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ASSESSMENT OF LIBERALISATION AND FACILITATION OF FDI IN THIRTEEN APEC ECONOMIES

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EXECUTIVE SUMMARY

The Bogor Declaration and the accompanying Non-Binding Investment Principles of 1994 have been repeatedly reaffirmed by the APEC Leaders as the driving force for investment liberalization in the Asia-Pacific Region.

Some 15 years after their adoption and on the eve of the self-imposed deadline for industrialized member economies to achieve them, it is apparent that considerable progress in liberalization and facilitation of the investments regimes by member economies has been achieved.

Overall, the thirteen selected APEC economies have reached a high level of investment liberalisation and have set up transparent and conducive investment regimes However, all economies still maintain – to various degrees – sectoral investment restrictions in the form of prohibitions or capital ceilings, and some countries continue to apply - in addition to sectoral limitations – a general screening system for FDI. As recognized by the Bogor Goals, the pace of liberalization was to take into account differing levels of economic development among APEC economies. It is therefore not surprising that some of the reviewed economies have brought considerable changes to their investment regimes over the years whereas other economies that had fairly open regimes in 1995, did not have to undertake major changes. All thirteen selected economies are also actively engaged in investment promotion and facilitation (e.g. through investment incentives and the work of national investment promotion agencies).

This progress has been largely achieved by unilateral efforts undertaken by the reviewed economies, with some requiring major policy changes reflected in the domestic investment regimes. In addition, international commitments as laid down in the numerous international investment agreements (IIAs), particularly FTAs/RTAs that these economies have concluded among themselves and with other APEC or non-APEC countries over the years, helped locking in unilateral progress, providing for an open, stable and predictable investment climate in the region, and thereby contributed to achieving the Bogor Goals..

The interaction between unilateral and international liberalization and facilitation is a salient pattern of the APEC dynamics. The success of these economies underlines the validity of the Bogor Goals approach, acknowledging the different levels of economic development among the member economies.

In addition to the two driving forces, i.e. autonomous liberalization-driven and IIA-driven, the peer pressure generated through the APEC process at various levels (including the ABAC) over the past decade and a half has played a role of maintaining the momentum in the move towards more open investment climate.

Driven by their shared commitment towards the Bogor Goals, the thirteen APEC economies that have gone for review have emerged as engines of global economic growth. Indeed, FDI inflows of the thirteen economies in 2008 accounted for two thirds of inflows to the grouping's total and 30% of global FDI flows. They have also dominated FDI outflows from the APEC region, accounting for 90% of the total. Between 1996 and 2008, the total FDI annual inflows of the thirteen economies more than quadrupled, and their outflows nearly quadrupled,

It should be noted, however, that the shares of FDI inflows and stocks into those thirteen economies in global and APEC totals as well as in the intra-APEC share have decreased over the last fifteen years. However, this is mainly due to the even higher FDI growth rates of other economies.

I. Introduction

With their Declaration of Common Resolve of 15 November 1994 (the "Bogor" Declaration), APEC Leaders adopted the Bogor Goals among which the long-term goal of free and open trade and investment in the Asia-Pacific and set some targets for industrialized economies to achieve this goal no later than the year 2010 and developing economies no later than the year 2020. The Bogor Goals further acknowledge that the pace of implementation would take into account differing levels of economic development among APEC economies.

At the same time, they committed to accelerate APEC's trade and investment facilitation programs, investment facilitation being one of the aims of the 1995 Osaka Action Agenda (OAA). The Investment Facilitation Action Plan (IFAP) was agreed upon by the APEC Leaders in 2007 in Sydney and further developed to create and sustain a conducive climate for investment at the economies' and the APEC-wide level.

Over the past 15 years, APEC member economies have been striving to improve the transparency of their investment frameworks, to improve their investment climate and to strengthen through concrete initiatives the regional economic integration. This commitment has been strongly reaffirmed by APEC Economic Leaders at the 17th APEC Summit in Singapore.

The achievement of the Bogor Goals is being undertaken and supported through various initiatives within APEC, among which there are two main non-binding instruments:

- The APEC Non-Binding Investment Principles of 1994; and
- The Menu of Options for Investment Liberalisation and Business Facilitation to Strengthen APEC Economies of 1997.

The APEC Member Economies have further entered into negotiations of International Investment Agreements (IIAs), particularly Free Trade Agreements and Regional Trade Agreements (FTAs/RTAs) among themselves as well as with countries outside the region (table 1). The APEC region has been the most dynamic in recent years as far as the negotiation of IIAs is concerned and significant changes and evolution in IIAs have taken place in the region, driven by APEC Member Economies. These agreements constitute a driving force that also needs to be addressed in assessing progress towards the Bogor Goals. APEC has also been instrumental in supporting unilateral efforts through Individual Action Plans (IAPs) and APEC Member Economies have consistently worked towards reaching the goal set in 1994 of free and open trade and investment in the region. They have actively pursued investment promotion, for instance through the granting of investment incentives or the work of national investment promotion agencies.

As part of their commitment towards the Bogor Goals, thirteen Member Economies have volunteered to have their investment regimes reviewed in order to assess the current level of investment liberalization, facilitation and protection against these Goals. [1] These Member Economies are Australia, Canada, Chile, Hong Kong (China), Japan, the Republic of Korea, Malaysia, Mexico, New Zealand, Peru, Singapore, Taiwan, Province of China, and the United States. Within APEC, the main point of reference against which the state of investment liberalisation and protection of the thirteen APEC economies will be assessed in this study are the APEC Non-Binding Investment Principles of November 1994, in which APEC member economies committed to ongoing efforts towards the improvement and further liberalisation of their investment regimes in a number of policy areas. Each of these policy areas will be discussed in section II.1 below.[2] Each item will be introduced by a reference to the relevant text in the APEC Non-Binding Investment Principles.

The study examines the investment framework of the thirteen APEC member economies, particularly national investment regimes (mainly laws and regulations) and their international commitments under IIAs and the extent to which they reflect the NBIPs and Menu of Options. It consists of three parts: Part 1 analyses the current status of investment liberalisation and protection.[3] Part 2 reviews progress in these areas, and part 3 assesses the impact of the progress achieved on FDI flows into the thirteen economies.

[1] Efforts by Member Economies have further been supported by studies and reports, including the APEC reports on "Enhancing Investment Liberalisation and Facilitation in the Asia-Pacific Region" of 2007, the APEC Guide to the Investment Regimes of APEC member Economies (6th edition, 2007); and the Core Elements I and II studies undertaken by UNCTAD in 2007 and 2008.

