate.

5. Concluding remarks and policy recommendations

Our analysis of the impediments to FDI inflows for the APEC economies based on a survey of Japanese firms with additional information obtained from US and European firms revealed a number of important and serious impediments. Dividing the

impediments into those related to FDI liberalization and FDI facilitation, we found that a majority of the impediments identified fell into the FDI facilitation category. Although the impediments in the FDI liberalization category account for a small share in terms of the number of incidents, the degree of severity in discouraging FDI by the impediments under the FDI liberalization category is notably substantial. This is because legal restrictions can totally prevent FDI.

Among the 10 types of impediments we examined, lack of transparency in policies and regulations concerning investment (institutional problems), and complicated and/or delayed procedures with respect to regulations with respect to investment (implementation problems), both of which are classified as FDI facilitation problems, are found to be by far the most serious obstacles discouraging FDI inflows. These impediments are particularly serious for low-income economies. Besides these impediments, underdeveloped infrastructure, shortages of human resources, and insufficient investment incentives are problems reported by many respondents. Among the impediments classified under FDI liberalization, restrictions on foreign entry are identified as an extremely serious obstacle to FDI.

Based on our findings, we would like to make several policy recommendations to deal with or remove the obstacles to FDI. First, in order to remove obstacles concerning FDI liberalization, the APEC member economies should use various existing frameworks, such as WTO/GATT's TRIMs agreement, BITs, FTAs, and other legal frameworks. Second, to overcome obstacles concerning FDI facilitation, the APEC member economies should actively engage in various programs organized by APEC (the Osaka Action Agenda, Non-binding Investment Principles, etc), OECD (the Policy Framework for Investment), FTAs, and others. For developing member economies, capacity building is urgently required, to deal with FDI facilitation problems. Developed member economies need to provide developing member economies with economic cooperation/technical cooperation, in order that both the developed and developing members can benefit from FDI expansion, which would result from the removal of FDI barriers.

It is essential to emphasize concerted efforts to deal with FDI impediments among APEC member economies. We noted the importance of provision of economic cooperation to remove FDI impediments in developing member economies. To realize their favorable outcome, policy coordination involving developed and developing

members must be effectively formulated implemented. Although FDI liberalization would bring benefits to the liberalizing country through increased FDI inflows, unilateral liberalization of FDI policy is not easy, since it faces opposition from potentially negatively impacted groups. To overcome the opposition, reciprocal FDI liberalization under frameworks such as BITs and FTAs would be effective.

Finally, we would like to stress the importance of enforcing and monitoring the progress made by APEC members toward achieving a freer FDI environment. To achieve this goal, APEC should apply peer pressure by making reference to individual action plans (IAPs) submitted by its members. To effectively implement the “commitments” made in the form of IAPs, close coordination and cooperation between the public and private sectors is necessary. To evaluate the progress in FDI liberalization and facilitation, periodic (annual) assessment of the FDI environment in the APEC economies by a survey such as the JMC survey will be essential.

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Table A.2.1 Components of ease of doing business and their evaluation for APEC economies, 2005

	Australia	Canada	Chile	People's Republic of China	Hong Kong, China	Indonesia	Japan	Korea	Malaysia	Mexico	New Zealand	Papua New Guinea	Peru	Philippines	Russia	Singapore	Chinese Taipei	Thailand	United States of America	Viet Nam
Starting a Business																				
Procedures (number)	2	2	9	13	5	12	11	12	9	9	2	8	10	11	8	6	8	8	5	11
Time (days)	2	3	27	48	11	151	31	22	30	58	12	56	102	48	33	6	48	33	5	50
Cost (% of income per capita)	2	1	10	14	3	102	11	15	21	16	0	30	38	20	5	1	5	6	1	51
Min. capital (% of income per capita)	0	0	0	947	0	98	75	309	0	14	0	0	0	2	4	0	216	0	0	0
Dealing with Licenses																				
Procedures (number)	16	15	12	28	22	19	11	14	25	12	7	20	19	23	22	11	32	9	18	14
Time (days)	140	87	191	359	160	224	87	64	281	142	65	218	201	197	531	129	206	127	69	143
Cost (% of income per capita)	14	123	125	101	24	365	20	180	85	105	31	125	366	123	354	24	239	18	17	64
Employing Workers																				
Difficulty of Hiring Index (0-100)	0	11	33	11	0	61	17	11	0	33	11	11	44	56	33	0	78	33	0	33
Rigidity of Hours Index (0-100)	40	0	20	20	0	20	60	60	20	40	0	20	60	40	60	0	60	20	0	40
Difficulty of Firing Index (0-100)	10	0	20	40	0	50	0	30	10	40	10	0	80	20	40	0	30	0	0	70
Rigidity of Employment Index (0-100)	17	4	24	24	0	44	26	34	10	38	7	10	61	39	44	0	56	18	0	48
Nonwage labor cost (% of salary)	21	14	3	45	5	10	13	18	13	24	1	10	10	9	42	13	11	5	9	17
Firing costs (weeks of wages)	4	28	52	91	62	108	9	91	88	74	0	39	52	91	17	4	91	54	0	87
Registering Property																				
Procedures (number)	5	6	6	3	5	7	6	7	5	5	2	4	5	8	6	3	3	2	4	4
Time (days)	5	10	31	32	54	42	14	11	144	74	2	72	33	33	52	9	5	2	12	67
Cost (% of property value)	7	2	1	3	5	11	4	6	3	5	0	5	3	6	0	3	6	6	1	1
Getting Credit																				
Legal Rights Index (0-10)	9	7	4	2	10	5	6	6	8	2	9	6	2	3	3	9	4	5	7	4
Credit Information Index (0-6)	5	6	6	3	5	2	6	5	6	6	5	0	6	3	0	4	5	4	6	3
Public registry coverage (% adults)	0	0	46	0	0	0	0	0	34	0	0	0	14	0	0	0	0	0	0	1
Private bureau coverage (% adults)	100	100	22	0	65	0	61	81	..	49	96	0	28	4	0	39	57	18	100	0
Protecting Investors																				
Disclosure Index (0-7)	8	8	8	10	10	8	7	7	10	7	10	5	7	1	7	10	8	10	7	4
Director Liability Index	2	9	6	1	8	5	6	2	9	0	9	5	5	2	2	9	4	2	9	0
Shareholder Suits Index	7	8	5	2	8	3	8	7	7	5	10	8	7	7	7	9	4	6	9	2
Investor Protection Index	6	8	6	4	9	5	7	5	9	4	10	6	6	3	5	9	5	6	8	2
Paying Taxes																				
Payments (number)	12	10	10	48	4	52	15	27	35	49	9	44	53	59	74	16	15	46	10	32
Time (hours)	107	119	432	872	80	560	315	290	190	536	70	198	424	94	256	30	1,104	104	325	1,050
Profit tax (%)	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Labor tax and contributions (%)	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Other taxes (%)	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Total tax rate (% profit)	54	43	26	77	29	37	54	32	35	38	38	44	41	53	69	29	36	40	45	42
Trading Across Borders																				
Documents for export (number)	6	3	7	6	6	7	5	5	6	6	5	5	7	6	8	5	8	9	6	6
Time for export (days)	10	9	20	20	13	25	11	12	20	17	8	30	24	18	39	6	14	24	9	38
Cost to export (US\$ per container)	795	700	510	335	425	546	789	780	481	1,048	355	584	800	1,336	2,237	382	747	847	625	701
Documents for import (number)	5	4	9	11	8	10	7	8	12	8	9	10	13	7	8	6	8	12	5	9
Time for import (days)	13	11	24	24	16	30	11	12	22	26	13	32	31	20	38	3	14	22	9	36
Cost to import (US\$ per container)	945	850	510	375	425	675	847	1,040	427	2,152	555	642	820	1,336	2,237	333	747	1,041	625	887
Enforcing Contracts																				
Procedures (number)	19	17	33	31	16	34	20	29	31	37	28	22	35	25	31	29	28	26	17	37
Time (days)	181	346	480	292	211	570	242	230	450	415	109	440	381	600	178	120	510	425	300	295
Cost (% of debt)	13	12	16	27	14	127	10	6	21	20	11	110	35	15	14	15	17	18	8	31
Closing a Business																				
Time (years)	1	1	6	2	1	6	1	2	2	2	2	3	3	6	4	1	1	3	2	5
Cost (% of estate)	8	4	15	22	9	18	4	4	15	18	4	23	7	38	9	1	4	36	7	15
Recovery rate (cents on the dollar)	80	90	23	32	81	13	93	82	39	64	71	22	31	4	28	91	89	44	76	19

Data source: Doing business database, available from <http://www.doingbusiness.org/>.

Table A.2.2 Components of the Global Competitiveness Index and notable competitive disadvantages for APEC economies

	Australia	Canada	Chile	People's Republic of China	Hong Kong, China	Indonesia	Japan	Korea	Malaysia	Mexico	New Zealand	Peru	Philippines	Russia	Singapore	Chinese Taipei	Thailand	United States of America	Viet Nam	
Overall GCI ranking	19	16	27	54	11	50	7	24	26	58	23	74	71	62	5	13	35	6	77	
Basic requirements																				
1. Institutions																				
<i>Public institutions</i>																				
Property rights																				
1.01				82		90		34		60		106		114		39			69	
Ethics and corruption																				
1.02		33		71	17	75	26	51	29	79		77	111	88			39	54	28	94
1.03		29				64	25	67		85		116	106	107			32	48	24	61
Undue influence																				
1.04				56	78	13	94	22	51		67	119	77	110	29	53			36	73
1.05				60	16			46		85			93	114			25		39	79
Government inefficiency (red tape, bureaucracy and waste)																				
1.06			34				74	73			37	77	109	97			24		27	91
1.07		54	38				25	50		94	31	111	108	116					27	110
Security																				
1.08		78	74		104	25		97	63	65			119	103	77	52	80	111	61	
1.09				31		100				105		96	84	106		36				
1.10			29	55				46	32	117		114		82		30			42	
1.11		23	36		92	22		43	54	34	114	106	86	91		50	65	55	83	
<i>Private institutions</i>																				
Corporate ethics																				
1.12				104	17	98							106	117		35	57	21	81	
Accountability																				
1.13				119	25	30	86									33				
1.14				113	20	31	76							120	22	55				
1.15				108		73	31	57						88		40	56	22	85	
2. Infrastructure																				
2.01				65		96				60	34	93	88	85						91
2.02		22									37	85								
2.03		28				97														
2.04																				
2.05				79		90			33	73	48			82					20	88
2.06				58		95				64		87	97		29		80			74
3. Macroeconomy																				
3.01							114	91	62				65			72		101	84	
3.02			41	19								84								
3.03						107								114						92
3.04		58	32		73	66				71	53	101		74	54					
3.05			89			56	108		49				77		97	35	54	73	64	
3.06		108	107	51		83		111			114			116	26	32			35	
4. Health and primary education																				
<i>Health</i>																				
4.01													87							
4.02					45				54			87								
4.03																		77		
4.04						81			43	69			75					63	60	
4.05						83			53					89						
4.06				92		96		77	78			91	106			60	88		94	
4.07				70		89			77			100					86		83	
4.08									70	63								97	70	
<i>Primary education</i>																				
4.09																		90		

(Continue)

	Australia	Canada	Chile	People's Republic of China	Hong Kong, China	Indonesia	Japan	Korea	Malaysia	Mexico	New Zealand	Peru	Philippines	Russia	Singapore	Chinese Taipei	Thailand	United States of America	Viet Nam
Efficiency enhancers																			
5. Higher education and training																			
<i>Quantity of education</i>																			
5.01					64			78	74								77		
5.02			38	77	60	83		61	72						35				94
<i>Quality of education</i>																			
5.03			76				38		82		124								100
5.04	29		100						101	25	124	108						42	65
5.05								53			25			84		24			
5.06			31		18								75				66		
5.07	20		34	76	21									99					
6. Market efficiency																			
<i>Good markets: distortions, competition, and size</i>																			
Distortions																			
6.01		32				115	78		102				114						24
6.02			37	74		77	47		79	112	86	106			41				25
6.03	80	66					49	72	74	61	82			94					31
6.04			44	94		85	70	85	44										70
6.05			38	81		113	42		40	93		108	81				81	48	
Competition																			
6.06								36							26				76
6.07				74	36			35	28				100	32			47		
6.08 Imports																			
6.09		39		83		53	56	45			80		99		31	90	36	112	
6.10	22	28		87		77	95	49				90	124		36	104	43	121	
Size																			
0.00 GDP-exports+imports																			
6.11 Exports																			
<i>Labor markets: flexibility and efficiency</i>																			
Flexibility																			
6.12	71	44	62			77	70	66	59	79	93	82				27	65		
6.13	95	50								36		105					89	30	83
6.14	50	42	31	99				114		40	90	78	73					34	76
Efficiency																			
6.15					31			59									29		
6.16	30	23																	
6.17	32							45		60	99	118							57
6.18 Private sector employment of women																			
Financial markets: sophistication and openness																			
6.19								42	31	26			84			33			
6.20		36	31	99		38	89		77			78	88		32				
6.21			32	91		23	69					79							
6.22				123		88	76	82				80	116	21	100	75	27	103	
6.23			31	77				61	27	66									
7. Technological readiness																			
7.01				69	22					31		63	85						
7.02			33		18	74				75	32	76							
7.03				19	78	25							87		26			20	
7.04	22	30		104	31		76	95			42		115		28				
7.05	29	55	44			92	39		48	61	34	89					56	43	
7.06			41	76		80			32	57		84						62	
7.07			44	80		98			35	55			77					65	99

(Continue)

	Australia	Canada	Chile	People's Republic of China	Hong Kong, China	Indonesia	Japan	Korea	Malaysia	Mexico	New Zealand	Peru	Philippines	Russia	Singapore	Chinese Taipei	Thailand	United States of America	Viet Nam
Innovation factors																			
8. Business sophistication																			
Networks and supporting industries																			
8.01 Local supplier quantity	31										33				43				83
8.02 Local supplier quality															25				91
Sophistication of firms' operations and strategy																			
8.03 Production process sophistication	21			89	30	83					31	60		70			50		91
8.04 Extent of marketing															22	28			
8.05 Control of international distribution	36				20										47				
8.06 Willingness to delegate authority					20	94													
8.07 Nature of competitive advantage	40	32	51	74	19					67	34		102	107			64		116
8.08 Value-chain presence	99	46	58			82					40			112					
9. Innovation																			
9.01 Quality of scientific research institutions			48	63	24							108	79						
9.02 Company spending on research and development	28	22	48	23						60	35								
9.03 University/industry research collaboration	25																		
9.04 Government procurement of advanced technology products	30	36	54							77	47		90						
9.05 Availability of scientists and engineers	35		33	86	27					85	43	73	84						
9.06 Utility patents	21				22	75			31										77
9.07 Intellectual property protection			45	20				31				96		112		26			100
9.08 Capacity for innovation	35		50	22							26		63		24		51		

Source: GCR 2006-2007.

Note: variables considered as disadvantages are those ranked below 10 for Japan, Singapore, USA with an overall ranking in the top 10 economies, those ranked equal to or lower than the economy's overall ranking for HKC, Indonesia, Korea, CT, Thailand, Australia, NZ, Canada, Chile with an overall ranking from 11 to 50, and those ranked lower than 50 for PRC, the Philippines, Viet Nam, Mexico, and Russia with an overall ranking lower than 51.

Table A.3.1 Investment issues in 21 APEC economies

Category	APEC economies																						
	Total	Australia	Brunei	Canada	Chile	China	Hong Kong, China	Indonesia	Japan (Government level)	Korea	Malaysia	Mexico	New Zealand	Papua New Guinea	Peru	Philippines	Russia	Singapore	Chinese Taipei	Thailand	USA	USA (Government level)	Vietnam
i) Restrictions on foreign entry																							
Existence of prohibition and restriction on foreign entry	8				o		o		o		o				o			o	o				o
Restriction on foreign entry for specific sector: service sector (general)	1				o																		o
Restriction on foreign entry for specific sector: distribution service sector	2						o																o
Restriction on foreign entry for specific sector: coal mining industry	1						o																
Restriction on foreign entry for specific sector: retail trade	1																						
Restriction on foreign entry for specific sector: culture industry (book publishing, motion picture, music, broadcasting, etc.)	1		o																				
Restriction on foreign entry for specific sector: banking industry (restrictions on individual deposit account for foreign bank branches)	1	o																					
Restriction on foreign entry for specific sector: certain sectors	1										o												
Restriction on foreign entry for specific sector: restrictions on licensing	1																						o
Restriction on entry for specific sector: restrictions on entry by large firms in certain sectors (non-discriminatory)	1								o														
Restriction on entry for specific sector: license requirement in the construction industry (license required only for foreign firms; no issuance of licenses for foreign-owned firms with more than 40% ownership)	1														o								
Restriction on entry for specific sector: license requirement under financial service law (non-discriminatory)	1	o																					
Restriction on entry for specific sector: operation of hospital and medication facilities (non-discriminatory)	1							o															
Restriction on entry for specific sector: restrictions on Provision of mixed medical service system (non-discriminatory)	1							o															
Restriction on entry for specific sector: national security	1																					o	
Restriction on entry for specific sector: trade associations	1																					o	
Restriction on entry for specific sector: alcoholic beverages distribution license requirement ("sake" rice wine distributed only by licensed distributors)	1																					o	o
Restriction on entry for specific sector: licensing of transport business allowed only to a single company (monopoly with a company runned by the former prime minister's family, in exclusion of foreign and other local companies)	1									o													
Restriction on entry for specific sector: limited approval of license for domestic sea freight distributor (discriminatory against foreign companies; exclusive approval of Filipino and Filipino wholly-owned partnership and companies with Filipino ownership ratio of more than 60%; requirement to use U.S. flag vessels for Alaskan crude oil transport)	2														o							o	
Restriction on entry for specific sector: restricted number of lawyers with foreign nationalities in some States	1																					o	
Restriction on entry for specific sector: a public fund injection requirement for establishing a financial holding company	1																					o	
Restriction on entry for specific sector: restricted enter by foreign trust companies into the hot stock investment market	1																					o	
Prohibition on foreign entry for specific sector: bid on government	1									o													
Restriction on foreign ownership ratio for specific sector: privatization	1								o														
Restriction on foreign ownership ratio for specific sector:	1								o														
Restriction on foreign ownership ratio for specific sector: non-manufacturing sector (restrictions on various types of services such as	1									o													
Restriction on foreign ownership ratio for specific sector: restricted entry by local existing affiliates of foreign firms into the manufacturing sector	1									o													
Restriction on foreign ownership ratio for specific sector: service sector (restrictions on the majority-owned foreign firms)	1																			o			
Restriction on foreign ownership ratio for specific sector: restrictions on the foreign ownership ratios in certain sectors	1									o													
Restriction on foreign ownership ratio for specific sector: linked with Joint venture issue: restrictions on foreign ownership ratios and joint venture requirement (including reduction in maximum foreign ownership	1														o								o
Joint venture issue: joint venture requirement with a state enterprise	3					o											o						o
Joint venture issue: difficulty in obtaining the approval for incorporation by wholly foreign-owned firms in wholesale and retail trade	1					o																	