[2] Not covered is the issue of investor behaviour. The 1994 APEC Non-Binding Investment Principles mention in this context that "acceptance of foreign investment is facilitated when foreign investors abide by the host economy's laws, regulations, administrative guidelines and policies, just as domestic investors should."

[3] Liberalization measures or commitments typically aim at reducing obstacles and barriers to free and open flows of investment into and out of economies. This is achieved by the granting of national treatment at the pre-establishment phase of the investment (in relation to establishment, acquisition and expansion of the investment), the prohibition of performance requirements including relating to the entry and sojourn of personnel (i.e. operation conditions applicable either to the entry or to the established investment) and will be ensured by transparency of the conditions contained in the laws, regulations as well as the way they will be applied in practice.

II. Main findings

1. Current status of investment liberalisation and protection[4]

This section identifies the degree of convergence between the level of investment liberalisation and protection under the national investment regimes of the reviewed economies and their liberalisation and protection commitments made under international investment agreements, on the one hand, the Non-Binding Investment Principles, on the other hand.

a. Transparency:

> "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."

All economies have adopted general or specific legislation aimed at enhancing the transparency of laws and regulations pertaining to investment. Some economies have gone further to also undertake transparency commitments on administrative practices, policies as well as international arbitration procedures. IIAs (in particular FTAs/RTAs) to the extend they contain detailed lists of non-conforming measures as far as national treatment, most-favoured nation treatment and prohibition of performance requirements are concerned further contribute to making investment regime more transparent and predictable. In addition, the six economies amongst the thirteen that are also G-20 members (Australia, Canada, Japan, Republic of Korea, Mexico, United States) have agreed at the Summit in London in April 2009 that the WTO, together with other relevant international organizations including UNCTAD, monitor and report publicly on G20 adherence to their undertakings on resisting protectionism and promoting global trade and investment.[5]

b. National Treatment (as far as the establishment, expansion, operation and protection is concerned)

> "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 investment, treatment no less favourable than that accorded in like situations to domestic investors."

None of the selected thirteen APEC member economies is fully open to foreign investment and several sectors are reserved to national investors or closed to private investment altogether. To the extent that restrictions still exist, they all relate to the entry stage of foreign investment. No discriminatory measures could be found with regard to the post-establishment phase. All economies have introduced liberalisation measures since the adoption of the Bogor Declaration, for instance through raising foreign ownership ceilings in individual sectors (see below 3).

The sectors with the highest degree of remaining FDI restrictions are transportation and mass media/broadcasting. Twelve of the thirteen APEC economies reviewed for this study

[4] The issues are taken up in the order of the 1994 APEC Non-Binding Investment Principles.

[5] See the joint WTO/OECD/UNCTAD Report WTO-OECD-UNCTAD Report on G20 Trade and Investment Measures, 14 September 2009, available at: http://www.unctad.org/en/docs/wto_oecd_unctad2009_en.pdf., and UNCTAD (2009), Investment Policy Developments in G-20 Countries, available at: http://www.unctad.org/en/docs/webdiaeia20099_en.pdf

limit FDI entry in these areas. Other sectors with a relatively high level of FDI restrictions include land ownership (11), and energy/mining, financial services and telecommunication (9 each). An overview of the main industries where restrictions exist is provided in table 2. This result matches the exceptions to national treatment, most-favoured nation treatment and market access found in FTAs of the thirteen examined economies (table 3).[6]

Some of the reviewed economies (Australia, Canada and New Zealand) maintain - in addition to sector-specific restrictions - a pre-establishment screening system for foreign investment above a certain threshold or examine foreign investment for national security reasons (e.g. Canada, Japan, United States). Additional criteria have been added in recent years by several economies as a response to increased concerns about national security and public morals, paying special attention, however, to transparency of their screening mechanisms.

c. Most-Favoured Nation Treatment (MFN)

"Member economies will extend to investors from any economy treatment in relation to the establishment, expansion, and operation of their investment 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."

As a rule, reviewed member economies do not discriminate among foreign investors of different nationality in their laws and regulations and *de facto* discrimination is also not reported. In general, existing restrictions (closed sectors, measures non-conforming to national treatment, screening mechanisms) apply to foreign investors irrespective of their nationality.

An obligation to grant most-favoured nation treatment is also contained in the vast majority of IIAs concluded by member economies and is subjected to only the systemic exceptions in the areas of taxation and regional economic integration (so-called REIO-clause). Canada has included further exceptions to the principle of MFN treatment in its most recent FIPAs and FTAs.

d. Investment Incentives

"Member economies will not relax health, safety, and environmental regulations as an incentive to encourage foreign investment."

No instances could be found where any of the thirteen APEC economies would have relaxed their domestic health, safety or environmental standards in order to attract FDI. Commitments not to relax these standards can be found in IIAs of the nine APEC economies.[7]

[6] Land ownership and mining restrictions are to be found in different sources of law and are not reflected in the same manner in lists of exceptions than sectoral restrictions, except when they apply to a given sector, e.g. ownership of land for agriculture.

[7] See for example, the Australia-United States FTA (Article 11.11), the Singapore-Peru FTA (Article 10.8), the Japan-Indonesia EPA (Article 74), the New Zealand-Malaysia FTA (Article 10.15), and the Canada-Chile FTA (Article G-14).

e. Minimizing Performance Requirements

> "Member economies will minimise the use of performance requirements that distort or limit expansion of trade and investment."

No examples of mandatory performance requirements for foreign investors could be found in any of the thirteen examined economies and all are bound by the prohibition of trade-related investment measures under the WTO-TRIMS Agreement that apply to trade in goods. In their IIAs, some of the economies are reflecting commitments taken under the WTO-TRIMS Agreement extending them to services investment but some are going beyond and are prohibiting the use of several other performance requirements and are also providing for some exceptions to this prohibition. Article 10.5 of the Chile-United States FTA is an example.[8]

f. Expropriation and Compensation

> "Member economies will not expropriate foreign investment or take measures that have a similar effect, except for a public purpose and on a non-discriminatory basis, in accordance with the laws of each economy and principles of international law and against the prompt payment of adequate and effective compensation."

Whether in their Constitution or their domestic laws and regulations, all reviewed economies protect foreign investors in case of an expropriation by giving them the right to compensation and to review the legality of the measure by an independent judicial body. There is a vast degree of convergence among the applicable conditions for a lawful expropriation and the standards of compensation, thereby reflecting the standard of international law on expropriation of foreign property rights. These commitments are further embedded in FTAs/EPAs with investment chapters and BITs concluded in recent years by the reviewed economies. In practice, several cases of expropriation have been brought by foreign investors against Canada, Mexico and the United States under the NAFTA, as well as in Chile, challenging measures taken by the State as being of expropriatory nature, therefore requiring payment of compensation.

g. Repatriation and Convertibility

> "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."

Over the last decade, all of the reviewed economies have liberalized their capital controls and other exchange control regulations. None of them maintains capital controls or otherwise applies general restrictions on the repatriation of capital. Freedom of transfer of capital and returns of investment is a salient feature of international commitments made by all of the reviewed economies. However, for investments entering Chile under a specific investment regime a waiting period of one year for the repatriation of capital is required.[9]

[8] See also performance requirements provisions in the Japan-Thailand EPA (Article 97), Japan-Singapore EPA (Article 75), and the United States-Peru (Article 10.9).
[9] Foreign Investment Statute (Decree Law No. 600).

Noteworthy in this context is also the special dispute settlement provision in the FTA between Chile and the United States (Annex 10-C) which concerns the imposition of restrictive measures with regard to payments and transfers.

h. Availability of investor-State Dispute Settlement Mechanisms

"Member economies accept that disputes arising in connection with a foreign investment will be settled promptly through consultations and negotiations between the parties to the dispute or, failing this, through procedures for arbitration in accordance with members' international commitments or through other arbitration procedures acceptable to both parties."

In case of an investor-State dispute, all thirteen economies provide access to domestic or international arbitration procedures. Major changes have been introduced in the domestic framework as regards arbitration with all economies having arbitration laws in place, mostly recently revised in Peru and Chile and having signed on to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Some economies have set up mediation and arbitration centres (Singapore, Chile). All APEC economies under review with the exception of Mexico, Hong Kong (China) and Taiwan, Province of China, have adhered to the ICSID Convention. With the notable exception of the FTA between Australia and the United States, all the recent investment chapters of FTAs concluded by the reviewed members contain an option for the foreign investor to go for international arbitration against the host State. Six of the thirteen economies (Canada, Chile, Malaysia, Mexico, Peru and the United States) have been involved in investor-State dispute settlement cases in recent years. The large majority of them have been initiated under the NAFTA and involve Canada, Mexico and the United States (table 1). All the States involved have paid up the awards rendered against them.

i. Entry and Sojourn of Personnel

"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."

There are no quantitative restrictions with regard to the hiring of foreign key personnel that foreign investors wish to employ in their subsidiaries, except some quotas for the employment of foreign staff in general (i.e. not limited to key personnel) in the case of Chile[10] and Peru.

j. Avoidance of Double Taxation

"Member economies will endeavour to avoid double taxation related to foreign investment."

In order to avoid double taxation, the thirteen economies dispose of an extensive network of bilateral double taxation treaties. In total, they have concluded 561 DTTs (151 being intra-APEC DTTs), with Canada (86) being the most active country (table 1).

[10] Source: EIU Country Commerce, 2009 and UNCTAD.

k. Minimisation of Barriers to Capital Exports

"Member economies accept that regulatory and institutional barriers to the outflow of investment will be minimized."

No cases have been reported concerning regulatory or institutional barriers to outward investment. However, not all examined thirteen economies have reached the same level of efficiency in their administrative practices in relating to capital exports.

Table 1. International policy framework and investment disputes for selected APEC economies by 2009[a/]

	Number of BITs with		Number of DTTs with		Number of other IIAs with		International investment disputes with	
	APEC members	*non-APEC members*	*APEC members*	*non-APEC members*	*APEC members*	*non-APEC members*	*APEC members*	*non-APEC members*
Australia	9	13	17	35	8	2	0	0
Canada	5	23	18	68	5	12	12	1
Chile	9	42	6	10	5	7	1	2
Hong Kong, China	5	11	3	2	1	0	0	0
Japan	6	9	18	38	11	2	0	0
Malaysia	8	59	16	45	18[b/]	2	0	2
Mexico	4	24	9	29	3	9	15	4
New Zealand	3	1	15	25	7	1	0	0
Peru	9	23	1	2	5	6	2	0
Republic of Korea	14	76	14	51	6	4	0	0
Singapore	6	29	17	44	16	8	0	0
Taiwan, Province of China	5	17	6	9	0	3	0	0
United States	1	45	11	52	14	39	14	0

[a/] Note: Information for Australia, Canada, Chile, Hong Kong (China), Japan, New Zealand, Peru, Singapore and the United States is for the period until end of 2009. For the Republic of Korea, Malaysia, Mexico and Taiwan, Province of China, the time period extends to May 2010.
[b/] This includes three IIAs signed within the ASEAN context, namely the 1996 ASEAN Agreement for the Promotion and Protection of Investments, as amended by the 1996 Protocol; the 2005 Framework Agreement on the ASEAN Investment Area; and the 2009 Comprehensive ASEAN Investment Agreement (ACIA) which replaced the earlier agreements.

Table 2. Industries with remaining FDI restrictions in selected APEC economies in 2009 (preliminary findings)[a]

	Transport[b]	Financial services	Mass media/ broadcasting	Telecom	Agriculture/ fisheries	Land ownership	Energy and mining	Other
Australia	•	•	•	•		•	•	•
Canada	•	•	•	•	•		•	•
Chile	•		•		•	•	•	
Hong Kong, China			•					•
Japan	•	•	•	•	•	•	•	•
Korea, Republic of	•	•	•	•	•	•	•	
Malaysia	•	•	•	•	•	•	•	
Mexico	•	•	•	•	•	•	•	
New Zealand	•			•	•	•		
Peru	•		•			•	•	
Singapore	•	•	•			•		•
Taiwan, Province of China	•	•	•	•	•	•		•
United States	•	•	•	•		•	•	•

Source: UNCTAD, based on information from APEC members and other documentation.

a/ This table takes into account specific ownership restrictions/ceilings and screening requirements.

b/ Water, air or land transportation

Table 3. National treatment, MFN and market access reservations, by sector, in selected APEC FTAs/EPAs [a/]

	Number of FTAs reviewed	Trans-portation[b/]	Financial services	Communi-cation/ Mass media/ broadcasting[c/]	Agriculture/ fisheries	Land owner-ship	Mining	Energy
Australia	4	3	3	3	3	-	-	-
Canada	3	3	-	3	2	-	-	3
Chile	5	4	1	5	5	-	4	4
Hong Kong, China	-	-	-	-	-	-	-	-
Japan	2	2	2	2	2	2	1	1
Malaysia	2	-	-	-	2	2	2	1
Mexico	2	2	1	2	2	2	-	2
New Zealand	3	1	1	1	2	1	-	1
Peru	3	3	-	2	3	-	-	-
Republic of Korea	4	4	1	4	4	3	-	4
Singapore	6	4	3	4	1	2	-	2
Taiwan, Province of China	1	1	1	1	1	1	-	-
United States	5	5	2	5	-	-	4	4