(Continue)

Category	APEC economies																						
	Total	Australia	Brunei	Canada	Chile	China	Hong Kong, China	Indonesia	Japan (Government level)	Korea	Malaysia	Mexico	New Zealand	Papua New Guinea	Peru	Philippines	Russia	Singapore	Chinese Taipei	Thailand	USA	USA (Government level)	Vietnam
Issues																							
Joint venture issue: restrictions of the form of establishment (a local affiliate or a joint venture) to qualify as the main contractor in a plant construction project	1					o																	
Discriminatory restrictions in specific sectors: Iran and Libya Sanctions Act, Sarbanes-Oxley Act, The Exon-Florio National Security Test for Foreign Investment	1																					o	
Minimum foreign capital requirement	1																		o				
Prohibitive application fee for adding a business line to foreign-owned fishery firm	1											o											
Land ownership and use: requirement to return the right of land-use	1					o																	
Land ownership and use: restrictions on (prohibition of) land ownership by foreign-owned firms	5						o								o	o			o			o	
Land ownership and use: a lump-sum payment of land-use fee, implemented only for foreign-owned firms	1																					o	
Land ownership and use: designated specific purpose of land use by the government and restriction on sales and purchases of land property (non-discriminatory)	1																o						
Requirements to establish a holding company	1					o																	
More stringent restrictions to regulate investments in development zones	1					o																	
Discriminatory treatment on Japanese firms vis-à-vis U.S. firms	1																		o				
Excessive quorum of shareholders	1																		o				
Universal banking is prohibited (unfavorable to EU banks adopting	1							o															
ii) Performance requirements																							
Home country insurance principle (obligation)	2					o				o													
Local content requirement: link between local content ratio and tariff rate	2					o																o	
Local content requirement: requirement to use domestically produced parts and components	1					o																	
Local content requirement: exclusion of foreign-owned firms from domestic procurement	1									o													
Local content requirement: requirement to use local firms (Bumiputra firms)	1									o													
Local content requirement: price disclosure requirement to customers in local content audit of parts and components	1					o																	
Local content requirement: local designing (requirement)	1					o																	
Local content requirement: planning of local content requirement policy for automobiles	1																					o	
Local content requirement: requirement for increasing local content ratios	3															o	o					o	
Local content requirement: Insufficient ability of indigenous firms to satisfy local content requirement	1						o																
Local content requirement: local content requirement in government procurement according to Buy American Act	1																			o			
Local content requirement: local content requirement to receive federal-aid in the state procurement	1																			o			
Local content requirement: discriminatory procurement restrictions according to the Buy Canadian Act	1		o																				
Performance requirements such as the amount of investment, export, production, etc. (including export requirement)	3					o				o													o
High percentage of direct exporting obligation	1									o													
Export of bidding qualification / foreign currency acquisition requirement	1	o																					
Link with preferential treatment: local content ratio	1														o								
Link with preferential treatment: export ratio (export requirement)	2														o			o					
Government licensing requirement for royalty, brand-use fee, etc	1																					o	
Enforcement of obligation to conduct continuing exploration and survey for coal mine rights ownership	1						o																
Foreign product discrimination in government procurement according to the Federal Buy American Act	1																					o	
Requirement to use U.S. domestic bank for all assets of foreign	1																					o	

(Continue)

Category Issues	APEC economies																						
	Total	Australia	Brunei	Canada	Chile	China	Hong Kong, China	Indonesia	Japan (Government level)	Korea	Malaysia	Mexico	New Zealand	Papua New Guinea	Peru	Philippines	Russia	Singapore	Chinese Taipei	Thailand	USA	USA (Government level)	Vietnam
iii) Restrictions on overseas remittances and controls on foreign currency transactions																							
Restriction on overseas remittances: difficulty in remittances of compensation for intangible assets and services in foreign currencies	1					o																	
Restriction on overseas remittances: reinforcement and lack of transparency in restrictions on remittances in foreign currencies	1																						o
Restriction on overseas remittances: prohibited overseas remittance of sales of imported production facilities used in export processing zone	1					o																	
Restriction on overseas remittances: difficulty in overseas remittance of the payment for foreign projects	1					o																	
Restriction on overseas remittances: partly	1														o								
Restriction on overseas remittances: requirement to attach payment certificate attachment for remittances to China	1																	o					
Restriction on overseas remittances: prohibitive tax imposed on remittances (including tax on profit remittances)	2																		o				o
Control related to local currency: restriction on finance in RMB	1					o																	
Control related to local currency: enforcement of payment in RMB	1					o																	
Control related to local currency: control on local currency transactions in offshore market (including absence of Taiwan dollar offshore market)	3						o			o								o					
Control related to local currency: restricted access to Korean won exchange market by non-residents / restricted financing in Baht for non-residents	2								o										o				
Sudden introduction and modification of foreign exchange transaction controls	1									o													
Foreign currency transactions: restrictions on having foreign currencies	1									o													
Foreign currency transactions: difficulty in foreign exchange settlement and foreign payment	1																						o
Foreign currency transactions: restriction on the way of using foreign currency deposits	1																		o				
Foreign currency transactions: foreign currency control for imports	1															o							
Foreign currency transactions: persisting reserve and deposit obligation related to foreign currency accounts	1															o							
Difficulty in currency hedging	1																	o					
Restriction on "netting"	1										o												
Royalty payment: nationality discrimination in deduction rate	1		o																				
Royalty payment: exclusion of imported parts, etc. from royalty calculation	1																						o
Difficulty in directly collecting payment from customers for domestically sold goods (institutional restriction according to provisions of foreign	1								o														
iv) Restrictions on the movement of people and employment requirements																							
Mandatory employment of local labor: general	2					o	o																
Mandatory employment of domestic workers: employment of Chinese partner's employees	0																						
Mandatory employment of local labor: geographical restriction on hiring local workers	1					o																	
Mandatory employment of local labor: employment of Malaysians with a priority (including request for handover of managing directorship)	1									o													
Mandatory employment of local labor: nationality requirement of directors (including president and board members in investment trust companies)	5		o												o	o			o				o
Mandatory employment of local labor: employment of Chinese military veterans	1					o																	
Mandatory employment of local labor: employment of Koreans with national merit	1								o														
Restriction on hiring foreigners: employment quota for foreigners or restriction on foreign employment ratio	5									o								o	o	o			o
Restriction on hiring foreigners: modification and tightening of policies regarding foreign workers	1									o													
Restriction on hiring foreigners: restriction on hiring and visa issuance to mainland Chinese workers	2						o												o				
Visa issue: discontinued issuance of multiple-entry visa	1					o																	
Visa issue: application fee for re-entry	1							o															

(Continue)