[1] The FTAs/EPAs reviewed include Agreement between Japan and the United Mexican States for the Strengthening of Economic Partnership (2004), ASEAN-New Zealand-Australia FTA (2009), Australia-Chile FTA (2008), Australia-Singapore FTA (2003), Australia-United States FTA (2004), Canada-Chile FTA (1996), Canada-Peru FTA (2008), Chile-Japan EPA (2007), Chile-United States FTA (2003), China-New Zealand FTA (2008), China-Singapore FTA (2008), Comprehensive Economic Partnership Agreement between India and the Republic of Korea (2009), Economic Partnership Agreement between Japan and Malaysia (2005), Free Trade Agreement between Pakistan and Malaysia (2007), Free Trade Agreement between Taiwan (Province of China) and Nicaragua (2006), Free Trade Agreement between the Republic of Korea and Singapore (2005), Free Trade Agreement between the Republic of Korea and the Republic of Chile (2003), Free Trade Agreement between the United States and the Republic of Korea (2007), Japan-Singapore EPA (2002), NAFTA (1992), New Zealand-Singapore FTA (2000), North American Free Trade Agreement (NAFTA) (1994),Peru-China FTA (2009), Peru-Singapore FTA (2008), Peru-United States FTA (2006), Singapore-United States FTA (2003) and Trans-Pacific Strategic EPA (Brunei, Chile, Singapore, New Zealand) (2005).
[2] Water, air or land transportation.
[3] Telecommunication, newspapers, movies, radio etc.

2. Progress on investment liberalisation and protection

All thirteen APEC economies have undertaken investment promotion liberalisation and protection steps during the last decade and before. According to UNCTAD's database on investment policy measures, they have taken a total of 242 investment-related measures in the period from 1996-2008. Out of these, a total of 224 measures (i.e. 93 %) made the investment environment more favourable to foreign investors.[11] The highest number of more favourable measures was taken in the Republic of Korea (34), followed by Malaysia (31), Taiwan, Province of China (25) and Singapore (24). During 2006-2008, a total of 32 measures have been taken, out of which (only) 24 (i.e. 75 %) were more favourable to foreign investors (table 4).[12]

Table 4. Number of investment-related measures taken by the thirteen APEC economies between 1996 and 2008 (preliminary findings)

Country /territory	*Measure*	*1996*	*1997*	*1998*	*1999*	*2000*	*2001*	*2002*	*2003*	*2004*	*2005*	*2006*	*2007*	*2008*	*Total*
Australia	More favourable	1	1		2	2	6	4		1	2	2			21
	Less favourable		1												1
Canada	More favourable	1	1		2	2	6	1	3	3		1			20
	Less favourable												1		1
Chile	More favourable	1	1	2		1				1	1				7
	Less favourable								1	1	2				4
Hong Kong, China	More favourable				1	2		1	1	1					6
	Less favourable														
Japan	More favourable				1		2	3		3	1	1	3	4	18
	Less favourable										1		1		2
Korea, Rep. of	More favourable			3	3	2	3	6	2	4	5	4	2		34
	Less favourable										1	1			2
Malaysia	More favourable	3	1	5	1	2		2	14		1		2		31
	Less favourable														
Mexico	More favourable	1	2		1		2	2	3	2					13
	Less favourable														
New Zealand	More favourable				1			4			1	1	1		8
	Less favourable							1							1
Peru	More favourable	1		1	1	1		2	3				1		10
	Less favourable												1		1
Singapore	More favourable	1	1	3	2	2	3	3		8	1				24
	Less favourable	1								1					2
Taiwan Province of China	More favourable	1	4		3		2	6	4	4			1		25
	Less favourable											1			1
United States	More favourable	2		1				1	2				1		7
	Less favourable												2	1	3
Total		***13***	***12***	***15***	***18***	***14***	***24***	***36***	***33***	***29***	***16***	***11***	***16***	***5***	***242***

Source: UNCTAD, World Investment Reports 1997-2009.

[11] More favourable measures are understood as those that facilitate the entry or operation of foreign investment.

[12] It should be noted that this change in the relationship between more favourable/less favourable investment-related measures reflects a global trend.

Liberalisation measures taken in recent years cover a variety of areas. They relate, inter alia, to general screening mechanisms for foreign investment, and several industries, including airlines, media and broadcasting, telecommunication, financial, postal and energy services. On the other hand, some economies tightened their screening procedures for foreign investors on national security grounds, or concerning land acquisitions (table 5).

Table 5. Screening procedures and industries where (partial) liberalization (+) or de-liberalization (-) for FDI took place in selected APEC economies, 1996–2009 (preliminary findings)

	Screening procedures	Transportation[a/]	Financial services	Media/ broadcasting	Telecom	Land ownership	Energy/Mining	Other
Australia	+	+		+	+			
Canada	+/-		+		+			
Chile			+					
Hong Kong, China					+			
Japan			+	+/-	+		+	+
Korea, Rep. of	+	+	+	+	+	+	+	+
Malaysia	+	+	+		+	+/-		+
Mexico	+	+	+	+	+		+	+
New Zealand	+/-							
Peru				+				+
Singapore			+		+	+	+	+
Taiwan, Province of China		+	+		+		+	+
United States	-		+		+			

Source: UNCTAD, based on information from APEC members and other documentation.

[a/] Water, air or land transportation.

Main developments in the nine APEC economies include the following:[13]

a. Australia

- ***Liberalisation measures***

The procedures and conditions for the entry of foreign investors have been simplified by raising and unifying the threshold for pre-establishment screening procedures. Also, the foreign ownership ceilings in a number of sectors, including airlines, media, and telecom have been raised. On the other hand, a new bill was passed in 2009 extending the range of transactions requiring notification to the Foreign Investment Review Board.

- ***Main remaining restrictions***

Australia maintains some FDI restrictions in various sectors. First, foreign investment proposals which are subject to the FATA and hence should be notified to the Government for prior approval, include (i) acquisitions of interests in an Australian business or corporation which is valued above, or the proposed value is above, $219 million, (ii) takeovers of offshore companies whose Australian subsidiaries or gross assets exceed $219 million, (iii) acquisitions of interests in Australian real estate. Second, foreign investors equity may not exceed 49% equity in an Australian International Airline (except Qantas). In the case of Qantas, total foreign ownership is restricted to a maximum of 49% in aggregate, with individual holdings limited to 25% and aggregate ownership by foreign airlines limited to 35%. In the airport sector, there is a 49% foreign ownership limit, a 5% airline ownership limit and cross ownership limits between Sydney airport (together with Sydney West) and Melbourne, Brisbane and Perth airports. For a ship to be registered in Australia, it must be majority Australian owned. In the telecom sector, aggregate foreign ownership of Telstra is restricted to 35% of the privatized equity (including installment receipts) and individual foreign investors are only allowed to acquire a holding of no more than 5 % of the privatized equity.

b. Canada

- ***Liberalisation measures***

The threshold for screening foreign investors from WTO countries was raised in 2009. Foreign ownership ceilings were raised in the telecommunication and financial services sectors. Furthermore, foreign banks have been allowed to establish branches. On the other hand, new procedures were introduced in 2009 to allow the screening of foreign investment under national security considerations.

- ***Main remaining restrictions***

The *Investment Canada Act* restricts foreign investments in the cultural industries[14], energy uranium, financial services, fisheries, broadcasting and telecommunications, and

[13] The following information reflects preliminary findings. Verification is on-going.

[14] Restrictions to foreign investors in the cultural industries apply to book publishing and distribution, newspaper and magazines publishing, distribution and sale, film distribution, sound recording, and music publishing.

transportation sectors. In general, a simple majority of the board of directors of a federally-incorporated corporation has to be Canadian residents. Mergers and acquisitions of Canadian businesses by Non-Canadian investors are reviewable if the asset value exceeds a certain threshold. The threshold for foreign investors from Non-WTO countries is CAN$5 million in case of a *direct* acquisition and CAN$50 million in case of an *indirect* acquisition of a Canadian business. [15] Thresholds for foreign investors of WTO countries are significantly higher and only direct acquisitions of control exceeding CAN$312 million (year 2009) are reviewable. With regard to cultural industries the lower threshold of CAN$5 million applies irrespective of the nationality of the investor. Foreign investments may be rejected in case of national security concerns.

Furthermore, foreign ownership requirements apply to the uranium production sector (max 49% foreign ownership), financial services (max 20% of voting shares, 30% of non-voting shares for large[16] banks), fisheries (max 49%), broadcasting and telecommunications (max 20% direct foreign ownership, 33.3% in case of holding companies), and transportation sectors (max 25%). In the business service industries, foreign investors may not carry out specific professions (e.g. customs brokerage, lawyers). In addition, provincial laws contain further restrictions for foreign investors with regard to insurance agents, insurance services and telecommunications.

c. Chile

- ***Liberalisation measures***

With the coming into force of the Fifth Protocol to the GATS on Financial Services in March 1999, the insurance services sector has been liberalised. In January 2010, Chile signed an accession agreement for joining the OECD after having taken significant reform steps in a number of areas that are relevant for FDI (e.g. taxation, anti-corruption measures, corporate governance).

- ***Main remaining restrictions***

Only a few areas face restrictions to the general rule of national treatment. These include coastal trade, air transport, fisheries and mass media. In some cases, restrictions are subject to the principle of international reciprocity. Also, land owned by the State, within a distance of 10 km from the borders and 5 km form the coast cannot be sold to foreigners. Furthermore, some strategic activities – such as exploration and exploitation of lithium, liquid and gaseous hydrocarbons deposits in coastal waters under national jurisdiction or located in areas classified as important to national security, and the production of nuclear energy – are reserved to the State, although concessions may be awarded to domestic and foreign investors.

[15] Thresholds as stated in the Investment Canada Act at http://www.ic.gc.ca/eic/site/ica-lic.nsf/eng/h_lk00050.html.

[16] Canada distinguishes three classes of banks, based on the size of its equity: Small (less than CAN$ 1 billion, medium (CAN$1 billion - CAN$5 billion) and large (greater than CAN$5 billion).

d. Hong Kong, China

- ***Liberalisation measures***

The telecommunications services market has been fully liberalized since 2003. No other major liberalizations have been undertaken between 1996 and 2009, probably due to Hong Kong-China's already high degree of openness.

- ***Main remaining restrictions***

There are only a few exceptions relating to (1) broadcasting, where voting control of free-to-air television stations by non-residents is limited to 49 percent. There are also residency requirements for the directors of broadcasting companies. (2) In legal services, foreign lawyers are only able to practice foreign and international law in Hong Kong, unless they pass the Hong Kong Bar Examination. Foreign law firms may not hire local lawyers to advise on Hong Kong law, but may themselves become "local" firms after satisfying certain residency and other requirements.

e. Japan

- ***Liberalisation measures***

Japan privatized postal services and abolished or privatized public corporations engaged in activities such as highways, housing loans, urban development and petroleum development. It also relaxed barriers on foreign investment in telecommunication, broadcasting, mining and finance during the last decade, although restrictions on foreign investment in theses areas still exist. On the other hand, foreign ownership restrictions were tightened in terrestrial broadcasting radio stations.

- ***Main remaining restrictions***

Inward FDI generally requires ex-post facto reporting to the Minister of Finance and the Minister in charge of the industry involved, within 15 days of executing a foreign investment in Japan. Prior notification is required, in principle, for inward FDI in industries where Japan reserves the right to take exceptions under the OECD Code of Liberalization of Capital Movements, such as agriculture, forestry and fisheries, crude oil, leather and leather products, and air and maritime transport. In addition, prior notification is required in some other sectors on the grounds of "public order, public safety, and national security". These include aircraft, arms, explosives, nuclear power, electric utilities, gas utilities, water, heat generation, rail transport, passenger transport, telecommunications (accompanying certain network facilities), television and cable television, and broadcasting sectors. Besides the notification requirements, various other laws stipulate specific restrictions on inward FDI in certain sectors, including real estate, fisheries, financial services, telecommunications, broadcasting and transport.

f. Republic of Korea

- ***Liberalisation measures***

Most of the liberalization measures of the Republic of Korea were introduced after the Asian Financial Crisis in 1997. In 1998, the country adopted a new Foreign Investment Promotion Act. One of its main features was the lifting of the limits on foreign investment in the corporate and special bond markets, and the removal of restrictions on the purchase and sales of local real estate. The Act also stipulated non-discriminatory treatment between foreign and domestic investment and guaranteed dividend remittances. Other important features of the FIPA were protection of FDI from expropriation, simplified procedures, the provision of a one-stop service for foreign investors, the establishment of foreign investment zones (FIZs), the establishment of the Commission on Foreign Direct Investment Policy; and an increase in tax incentives and subsidies.