Category	APEC economies																						
	Total	Australia	Brunei	Canada	Chile	China	Hong Kong, China	Indonesia	Japan (Government level)	Korea	Malaysia	Mexico	New Zealand	Papua New Guinea	Peru	Philippines	Russia	Singapore	Chinese Taipei	Thailand	USA	USA (Government level)	Vietnam
Issues																							
Visa issue: difficulty in obtaining working visa, tightening of issuance condition (including cases of certain engineering or investors only), restriction on visa issuance, annual visa issuance quota (H1-b), requirement of issuance such as years of experience (E)	9	o		o					o		o						o		o	o	o	o	o
Visa issue: tightening of visa renewal (difficulty in renewal of multiple-entry visa; including suspension of renewal procedures in US)	4														o	o			o		o		
Visa issue: difficulty in changing types of visa	1																			o			
Visa issue: restricted entry by SMEs due to prerequisite conditions for	1																		o				
Visa issue: no work permit under foreign temporary workers for construction engineering	1																		o				
Visa issue: more restricted conditions for working holiday visa	1		o																				
Visa issue: brevity of visa valid period	2																o					o	
Visa issue: period of time requirement for grant of permanent residency	1		o																				
Visa issue: constraints on family members' residency	1																			o			
Visa issue: introduction of obligation to obtain entry visa	1							o															
Visa issue: confusion caused by abolishing visa waiver and penalty for non-read-by-machine type passport holders	1																					o	
Tightened ancestral register condition in urban area	1					o																	
Excessive penalty for violation of mandatory employment of disabled persons	1					o																	
Discriminate period of residency permit between those with and without university degree	1																	o					
v) Lack of transparency in policies and regulations concerning investment (institutional problems)																							
Underdevelopment, lack of transparency, and delay of implementation of regulations (inadequate implementing regulations and prolonged delays in their issuance): general	3					o	o									o							
Underdevelopment of legal system: tax regulations	1					o																	
Underdevelopment of legal system: derivatives trading taxation	1													o									
Underdevelopment of legal system: regulations on mortgage, lien, and hypothec	1																					o	
Underdevelopment of legal system: regulations on personal credit information protection for business process management companies	1																				o		
Underdevelopment of legal system (immaturity): bill system	1					o																	
Underdevelopment of legal system (insufficiency): Corporate Separation Law and merger law	1																		o				
Underdevelopment of legal system (insufficiency): foreign exchange law and taxation system	1																		o				
Underdevelopment of legal system (insufficiency): Building Law, and Fire Defence Law, and related laws and regulations	1																		o				
Underdevelopment of legal system (insufficiency): legislation about handling of chemicals and hazardous materials	1																		o				
Underdevelopment of legal system (insufficiency): regulations on	1																		o				
Underdevelopment of legal system (insufficiency): consolidated taxation system	1		o																				
Underdevelopment of legal system (insufficiency): legal measures to block illegal imports	1		o																				
Underdevelopment of legal system (insufficiency): facilitation measures for the movement of workers	1							o															
Underdevelopment of legal system (insufficiency): legal environment of international legal service provision	1							o															
Underdevelopment of legal system (insufficiency): VAT taxation system	1															o							
Underdevelopment of legal system (inadequacy): inadequate protection of depositors	1																		o				
Underdevelopment of legal system (inadequacy): foreign-language translation of Japanese laws	1							o															
Underdevelopment of legal system (unratification): social security agreement	2		o					o															
Underdevelopment of legal system (delay): adoption of the metric system	1																			o	o		
Underdevelopment of legal system (absence): bill and cheque clearinghouse system	1										o												

(Continue)

Category	APEC economies																						
	Total	Australia	Brunei	Canada	Chile	China	Hong Kong, China	Indonesia	Japan (Government level)	Korea	Malaysia	Mexico	New Zealand	Papua New Guinea	Peru	Philippines	Russia	Singapore	Chinese Taipei	Thailand	USA	USA (Government level)	Vietnam
Issues																							
Lack of transparency in legal system: measures banning imports of used equipments	1					o																	
Lack of transparency in legal system: regulations on imports of parts and components	1																o						
Lack of transparency in legal system: regulations on tax laws	1						o																
Lack of transparency in legal system: application for approval of factory construction	1					o																	
Lack of transparency in legal system: toxic substances control	1					o																	
Lack of transparency in legal system: self-certification system	1								o														
Lack of transparency in legal system: investment incentives	1														o								
Lack of transparency in legal system: withdrawal rules	1																		o				
Lack of transparency in legal system: conditions of employment	1																		o				
Lack of transparency in legal system: statutory retirement package (lack of uniformity/transparency)	1																	o					
Lack of transparency in legal system: provisions of corporate law about pseudo foreign companies	1							o															
Lack of transparency in legal system: financial regulations	1							o															
Lack of transparency in legal system: licensing procedures for large-scale retail stores	1							o															
Lack of transparency in legal system: procedure for public comment	1							o															
Lack of transparency in legal system: accounting system	1															o							
Lack of transparency in legal system: customs valuation and customs clearance (including inefficiency)	1															o							
Lack of transparency in legal system: licenses and approvals for construction	1																		o				
Lack of transparency in legal system: administrative instruction for renewal of driver's license according to the enforcement of ID Act	1																				o		
Lack of transparency in legal system: prior notification requirement on import cargo according to the implementation of anti-bioterrorism measures	1																					o	
Lack of transparency in legal system: application criterion of the Federal Telecommunications Act (including disunity at the state-level and interstate regulations)	1																					o	
Lack of transparency in legal system: effect of unbundling obligations review as market entry conditions for long-distance communication	1																					o	
Lack of transparency in legal system: regulations on drugs and medical devices and related ones	1																					o	
Lack of transparency in legal system: lack of transparency and delayed notification of agreements with Latin American countries	1										o												
Ambiguity of legal system: general (including disunity)	1										o												
Ambiguity of legal system: interpretation of minimum wages	1					o																	
Ambiguity of legal system: welfare expenses (high-cost and ambiguity)	1					o																	
Ambiguity of legal system: procedure for determining amount of	1					o																	
Ambiguity of legal system: registration application procedures for products subject to Pharmaceutical Law	1					o																	
Ambiguity of legal system: provisions of land renewal procedures	1					o																	
Ambiguity of legal system: disparity of tariff rates among similar products	2						o		o														
Ambiguity of legal system: introduction of emission control regulations (including unrealistic policies)	3						o							o			o						
Ambiguity of legal system: visa issuance criterion	1								o														
Ambiguity of legal system: foreign exchange laws	1									o													
Ambiguity of legal system: government procurement procedures	1	o																					
Ambiguity of legal system: approval and license procedures by administrative institutions	1						o																
Ambiguity of legal system: criteria and necessary documents to submit for tax exemption	1					o																	
Ambiguity of legal system: criteria for domestic transactions and imports of diamonds	1													o									
Ambiguity of legal system: approval and license criterion of investment-related regulations	1																					o	
Ambiguity of legal system: pension system for resident representatives/officers	1	o																					

(Continue)

Category	APEC economies																						
	Total	Australia	Brunei	Canada	Chile	China	Hong Kong, China	Indonesia	Japan (Government level)	Korea	Malaysia	Mexico	New Zealand	Papua New Guinea	Peru	Philippines	Russia	Singapore	Chinese Taipei	Thailand	USA	USA (Government level)	Vietnam
Issues																							
Ambiguity of legal system: classification of attachments and accessories of medical equipment	1																					o	
Ambiguity of legal system: partnership requirement	1							o															
Ambiguity of legal system (insufficiency): regulations on imports of remodelled products	1								o														
Ambiguity of legal system (insufficiency): regulations on disposal of industry wastes	1									o													
Ambiguity of legal system (insufficiency): tariff classification for parts and components	1																						o
Lack of implementation of legal system: administrative ruling of tariff classification	1					o																	
Lack of implementation of legal system: environmental control	1						o																
Delay of legal reforms: legal reform for facilitating cross-border M&A	1							o															
Sudden modification of legal system: general (including absence of legal stability)	5					o	o			o				o	o								
Sudden modification of legal system: capital control and other controls	1									o													
Sudden modification of legal system: incentives for foreign investors	1																						o
Sudden modification of legal system: modification of Maquiladora system and introduction of PROSEC system	1										o												
Sudden modification of legal system: regulation on trailer truck	1									o													
Sudden modification of legal system: raising of import tariffs	1									o													
Sudden modification of legal system (introduction): introduction of approval and license or prohibition (political issue)	1					o																	
Sudden modification of legal system (introduction): new tax	1									o													
Sudden modification of legal system (stoppage): stoppage of refund of import duties	1								o														
Sudden modification of legal system (setting): sudden setting of holidays	1														o								
Sudden modification of legal system (enforcement): law enforcement without appropriate moratorium	1																	o					
Sudden and frequent modification of legal system: laws and notices	2															o							o
Frequent modification of legal system: incentives for foreign investors	1					o																	
Frequent modification of legal system: tariff classification	1									o													
Frequent modification of legal system: registration and approval of in vitro diagnostic medications	1					o																	
Modification and publicity of legal system: difficulty in accessing information on regulations and practices, and insufficient efforts to disseminate information on their revision	1														o								
Instability of legal system: continued existence of materials-processing regime	1						o																
Instability of legal system: continued existence of carbon tax reimbursement	1											o											
Instability of legal system: automobile-related taxation system	1									o													
Instability of legal system: tax holiday regime	1						o																
Instability of legal system: instability of industrial development policies	1									o													
Instability of legal system: regulations on foreign workers	1									o													
Unsatisfactory quality of local parts and components due to insufficient regulations and standards	1									o													
Taxation issue: elimination of tax exemption for imported equipments and imposition of corporate tax	2					o	o																
Taxation issue: imposition of tax on representative offices	1					o																	
Taxation issue: double taxation issues for joint ventures and unratified tax treaties (including delayed revision of Japan-Australia Tax Treaty)	3	o		o		o																	
Taxation issue: reinforcement of taxation system for Hong Kong tax haven	1						o																
Taxation issue: tax issues on scrapped property	1						o																
Taxation issue: tax withholding for PE and inter-branch transactions	1									o													
Taxation issue: tax exemption discriminatory between national and non-national cars	1									o													
Taxation issue: tax on undivided profits	1																	o					
Taxation issue: raise of withholding tax on interest income for thin capitalization taxation	1					o																	
Taxation issue: high value-added tax rates on broker's commission	1					o																	

(Continue)