In the same year, the Republic of Korea abolished the previous Foreign Exchange Management Act and drastically liberalized the foreign exchange regime by moving from a positive list to a negative list approach and by streamlining procedures for current account transactions. As of April 1998, foreign participation in hostile mergers or acquisitions has been permitted and the prohibition on cross-ownership between companies repealed.

As of 1999, private investors may build plants and supply electricity in designated areas and buildings in Korea. As a result, the state-owned KEPCO lost its power generation monopoly in 1999.

Since 1998, foreign banks have been allowed to establish subsidiaries. Non-residents were permitted to invest in won-denominated domestic deposits with maturities of less than one year, and residents will be able to invest in foreign-currency-denominated overseas deposits since 2000. Overseas bank ownership has also increased, as 100% foreign ownership of commercial banks has been allowed in 1999, subject to a special permission from the Financial Supervisory Commission (FSC).

Also in 1998, the telecommunication sector has been liberalised. The monopoly on non-nuclear power generation was abolished in 1999, and competition was introduced in the power generation sector in 2001.

Sectoral FDI restrictions were relaxed in 2000 and 2001. Five fully closed sectors (fishing, inshore and coastal, cattle raising, wholesale meat, and news agencies) were opened partially.

In 2008, the Republic of Korea allowed foreign institutions to take the leading role in joint research projects between entities based in the country and other nations and to co-finance the projects and share intellectual property rights on technology developed through the projects. In 2009, foreign law firms were allowed to establish local offices and do business in the country.

- ***Remaining limitations***

Television and radio broadcasting, and nuclear power generation are closed to foreign investment. In some industries like energy, transportation and telecommunications there are

partial foreign ownership restrictions. Foreign companies can establish local branches as a foreign-investment company subject to notification and registration. Foreign financial institutions are subject to approval requirements under the Banking Act, Insurance Business Act, and Securities and Exchanges Act.

g. Malaysia

- ***Liberalisation measures***

In manufacturing equity holdings were liberalized in 2003, allowing foreign investors to hold 100% of the equity in almost all investments in new projects, as well as investments in expansion/diversification projects by existing companies.

Since 2005, Malaysia has undergone substantial liberalization in both the banking and insurance sectors to transform Malaysia in an international Islamic financial hub. The measures implemented include, among others, relaxing restrictions on foreign equity, easing limitations on branching of incumbent foreign financial institutions, and issuing new licenses to foreign Islamic financial players. On 27 April 2009, Bank Negara Malaysia announced further liberalization in the issuance of new banking licenses. The foreign equity limits in existing domestic Islamic banks, investment banks, insurance companies and *takaful* operators were raised to 70%.

In April 2009, the Government eliminated equity conditions imposed in 27 services subsectors, including in the areas of health and social services, tourism services, transport services, business services and computer and related services.

Malaysia has also encouraged FDI by streamlining its regulatory framework. In 2007 the Companies Act 1965 was modified to facilitate the electronic filing of documents. In December 2008, the automatic approval of manufacturing licenses was implemented[17]. In June 2009, a deregulation of the investment guidelines administered by the Foreign Investment Committee (FIC) was approved. To facilitate investments into the services sector, a National Committee for Approval of Investments in the Services Sector has been established.

The new guidelines on the acquisition of properties by foreigners eliminated an approval requirement by the FIC, unless the transaction involves Bumiputera interest in a property value of RM20 million and above (around USD 6 million).

- ***Main remaining restriction***

In several service sectors, especially professional services, foreign ownership continues to be restricted to a maximum of 30% equity participation. However, the government is

[17] Under the Industrial Coordination Act 1975 manufacturing companies with shareholders' funds of RM2.5 million and above, or employing 75 or more full-time paid employees, must apply for manufacturing licenses from MITI. Automatic approval does not apply to, inter alia: projects with implications for security, safety, health, environment, and religion, where evaluation is still required.

considering liberalization measures in legal services, accounting and taxation services, and distribution services[18].

Malaysia's crude oil and gas deposits are owned by the Government through Petroliam Nasional Berhad (Petronas). Foreign investment in the upstream petroleum and gas industry is accepted only in the form of production-sharing contracts with Petronas.

Sectors with "national interest" are not to be liberalized and include: *bumiputera* participation requirements in banking and insurance[19], certain manufacturing sectors (such as fabrics and apparel of batik, and integrated Portland cement), agriculture, defence, energy, telecommunication, and water.[20]

Foreign interest are not allowed to acquire properties valued at less than RM500,000 (around USD 150,000), residential units under the category of low and low-medium cost as determined by the State Authority; properties built on Malay reserved land; and properties allocated to *Bumiputera* interest in any property development as determined by the State Authority. All acquisitions of property valued at more than RM500,000 are under the purview of the relevant Ministries and/or Government Departments.

h. Mexico

- ***Liberalisation measures***

Since 1996 Mexico has removed significant foreign investment barriers to the effect that more than 95% of activities are open to foreign investment. In the year 2001, Mexico abolished the 49% foreign ownership limit in holding companies of investment corporations.

Investment in international land transportation (passengers and tourism) and international cargo[21] was fully liberalised in 2004. Mexico further derogated the 49% foreign ownership limit in financial leasing companies, factoring companies and "limited scope institutions" in 2006.

- ***Main remaining restrictions***

The following sectors are reserved to investment by the State, in whole or in part: (i) Petroleum and other hydrocarbons; (ii) Basic petrochemicals; (iii) Telegraphic and radio telegraphic services; (iv) Radioactive materials; (v) Electric power generation, transmission, and distribution; (vi) Nuclear energy; (vii) Coinage and printing of money; (viii) Postal service; (ix) Control, supervision and surveillance of ports, airports and heliports.

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[18] Department stores, supermarkets, and shopping malls must reserve 30% of the shelf space for products made by Malaysian SMEs
[19] The Foreign Investment Committee (FIC) guideline issued in June 2009 lowered the *bumiputera* (ethnic Malay) requirement from 30% to 12.5%.
[20] WTO Trade Policy Review of Malaysia (WT/TPR/S/225/Rev.1) paragraph 45
[21] International cargo means goods that have an origin or destination outside the territory of a Party; as defined in Annex I: Reservations for Existing Measures and Liberalization Commitments of the North American Free Trade Agreement.

The following sectors are reserved to Mexican nationals: (i) Retail sales of gasoline and liquid petroleum gas; (ii) Non-cable radio and television services; (iii) Development Banks; (iv) Certain professional and technical services; (v) Domestic land transportation for passengers, tourism and freight, except for messenger or package delivery services.