Category	APEC economies																						
	Total	Australia	Brunei	Canada	Chile	China	Hong Kong, China	Indonesia	Japan (Government level)	Korea	Malaysia	Mexico	New Zealand	Papua New Guinea	Peru	Philippines	Russia	Singapore	Chinese Taipei	Thailand	USA	USA (Government level)	Vietnam
Issues																							
Taxation issue: stamp tax for both contracting parties and irrationality of stamp tax provision	2	o																o					
Taxation issue: conformity requirement on accounting and tax service	1																		o				
Taxation issue: inadequate reserve criteria for taxation regulations	1																		o				
Taxation issue: persisting system of corporate tax withholding from supporting industry firms	1																		o				
Taxation issue: tax on surplus remittances	1																		o				
Taxation issue: capital tax	1		o																				
Taxation issue: worldwide income taxation	1		o																				
Taxation issue: tax on foreign exchange gains and losses of personal overseas bank account	1	o																					
Taxation issue: tax on personal overseas assets income	1	o																					
Taxation issue: strict rules of tax on undercapitalization	1																					o	
Taxation issue: Tariff Act (Article 337) inconsistent with the GATT/WTO	1																					o	
Irrationality of grouping of payroll taxes	1	o																					
Lack of deduction from taxable income	1	o																					
Limited items regarded as expenses	1																o						
Non-deduction for foreign taxes	1	o																					
Introduction of royalty for sales of mining companies (possibility)	2			o										o									
Difficulty in applying for tax exemption for reinvestment of dividends due to shortage of period allowed (the maximum period for application with satisfying conditions: only 20 days)	1			o																			
Safety and environmental standards and certification issue: expanded range of products subject to quality and safety standards tests	1				o																		
Safety and environmental standards and certification issue: inadequate safety evaluation standards	3					o		o							o								
Safety and environmental standards and certification issue: insufficient regulations on anti-pollution	1														o								
Safety and environmental standards and certification issue: Korean safety certification system (vehicle legislation, electromagnetic wave controls,	1								o														
Safety and environmental standards and certification issue: limited availability of examination and registration agencies for product	1																	o					
Safety and environmental standards and certification issue: product addition subject to product certification and registration tests	1																	o					
Safety and environmental standards and certification issue: inconsistency with the International Accounting Standards	2											o				o							
Safety and environmental standards and certification issue: inadequate codes and standards	1													o									
Safety and environmental standards and certification issue: bilingual labelling requirement	1		o																				
Safety and environmental standards and certification issue: unrealistic "Made in USA" labelling requirement	1																				o		
Safety and environmental standards and certification issue: exclusion of import products and foreign investors by automobile labelling	1																				o		
Safety and environmental standards and certification issue: inconsistent environmental controls among state and local governments	1		o																				
Safety and environmental standards and certification issue: lack of international harmonization of standards	1						o																
Safety and environmental standards and certification issue: absence of Japan-US MRA of telecommunication equipment certification	1																				o		
Safety and environmental standards and certification issue: duplication of sanitary standards and GOST standards and renewal of GOST test certification	1															o							
Safety and environmental standards and certification issue: application of standards of the former Soviet Union	1															o							
Safety and environmental standards and certification issue: delayed introduction of international standards	1																			o			
Safety and environmental standards and certification issue: inconsistency with ISO standards of container weight regulation	1																				o		
Depreciation issue: long depreciation period	1						o																

(Continue)

Category	APEC economies																						
	Total	Australia	Brunei	Canada	Chile	China	Hong Kong, China	Indonesia	Japan (Government level)	Korea	Malaysia	Mexico	New Zealand	Papua New Guinea	Peru	Philippines	Russia	Singapore	Chinese Taipei	Thailand	USA	USA (Government level)	Vietnam
Issues																							
Depreciation issue: lack of exemplification of designated products (ambiguity)	1						o																
Transfer pricing: tightening and reinforcement of transfer price taxation system, modification of calculation method, and possibility of double	2	o				o																	
Transfer pricing: international inconsistency of transfer price evaluation	3			o					o												o		
Transfer pricing: ambiguity of transfer price administration (including advance transfer pricing (APA) procedures)	2							o		o													
Restriction on bank loan guaranteed by headquarters of foreign firms (restriction on bank financing to foreign companies)	2					o													o				
Import restriction: import restriction by steel import quota	1					o																	
Import restriction: import restriction on mainland Chinese products	1																		o				
Import restriction: import restriction on final products by manufacturing firms	1																						o
Import restriction: continuing steel import licensing system and import monitoring system	1																					o	
Import restriction: continuing countervailing restrictions	1																					o	
Non write-off of welfare and annual bonus	1					o																	
Unenforceable offsetting of debts and credits	1					o																	
Unilateral abrogation of international commitments	1						o																
Weak credibility on trials at court	1					o																	
Limited tariff exemption for companies in the Special Economic Zones	1															o							
Unreasonable regulations and regulations without considering technological development trend	2															o			o				
Cap on surplus reserve	1															o							
Unilateral review of PPA	1															o							
Persisting I/L commodity items	1																		o				
No regal distinction between full-time and part-time employees of JV	1																	o					
Abundance of illegal remodelled cars	1														o				o				
Rampant parallel imports	1											o											
Inequality of taxation on Japanese campus of foreign universities	1								o														
Taxation issues on forming triangular mergers	1							o															
Disclosure of import customs clearance statistics	1	o																					
Requirement to establish equity capital in the local branch of foreign bank	1	o																					
Insufficient Medicare system	1	o																					
Commercial law and securities and exchange law highly protective of minor shareholders	1	o																					
Modification of government share of profit sharing type contracts	1	o																					
Unreasonable penalty for insufficient immigration form	1	o																					
Insufficient adoption of the metric system	1																					o	
Inconsistent business license acquisition requirement for construction industry among states	1																					o	
Inconsistent restriction on insurance among states	1																					o	
Prohibitive claimable amount of the Product Liability Law and stagnant reform of action ex delicto	1																					o	
Malfunctioning restriction on value and predictability for punitive damages according to federal law	1																					o	
vi) Complicated and/or delayed procedures of investment-related regulations (implementation problems)																							
Complicated procedures: regimes general	1						o																
Complicated procedures: approval procedures for new investment	1					o																	
Complicated procedures: procedures to import equipments with tax exemption	1					o																	
Complicated procedures: procedures to import used equipment	1					o																	
Complicated procedures: taxation procedures in free trade zones ("FTZ's")	1																		o				
Complicated procedures: transaction procedures (through relocation) in FTZ's.	1					o																	
Complicated procedures: procedures for equipment lease and rental certification	1						o																
Complicated procedures: procedures for overseas remittances	1																			o			

(Continue)

Category	APEC economies																						
	Total	Australia	Brunei	Canada	Chile	China	Hong Kong, China	Indonesia	Japan (Government level)	Korea	Malaysia	Mexico	New Zealand	Papua New Guinea	Peru	Philippines	Russia	Singapore	Chinese Taipei	Thailand	USA (Government level)	Vietnam	
Issues																							
Complicated procedures: approval and license procedures for merge, dissolution, or relocation of the service center	1																		o				
Complicated procedures: complicated procedures for port customs clearance	1							o															
Complicated procedures: Pre-Shipment Inspection (PSI)	1										o												
Complicated procedures: documentation requirement under Sarbanes-Oxley Act (including cost increase)	1																				o		
Complicated procedures: foreign resident registration procedures	1															o							
Complicated procedures: registration procedures for Securities and Exchange Commission concerning new stock issue by company reorganization	1																					o	
Complicated procedures (complexity): taxation items of fringe benefits	1	o																					
Complicated procedures (complexity): complexity and complicated procedures of PROSEC	1										o												
Complicated procedures (too-detailed): BOI approval and reporting procedures	1																		o				
Complicated procedures (too-detailed): import licensing procedures	1																						o
Complicated procedures: tax payment registration for foreign individuals	1						o																
Complicated procedures (including inequity): export drawback system	1													o									
Complicated procedures (including uniqueness): state customs clearance procedures	1									o													
Complicated procedures: discriminately reporting requirements for taxation	1																					o	
Complicated and delayed procedures: customs clearance (including clearance certificate requirement, AFTA origin certificate procedures and management, enforcement of certificate of origin document registration, off-shore trade customs clearance, and inefficiency of customs clearance)	8				o		o			o	o				o				o	o		o	
Disunity of rules of origin	1																				o		
Complicated food import restriction and delays in I/L issuance	1																				o		
Delayed logistics, increased cost, interruption of promptness, smoothness, and efficiency due to counterterrorism C-TPAT (Customs - Trade Partnership Against Terrorism)	1																				o	o	
Complicated and delayed procedures: procedures to apply for working visa and its renewal (including work permit)	11	o			o		o			o	o	o		o	o				o	o	o	o	o
Complicated and delayed procedures: remittance procedures	1				o																		
Complicated and delayed procedures: tax regulations-related procedures	2	o					o																
Complicated and delayed procedures: EPTA procedures	1						o																
Complicated and delayed procedures: import tariff reimbursement and tax exemption procedures	4									o	o								o	o			
Complicated and delayed procedures: export bounty coupon issuance procedures	1																		o				
Complicated and delayed procedures: government approval procedures for withdrawal	2																		o			o	
Complicated and delayed procedures: incorporation procedures (including	1															o							
Complicated and delayed procedures: BOI export and import approval and reporting procedures for products, materials, equipments, defective products and rejected materials	1																		o				
Delayed procedures: import cargo inspection (including uncertainty)	1																				o		
Delayed procedures: delayed logistics and increased costs increase due to the 24-Hour Advance Vessel Manifest Rule	1																				o		
Delayed procedures: patent registration application procedures	1				o																		
Delayed procedures: AICO approval procedures	1						o																
Delayed procedures: CEPA application procedures	1						o																
Delayed procedures: investment approval and license (through a special personal connection)	1						o																
Delayed procedures: renewal procedures of foreign resident' registration card	1								o														
Delayed procedures: import license	1									o													

(Continue)

Category	APEC economies																						
	Total	Australia	Brunei	Canada	Chile	China	Hong Kong, China	Indonesia	Japan (Government level)	Korea	Malaysia	Mexico	New Zealand	Papua New Guinea	Peru	Philippines	Russia	Singapore	Chinese Taipei	Thailand	USA	USA (Government level)	Vietnam
Issues																							
Delayed procedures: extraordinary approval procedures for withholding tax	1																	o					
Delayed procedures: approval procedures for technology transfer	1																						o
Delayed procedures: production license issuance (partial)	1																		o				
Delayed procedures: time-consuming tax number inquiry (ruling)	1																			o			
Delayed procedures: delayed immigration examination by introduction of US-VISIT program (including concern over information controls)	1																				o		
Delayed procedures: social security number acquisition procedures (and corresponding effects on resident officers and their family's daily life)	1																				o		
Delayed procedures: guidance prescribed period in excess of the experimental consultation period	1																				o		
Delayed procedures (including difficulty): procedures for waste disposal (and its renewal)	2														o				o				
Delayed procedures (including difficulty): procedures for prepayment of corporate tax reimbursement	1						o																
Delayed procedures (including difficulty): acquisition of Social Security Number	1																			o			
Delayed procedures (including difficulty): difficulty in obtaining AICO approval	1																					o	
Delayed procedures (including non-refunding and difficulty): value-added tax reimbursement procedures	4			o		o									o				o				
Delayed procedures (including non-refunding): corporate withholding tax reimbursement procedures	1																		o				
Difficulty in procedures: difficulty in securing debt against companies in bankruptcy	1				o																		
Difficulty in procedures: too short period to renew OHIP insurance	1		o																				
Difficulty in procedures: corporate tax advance declaration and payment procedures	1									o													
Difficulty in procedures: utilization of consolidated taxation payment system	1							o															
Difficulty in procedures: strict condition to use "made-in-US"	1																			o			
Difficulty in procedures: difficulty in acquiring driver's license	1																			o			
Difficulty in procedures: prolonged examination until acquisition of commercial satellite import license and technical support license	1																				o		
Inefficiency of procedures: unnecessary documents and procedures	1																o						
Inefficiency of procedures: tax return only in Russian	1																o						
Inefficiency of procedures: administrative procedures	1				o																		
Inefficiency of procedures (including corruption): investment approval procedures	2					o									o								
Inefficiency of procedures: malpractice and irrelevance of handling immigration form	1																			o			
Disunity of procedures: procedures at the office counter (window)	2														o				o				
Disunity of procedures: variation in examination period of medical equipments by a third-party body	1																				o		
Inadequacy of procedures (lack): service of foreign embassy in Japan for visa application acquisition	1																					o	
Complicated corporate tax prepayment system	1						o																
Complicated banking business resulting from the regulations requiring banking transactions in rupiah	1						o																
Complicated offsetting of debtors and creditors account in foreign trade transactions	1																		o				
Complicated handling of BOI incentives	1																		o				
Complicated approval and licensing for automobile price	1									o													
Complicated tax imposition on interstate transaction	1																			o			
Complicated L/C import system	1														o								
Abuses, illegality and ambiguity of rules and arbitrary implementation of Security and environmental standards and certification issue: diversity of standards and complicated examination of security standards approval	1		o																		o	o	
Security and environmental standards and certification issue: examination standard and discriminatory approval condition of fuel efficiency requirements for automobiles	1																			o			

(Continue)

Category	APEC economies																						
	Total	Australia	Brunei	Canada	Chile	China	Hong Kong, China	Indonesia	Japan (Government level)	Korea	Malaysia	Mexico	New Zealand	Papua New Guinea	Peru	Philippines	Russia	Singapore	Chinese Taipei	Thailand	USA	USA (Government level)	Vietnam
Issues																							
Security and environmental standards and certification issue: disunity of state standards (electrical parts and components), inconsistent standards and certification among state and city and environment-related legislation	2			o																	o		
Security and environmental standards and certification issue: complicated NOM standards labelling and renewal procedures	1										o												
Security and environmental standards and certification issue: complicated marking system (complexity and diversity)	1								o														
Security and environmental standards and certification issue: complicated requirement of KS marking for imported tires	1								o														
Security and environmental standards and certification issue: increasing complexity of standard and conformity	1																				o		
Complicated import customs clearance notification obligation for chemical products	1								o														
Delayed market entry by foreign investors	1							o															
Delayed approval of the pharmaceutical affairs	1							o															
Ambiguous implementation of antitrust law	1																		o				
Arbitrary application of system: disunity of legal interpretation and implementation (including disunity and inconsistency of implementation of product safety certification system, excessive power of local officials, Arbitrary application of system: diversity of implementation and interpretation by customs (including arbitrary tariff classification and tariff evaluation, difference with international rules, inequity of tariff rate application and ITA nonperformance)	5				o					o						o			o			o	
Arbitrary application of system: arbitrary asset evaluation	7				o		o			o	o				o				o	o			
Arbitrary application of system: arbitrary corporate tax examination	1				o																		
Arbitrary application of system: arbitrary and corrupt tax collection (including back taxes and tax on business corporations)	4						o								o	o			o				
Disunity of legal interpretation for application of system: acquisition of indigenous rights for land-use	2	o													o								
Disunity of regulations and controls among relevant ministries and agencies	1																		o				
Legal interpretation for application of system: inadequate publicity and duplication in interpretation of regulations and their administrative	1				o																		
Arbitrary restriction on opening of bank account in rural areas	1				o																		
Disunity and gap in grant of incentives	1				o																		
Insufficient implementation of regulations	1				o																		
Constraints of registration book	1				o																		
Link between export and inspection	1				o																		
Difficulty in repeating quality control examination in Chinese examining authority	1				o																		
Inconvenience of centralized authorization rights (including disapproval of PROSEC licensing procedures in rural areas)	2						o			o													
Delayed notifications of regulations from central to local governments	1				o																		
Disunity of regulations and directives among central and local governments	1															o							
Introduction of unitary taxation in some states	1																		o				
Ambiguity of power of government institution	1															o							
Special personal connection and political bribery and corruption of public savants (including collusion and corruption in customs)	6				o	o			o						o	o						o	
Ambiguity of locus of responsibility	1				o																		
Burden of translating the application form into Chinese	1				o																		
Unanimous voting to restrict withdrawal	1				o																		
Unanimous voting at the board meeting of joint ventures	1																					o	
Difficulty in obtaining approvals for capital reduction	1				o																		
Capacity utilization rate linked with the raw material import license	1				o																		
Prohibitive port charge and departure tax	1						o																
Introduction of value-added tax to free trade zones	1						o																
Heavy burden of value-added tax	2	o													o								
Prohibitive individual income tax	1	o																					
Burden of accounting office expense related to the transfer price taxation	1																		o				

(Continue)

Category	APEC economies																						
	Total	Australia	Brunei	Canada	Chile	China	Hong Kong, China	Indonesia	Japan (Government level)	Korea	Malaysia	Mexico	New Zealand	Papua New Guinea	Peru	Philippines	Russia	Singapore	Chinese Taipei	Thailand	USA	USA (Government level)	Vietnam
Issues																							
Greater interest burden by modification of collection method for the business tax	1																	o					
Existence of tax on property	1										o												
Collection of technology promotion funds	1						o																
Inconsistent tax collection	1																					o	
Collection of property tax and road tax	1																o						
Coordination issue of prepaid taxes	1																o						
Prohibitive cost for certification acquisition	1																o						
Irrational traffic regulation	1						o																
Increased cost due to irrational regulations on thin capitalization taxation and its application	2	o							o														
Promotion of excessively strict documentary examination related to the Letter of Credit transactions	1						o																
Long-term and irregular tax examination	1								o														
Educational expenses of resident officer's children: discriminatory public school tuition for children whose parents do not hold permanent visa	1	o																					
Educational expenses of resident officer's children: disapproval of tax allowance for expenditures	1		o																				
Irrational collection of Employer Health Tax (EHT)	1		o																				
Obligation to bear educational expenses of employees	1		o																				
Irrationality of listed company provision	1									o													
Existence of excessive regulations such as X-ray controls	1									o													
Heavy burden of individual income tax	1																					o	
Restricted transfer of the equity share	1									o													
Difficulty in obtaining plans of governments	1									o													
Excessively strict foreign exchange control	1																		o				
Signature requirement for document submitted to government and other public offices	1																		o				
Strict provisions of environmental law	1											o											
Discrimination against foreign firms provided by the Board of Investment	1																					o	
Rampant smuggling	1																					o	
Rampant illegal import of used cars	1																o						
Deemed tax valuation system	1																					o	
Restriction on export and import of wood packaging materials and pallet	1									o													
Inconsistent state/local government's sanctions law with the international laws	1																					o	