Investment restrictions prohibit foreigners from acquiring title to residential real estate in restricted zones within 50 kilometres of the nation's coast and 100 kilometres of the borders. However, foreigners may acquire the effective use of residential property in the restricted zones through the establishment of a 50-year extendible trust (fideicomiso) arranged through a Mexican financial institution that acts as trustee.

i. New Zealand

- ***Liberalisation measures***

The screening threshold for non-land business investments has been raised from NZ$ 50 million to NZ$ 100 million. On the other hand, conditions were tightened for the acquisition of land by foreign investors in cases where the land is considered unique and/or of cultural significance ("sensitive land") and where an ownership interest of 25% or more is to be acquired.[22]

- ***Main remaining restrictions***

Non-land business investments exceeding NZ$ 100 million must be screened. Acquisition of land by foreign investors requires approval from the Overseas Investment Office where the land is considered unique and/or of cultural significance ("sensitive land") and where an ownership interest of 25% or more is to be acquired. To acquire land other than farmland, potential overseas investors must demonstrate that the proposed land acquisition would offer "significant potential benefits" to New Zealand. Second, a 49 % ownership ceiling exists in the air transportation sector. Third, foreign ownership in the fisheries sector may not, in general, exceed 24.9% in quotas held by local commercial-fishing enterprises operating within the country's 200-mile exclusive economic zone, but outside its 12-mile territorial waters. Fourth, in the telecommunication sector, strategic shareholdings may not exceed 49.9%.

j. Peru

- ***Liberalisation measures***

In 2004, foreign investment in television and radio companies has been partially liberalised. Since 2008, private investors are allowed to hold up to 20% in 34 State-owned companies.

- ***Main remaining restrictions***

[22] Source: EIU country Commerce.

The legal framework governing foreign investment in Peru is based on national treatment. However there are some exceptions, these include the following areas: land and real estate 50 km from the border, broadcasting, air transportation, and water transportation are reserved for domestic investors or a majority domestic share is required. Furthermore, the State owns majority stakes in 31 firms in electricity, banking, securities, real estate, petroleum, ports, water and sewage. Natural resources are the inalienable property of the State, although concessions may be awarded to domestic and foreign investors.

k. Singapore

- ***Liberalisation measures***

Liberalization steps have been taken in telecommunication, financial, postal and energy services. Singapore also relaxed some restrictions on foreign purchase of real estate.

- ***Main remaining restrictions***

Exceptions to Singapore's general openness to foreign investment exist in broadcasting, domestic news media, transportation, financial services, legal and other professional services, and property ownership. Foreign equity in domestic broadcasting companies limited to 49 percent. Equity ownership (local or foreign) of the domestic news media is restricted to five percent per shareholder and directors have to be Singapore citizens. Acquisitions exceeding certain thresholds for a local bank require the approval of the Finance Minister. Approval is required for the foreign purchase of certain residential premises. Foreign ownership for air transportation services may be limited to 49% in accordance with bilateral or multilateral agreements. Foreign investment in some of Singapore's government-linked companies (GLCs), depending on the sectors they operate in, is also subject to restrictions. There are also restrictions on the services that foreign law firms can provide in Singapore.

l. Taiwan, Province of China

- ***Liberalisation measures***

In recent years, Taiwan Province of China has continued to open up its economy to foreign investment. The economy no longer has a list of permitted investments but instead maintains a "negative" list of industries where foreign investment is prohibited or restricted. In 2001, the government eliminated both the previous 50% ceiling for shareholding in a local company by a single foreign investor and the 50% ceiling on all foreign investment in the Taiwan Stock Exchange. After its accession to the WTO in January 2002, the government started permitting private imports of gasoline, liquid natural gas, wine and cigarettes, without any foreign ownership restriction. In 2003-2004, production of alcohol and cigarettes, agricultural production, fishing, and animal husbandry were opened to foreign investors. Also in 2004, mining and ordinary trucking services were liberalized. In 2009, the specific ownership limit of 25% for investments in local banks was removed.[23] The government has recently increased ceilings for foreign ownership in fixed line telephony and airline companies. Also in 2009, investment from mainland China was

[23] The Bank Merger Law, passed in 2000, allowed foreign banks to take up to 100% ownership of a local bank; however, there was a separate limit of 25% for any single foreign investor.

partially liberalised as – in a first phase – 100 industries were opened to mainland investors.[24]

- ***Main remaining restrictions***

Inward FDI is prohibited in a number of industries including forestry and logging, manufacture of certain chemicals used for explosives, firearms and weapons, postal services, postal saving and remittance services, taxi transportation and passenger bus services and radio and television broadcasting.

Some other industries are restricted to foreign investors. Shipping companies registered in Taiwan are subject to a foreign ownership limit of 50%. Foreign ownership in Taiwan-registered merchant ships is limited to a 50% stake for ships engaged in international shipping, and to a 33% stake for those involved in domestic shipping.

The foreign ownership limit on wireless and wire line telecommunications firms is 60 percent, including a direct foreign investment limit of 49%. For partially State-owned Chunghwa Telecom Co., which controls 97% of the fixed line telecommunications market, the limit on direct and indirect investment was raised from 49% to 55% in 2007, including a direct foreign investment limit of 49%. There is a 20% limit on foreign direct investment on cable television broadcast services, but foreign ownership of up to 60% is allowed through indirect investment via a local entity.

Foreign ownership limits are 49.99% for satellite television broadcasting services and piped distribution of natural gas and 49% for high-speed railways. A 50% foreign ownership limit remains on power transmission and distribution, ground-handling firms, air-cargo terminals, air-catering companies, and air-cargo forwarders. 25 In 2007, the foreign ownership limit on airline companies was raised from 33.33% to 49.99%, with each individual foreign investor subject to an ownership limit of 25%.

Investments require governmental approval where a foreign investor acquires more than one third of an enterprise's shares regardless of whether the relevant enterprise belongs to a negative-list industry. Investments in industries that are included in the negative list are subject to governmental approval in all cases.

m. United States

- ***Liberalisation measures***

Liberalisation steps mainly focused on the financial sector, where foreign bank branches may now be established in all states, and in the telecommunication sector, where satellite services have been opened for investors of some countries. On the other hand, screening procedures for foreign investors on national security grounds were reinforced.

- ***Main remaining restrictions***

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[24] *Source*: http://www.moea.gov.tw/

[25] The 50% foreign ownership limit for ground-handling firms, air-cargo terminals, air-catering companies, and air-cargo forwarders was removed for investors from WTO members.