(Continue)

Category	Issues	APEC economies																						
		Total	Australia	Brunei	Canada	Chile	China	Hong Kong, China	Indonesia	Japan (Government level)	Korea	Malaysia	Mexico	New Zealand	Papua New Guinea	Peru	Philippines	Russia	Singapore	Chinese Taipei	Thailand	USA	USA (Government level)	Vietnam
vii) Insufficient protection of intellectual property rights (IPRs)																								
	IPRs: widespread counterfeit goods and pirated copy goods due to insufficient protection of IPRs	11				o	o	o	o		o	o	o			o			o	o		o	o	
	IPRs: insufficient crackdown on counterfeit goods at the border (including Hong Kong customs case of watches), delayed appraisal during suspension of imports and uncertainty of disposal of seized articles	4					o	o			o												o	
	IPRs: implementation problems (including issues of Music etc.)	2					o																o	
	IPRs: unratified IPR treaty (global treaty)	4									o						o		o	o				
	IPRs: insufficient IPR laws	1															o							
	IPRs: insufficient period protected by IPRs	1								o							o							
	IPRs: insufficient protection of digital contents	1								o														
	IPRs: abuse of EU labels on wines	1																					o	
	Copyright: insufficient protection (live music, rental video games, etc.)	1																					o	
	Copyright: Disunity of sender information disclosure procedures of Digital Millennium Copyright Act	1																					o	
	Design right: insufficient protection of design right	1					o																	
	Trademark right and design right: rampant aggrieved goods (apparel)	1					o																	
	Trademark right and copyright: spreading aggrieved goods	1					o																	
	Trademark right: underdeveloped and insufficient trademark right protection system	2						o		o														
	Patent: delayed patent examination	2						o		o														
	Patent: insufficiency of patent (application) laid-open disclosure system (incompleteness)	2						o														o	o	
	Patent: restricted range of patent claim and short grievance period	1								o														
	Patent: constraints on use of US government-sponsored patent	1																					o	
	Patent: instability of rights caused by unique first-to-invent principle	2																					o	o
	Patent: disadvantage of third party for patent re-examination request (limited to existence of prior art documents)	2																					o	o
	License agreement: disadvantageous regulations to licensors	1					o																	
	Issues on leakage of know-how and technology	1																		o				
	Personal security issues of technical experts testifying at the court in criminal prosecution	1						o																
	Disapproved multiple claim	1								o														
	Accepted photographing at the exhibition	1								o														
	Inequality of Hilmer doctrine (discriminatory treatment provision)	2																					o	o
	Insufficient and complicated predictability for interferences	1																					o	
viii) Labor regulations and related practices excessively favorable to workers																								
	Difficulty in firing workers: retirement and firing regulations excessively protective for workers	5					o	o							o	o			o					
	Difficulty in firing workers: overburdened retirement benefit system	1								o														
	Wage: absence of minimum wage system (no minimum wage system and high labor cost)	1									o													
	Wage: substantial raising, frequent and arbitrary revision and disparity control of minimum wage	2						o												o				
	Wage: rapid increase in wage level (raising of labor cost)	6								o	o	o						o		o		o	o	
	Wage: disapproval of and difficulty in demotion and salary cut	2	o													o								
	Strike: strike practices led by major companies	1								o														
	Strike: easy implementation of strike and long-term strike practices	2					o		o															
	Labor union issue: resistance of labor union to foreign entry	1								o														
	Labor union issue: wage payment to full-time union officials	1								o														
	Labor union issue: existence of multiple labor unions in a single company	1								o														
	Labor union issue: illegal decision-making of labor union	1								o														
	Labor-management agreement and practices excessively favorable to workers; difficulty in revision of conservative labor regulations and vested conditions of employment	8								o	o	o	o			o			o	o		o	o	

(Continue)

Category	APEC economies																						
	Total	Australia	Brunel	Canada	Chile	China	Hong Kong, China	Indonesia	Japan (Government level)	Korea	Malaysia	Mexico	New Zealand	Papua New Guinea	Peru	Philippines	Russia	Singapore	Chinese Taipei	Thailand	USA	USA (Government level)	Vietnam
Issues																							
limited period permitted for contracts of temporary workers; labor condition of short-time workers	1								o														
Increased cost due to introduction of enforced unemployment insurance system	1					o																	
Uncertainty of workmen's compensation approval	1							o															
Misuse of medical leave	1								o														
Excessive holidays and/or work absence	1								o														
Abuse of family and medical leave system	1																			o			
Specificity of working time	1														o								
Unreasonably high wage rates for working on holidays	1														o								
Prohibition of employing contract workers	1														o								
Restriction on transfer of insurance officials among companies	1														o								
Greater burden of employees' pension	1																	o					
Burden of educational fund	1																	o					
Heavy burden of obligation to distribute taxable profits and profit sharing dividends to employees	3										o			o	o								
Excessively burdensome system of employment	1	o																					
Delayed procedures to buy social insurance	1										o												
High medical care cost and increased health insurance fee	1																			o			
Difficulty in optimum location of human resources due to the seniority right system	1																			o			
ix) Underdeveloped infrastructure, shortage of human resources, and insufficient investment incentives																							
Difficulty in hiring and securing human resources due to shortage of management staff and engineers (including brain drain of IT engineers)	7					o	o		o	o					o		o		o				
Shortage of specific specialized human resources (difficulty in securing workers proficient at languages)	2	o						o															
High turnover ratio and job hopping practices	5					o				o							o	o	o	o			
Labor shortage in maquiladora	1									o													
Infrastructure issue: underdeveloped (industrial) infrastructure (general)	5						o								o	o			o			o	
Infrastructure issue: fears of instable energy supply	1																			o			
Infrastructure issue: increased risk of power shortages and electrical power supply (instability)	3					o			o	o													
Infrastructure issue: inadequate road maintenance, partially underdeveloped	3	o				o	o																
Infrastructure issue: underdevelopment and lack of seaport infrastructure	2	o									o												
Infrastructure issue: prior consultation system for port and harbor services	1							o															
Infrastructure issue: underdeveloped containerized railway transportation	1					o																	
Infrastructure issue: creaky existing infrastructure	1						o																
Infrastructure issue: poor public physical distribution services	1						o																
Infrastructure issue: underdeveloped intermediate distribution	1																		o				
Infrastructure issue: inadequate public sanitation	1									o													
Infrastructure issue: runaway cost of public utilities (instability)	3						o			o	o												
Infrastructure issue: insufficiency and underdevelopment of waste disposals	3										o				o								o
Infrastructure issue: delayed delivery due to traffic jam in cities	1											o											
Infrastructure issue: insufficient aviation infrastructure in Kanto area	1							o															
Infrastructure issue: relatively high air transport costs	1							o															
Infrastructure issue: lack of carriers and high transportation costs	1																o						
Infrastructure issue: inadequate postal services	1										o												
Incentives issue: disparity of incentives in the same zone due to project-by-project grant of BOI incentives (irrationality)	1																			o			
Incentives issue: absence of investment incentives for the construction industry	1																			o			
Incentives issue: insufficient incentives for existing foreign-owned firms	1																			o			
Incentives issue: insufficiency, shrinking and ambiguity of incentives for foreign investors	6		o				o			o					o	o							o
Incentives issue: shrinking and abolishment of export bounty	1					o																	
Incentives issue: absence of incentives for parts manufacturer	1																						o
Incentives issue: insufficient incentives for foreign finished car maker	1																						o

(Continue)

Category	APEC economies																						
	Total	Australia	Brunei	Canada	Chile	China	Hong Kong, China	Indonesia	Japan (Government level)	Korea	Malaysia	Mexico	New Zealand	Papua New Guinea	Peru	Philippines	Russia	Singapore	Chinese Taipei	Thailand	USA	USA (Government level)	Vietnam
Issues																							
Incentives issue: insufficient government assistance for investment concerning environmental problem and insufficient incentives for environmental measures	2			o										o									
Incentives issue: insufficient assistance for local production	1	o																					
Incentives issue: insufficient incentive for local procurement	1	o																					
Incentives issue: insufficient assistance for large-scale R&D investments	1	o																					
Incentives issue: insufficiency of free trade yards	1															o							
Incentives issue: BOI tax incentives	1																		o				
Incentives issue: discriminatory favorable incentives for national cars	1									o													
Insufficient assistance for expenditures in ACIS scheme	1	o																					
Capital discrimination of tax incentives	1		o																				
Insufficient incentive for nurture of supporting industries (including local industrial development policy)	2														o								o
Insufficient industrial development policy for parts and components	1										o												
Absence of by-industry policies	1															o							
Issues of local suppliers in terms of delivery time and quality	1																						o
High tax rate: corporate tax	1						o																
High tax rate: individual income tax	1						o																
Financial market: immature financial market	3														o			o					o
Financial market: underdeveloped foreign currency exchange system	1														o								
Financial market: underdeveloped capital market	1																		o				
Financial market: difficulty in introduction of consumer loan	1															o							
Insufficiency of medical institutions	1														o								
Shortage of hospitals run by Institution Mexicano del Seguro Social (IMSS)	1										o												
Insufficient casualty insurance companies	1															o							
Inelastic law of one price policy	1			o																			
Disapproval of decreased prices of outlet	1			o																			
Public security: deterioration of living environment	1									o													
Public security: concerns about security	1									o													
Public security: increase in counter narcotics expenditures	1									o													
x) Restricted competition and price controls																							
Uniform setting of increased value rate (value-added rate) under the guideline	1			o																			
Monopoly / unilateral increase in price of energy supply	1						o																
Discriminatory rise in fuel price	1						o																
Oligopolistic pricing by Hong Kong freight forwarders in shipment of jewellery	1					o																	
Price reporting requirement to the Department of Commerce	1																	o					
Irrationality of CO2 absorption credits (belonged to nations) and greater burden on investors by introduction of carbon tax	1										o												
Government-designated trading company system	1																					o	
Monopolistic pricing	1																					o	
Antitrust law: lack of enforcement	1							o															
Antitrust law: extraterritorial application	2																		o	o			
Antitrust law: non-disclosure of cases and their details presented to the court	1																				o		
Full implementation of privatization	1							o															
Delay in implementing privatization and eliminating inefficient state-owned enterprises	1									o													
Target pricing of government procurement	1							o															
Oligopolistic economic structure	2	o																	o				
Prior reporting requirement in acquiring U.S. firms	1																		o				
Potential competitive restriction: revision of broadband-related controls and Federal Telecommunications Act	1																				o		
Maintenance of new entry and competition in process of change to digital television system	1																				o		
Maritime industry: unilateral price control on foreign shipping companies by Federal Maritime Commission	1																				o		
Maritime industry: distortion of competitive condition of international maritime market caused by infusion of massive subsidies to US shipping companies	1																				o		

Table A.4.1 10 major issues for FDI liberalization and facilitation and corresponding international documents

	APEC Non-Binding Investment Principles (NBIP)	APEC Menu of Options for Investment	other APEC documents	OECD Policy Framework for Investment	WTO and other international agreements
i. Restrictions on foreign entry					
i.1. Most-favoured-nation treatment	2nd principle	3.01-02		1.6(mechanisms to ensure transparency and constant review of remaining discriminatory restrictions)	GATS Art.II(MFN treatment for FDI in service sectors); Agreement on Government Procurement Art.3
i.2. National treatment	3rd principle	3.03-08	ABAC Checklist of Financial Services Liberalization	1.6	GATS Art.XVII(NT in the service sectors inscribed in Schedule); GATS' Annex on Telecommunications ; GATS' Understanding on Commitments in Financial Services; Agreement on Government Procurement Art.3; TRIMs Art.3
i.3. Restrictions on ownership, finance, and operation		3.09-18(elimination of restrictions for foreign investors regarding their form of establishment, joint venture requirement, etc.); 3.19-20(free access to domestic financial instruments); 3.21-23(removal of deposit requirements, etc.); 3.25, 3.27(removal of restrictions on imports and on access to local raw materials and inputs)	ABAC Checklist of Barriers and Impediments to FDI (removal of restrictive conditions on ownership)		TRIMs, Annex (prohibition of trade balancing requirements and foreign exchange requirements)
i.4. Further protection and liberalization of foreign investment		1.08-09(conclusion of bilateral, regional, and multilateral agreements for the protection of investment); 1.01(broadening definitions of investment); 1.03(standstill on restriction); 1.04-07(phasing out prior-authorization mechanisms)			
ii. Performance requirements	5th principle	7.01-03(elimination or relaxation of TRIMs-inconsistent performance requirements)			TRIMs, Annex (prohibition of local content requirements)

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iii. Restrictions on overseas remittances and controls on foreign currency transactions	7th principle	6.01-03(elimination of restrictions that impede recovery of profit, , restrictions on access to foreign exchange, control over the allocation of foreign currencies, etc.)		1.6(review of restrictions affecting the free transfer of capital and prodivts)	GATS Art.XI (international transfers and payments)
iv. Restrictions on the movement of people and employment requirements	9th principle	8.01-02(temporary entry and stay of personnel); 8.03-04(phasing out nationality requirements for executives, managers, members of boards of directors, etc.)	Ha Noi Action Plan(improving business mobility, particularly through the enhancement of the APEC Business Travel Card scheme)	8.8(review of unduly restrictive practices covering the deployment of workers from the investing enterprise)	
v. Lack of transparency in policies and regulations concerning investment (institutional problems)					
v.1. Transparency	1st principle	2.02(publishing information on an economy's investment code, investment laws and regulations, and procurement procedures)	Leaders' Statement to Implement APEC Transparency Standards; Transparency chapter of the APEC Model Measures for RTAs/FTAs	1.1(improving transparency); 3.2(predictability in trade policies; consultation with interested parties)	GATT Art.X; GATS Art.III; Agreement on TRIMs Art.6; Agreement on Government Procurement Art.17
v.2. Standards and conformance			Osaka Action Agenda (Part One, Section C.5); Ha Noi Action Plan (standards and conformance)		TBT Agreement Art.2 (non-discriminatory application, legitimate objective, and conformity with relevant international standards of technical regulations); SPS Agreement Art.5 (scientific risk assessment)
	APEC Non-Binding Investment Principles (NBIP)	APEC Menu of Options for Investment	other APEC documents	OECD Policy Framework for Investment	WTO and other international agreements
vi. Complicated and/or delayed procedures with respect to investment-related regulations (implementation problems)	12th principle (minimizing regulatory and institutional barriers to the outflow of investment)	13.02(streamlining application, registration, government licensing and government procurement procedures)	Osaka Action Agenda (Part One, Section C.6); Trade facilitation chapter of the APEC Model Measures for RTAs/FTAs; APEC Transparency Standards (Customs Procedure); Trade Facilitation Action Plan (TFAP) (reducing 5% transaction cost); Santiago Commitment to Fight Corruption and Ensure Transparency	2.4 (quickening and reducing the cost of establishing a new investment); 3.1 (reducin the compliance costs of customs); 10.1-10.9 (reasonable, consistent, and efficient public governance; fighting corruption)	GATT Art.VIII (fees and charges limited the approximate cost of services rendered); GATT Art.X.3 (administration of laws and regulations pertaining to customs proceures in a uniform, impartial, and reasonable manner); Agreement on Customs Valuation Art.1-8; GATS Art.VI
vii. Insufficient protection of intellectual property rights		10.01-05 (compliance with the TRIPS Agreement; adequate and effective enforcement measures; international cooperation)	Osaka Action Agenda (Part One, Section C.7); Comprehensive Strategy on IPR; Anti-Counterfeiting and Piracy Initiative (five APEC Model Guidelines)	1.3 (implementing laws and regulations for the protection and effective enforcement of IPR)	TRIPs Agreement

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viii. Labor regulations and related practices excessively favorable to workers		13.12 (labor market that facilitates domestic labor mobility)		8.6-8.10 (implementing core labor standards; labor market regulations that support job creation and investment attraction strategy)	
ix. Underdeveloped infrastructure, shortages of human resources, and insufficient investment incentives					
ix.1. Infrastructure and human resources		13.07-11 (establishing legal and taxation systems, accounting and financial reporting systems, bankruptcy law systems, financial system, standards of corporate governance); 13.13 (improving standards of professional services)	Osaka Action Agenda (Part Two, Section B.4/6/9/12); Transparency chapter of the APEC Model Measures for RTAs/FTAs (establishing judicial, quasi-judicial, or administrative tribunals or procedures)	9.1-9.8 (good infrastructure for attracting investment, especially in such sectors as telecommunications, electricity services, transport facilities, and fresh water supplies); 1.4 (effective system of contract enforcement); 1.2, 9.8 (ownership registration for land and other forms of property); 9.7 (well-functioning financial markets); 6.1-6.9 (corporate governance; equitable treatment of shareholders); 8.1-8.4 (human resource development)	GATT Art.X.3, GATS Art.VI.2 (independent judicial, arbitral or administrative tribunals or procedures for the purpose of the prompt review and correction of administrative action relating to customs matters or trade in services.)
ix.2. FDI incentives	4th principle (inappropriateness of encouraging investment by domestic lowering health, safety or environmental standards or relaxing core labor standards)	13.03-06 (investment incentives such as tax breaks, loans guarantees, grants, subsidies, etc.; establishing a specialized office); 15.01 (assistance for venture capital and start-up companies)	ABAC Checklist of Barriers and Impediments to FDI	2.1-2.9 (investment promotion; establishing an investment promotion agency; building investment promotion expertise by joining regional and international networks); 3.3 (creation of larger and dynamic markets); 5.1-5.9 (tax policy consistent with investment attraction strategy)	
x. Restricted competition and price controls		3.26 (elimination of pricing by state-designated monopolies); 12.01 (ensuring consistency between investment policies and competition and regulatory reform policy)	Osaka Action Agenda (Part One, Section C.8); Leaders' Agenda to Implement Structural Reform (LAISR)	4.1-4.7 (clear, transparent, and non-discriminatory competition laws and their application; independence of competition authorities; addressing anti-competitive practices by incumbent enterprises, including state-owned enterprises; international cooperation)	GATS Art.VIII (GATS-consistency of the behaviour of monopoly suppliers)

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