There are restrictions for foreign investors in terms of the extent of acquiring control of United States assets in coastal and freshwater shipping enterprises and United States airlines (max 25% of voting shares). In addition, license restrictions apply to the hydroelectric power and nuclear sector, the customs broker, fishing, financial and the communication industries sector (telephone, radio and television).

Broadcast or carrier radio licenses are not granted to foreign investors if more than 20% of the capital stock is owned or voted by a foreign entity. Foreign indirect investment is limited to 25%. Licenses in the energy sectors can generally only be granted to U.S. citizens and to companies operating under United States law. In the atomic energy sector licenses are only granted to United States citizens. The Atomic Energy Act, however, permits licenses to be to some extent (currently 50%) owned by foreign companies. In addition, foreign investors are excluded from working on classified United States government contracts, though companies from allied nations may be allowed to do so.

Foreign investments and mergers raising national security concerns are reviewable.

There are also a large number of investment restrictions at the state level. In general, every state has its own licensing, solvency and operating requirements with regard to insurance companies seeking to operate in the United States market. In addition, some United States' states restrict foreign ownership of land.

3. Economic assessment

a. General picture

Fifteen years later after its adoption, the Bogor Goals still remain a key organizing principle for APEC economies and the driving force behind their trade and investment liberalization and facilitation work programme. Driven by this shared commitment, thirteen economies of APEC have emerged as engines of global economic growth over the last decade and half, outpacing the rest of the world. These economies, in opening themselves to international trade and investment, increased their share of global output and trade. Indeed, in 2008, with 761 million people and a combined GDP of $25 trillion, these thirteen economies of APEC accounted for 11% of world population and over 41% of world GDP, respectively. Moreover, between 1994 and 2008, their exports and per capita GDP grew faster than the world average.[26]

FDI inflows into the thirteen APEC economies reached $579 billion in 2008 (table 6), accounting for almost three fourth of inflows to the grouping's total and 32% of global FDI flows. They increased more than three fold from 1996 to 2000 – the peak year – after which they declined until 2003 (figure 1).

Table 6. FDI inflows into 13 APEC economies, 1996, 2000, 2005-2008
(Millions of dollars)

Region/economy	1996	2000	2005	2006	2007	2008
World	388 998	1 400 718	984 076	1 463 689	2 107 526	1 787 290
APEC	209 202	572 370	308 983	573 373	767 083	790 873
13 APEC economies	151 683	525 909	203 110	450 835	600 219	579 408
6 advanced economies	112 578	422 568	124 841	356 872	481 662	456 358
Canada	9 634	66 795	25 692	59 761	108 414	44 712
United States	84 455	314 007	104 773	237 136	271 176	316 112
Australia	4 661	15 612	- 24 246	31 043	45 477	46 405
Japan	228	8 323	2 775	- 6 507	22 550	24 426
New Zealand	3 919	1 347	1 472	7 758	2 494	1 979
Singapore	9 682	16 484	14 374	27 680	31 550	22 725
7 other economies	39 105	103 341	78 269	93 963	118 558	123 050
Chile	4 815	4 860	6 984	7 298	12 534	15 181
Hong Kong, China	10 460	61 924	33 618	45 054	54 365	59 621
Korea, Republic of	2 012	9 004	7 055	4 881	2 628	7 603
Malaysia	7 297	3 788	4 064	6 060	8 460	7 235
Mexico	9 185	18 028	22 345	19 779	27 311	23 170
Peru	3 471	810	2 579	3 467	5 491	4 808
Taiwan Province of China	1 864	4 928	1 625	7 424	7 769	5 432

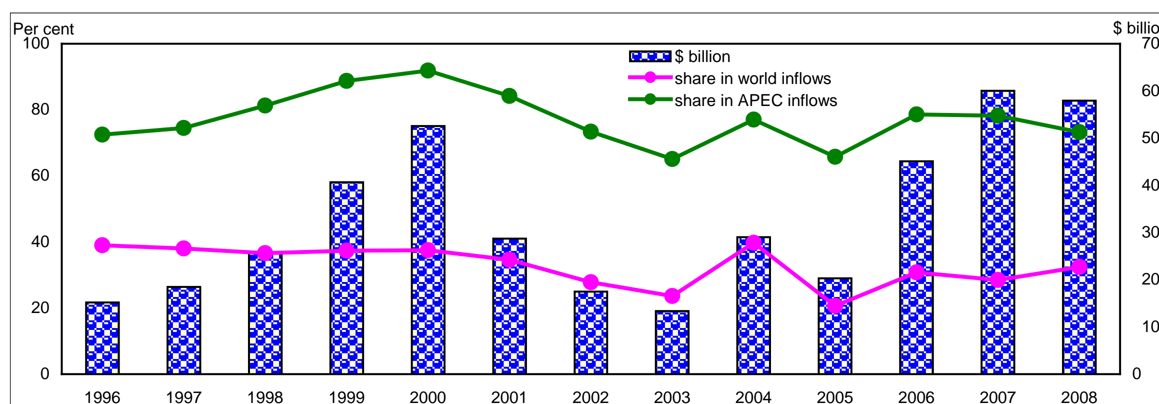
Source: UNCTAD, FDI/TNC database (www.unctad.org/fdistatistics)

The decline in FDI activity during 2002-2003 was due primarily to a dramatic fall in cross-border mergers and acquisitions (M&As) and transitory causes such as the economic downturn in the early 2000s which led to reduction in overall corporate investment and reduced profit opportunities. The reverse is true for the growth that resumed in 2003, leading to a new record level in 2007. In particular cross-border M&As were again playing an important role behind the growth of FDI, with an increasing involvement of private equity funds as well as sovereign wealth fund (UNCTAD 2008). Moreover, as the impact of global financial crisis on FDI continued to unfold, inflows to this group of economies

[26] For 2009 data, see the World Investment Report 2010, to be released on 22 July 2010.

declined in 2008 and 2009, largely reflecting a low propensity of transnational corporations (TNCs) to invest and weak economic performance in many parts of the world.

Figure 1. FDI inflows into thirteen APEC economies and their share in world inflows and total APEC inflows, 1996-2008
(Billions of dollars and per cent)



Source: UNCTAD, FDI/TNC database (www.unctad.org/fdistatistics).

FDI outflows from the thirteen economies, in 2008, rose to a record of $665 billion, maintaining their position as large net outward investors (table 7). For the last fifteen years they have dominated FDI outflows from APEC region, accounting for 90% of the total, although the share has decreased recently (figure 2).

Table 7. FDI outflows from 13 APEC economies, 1996, 2000, 2005-2008
(Millions of dollars)

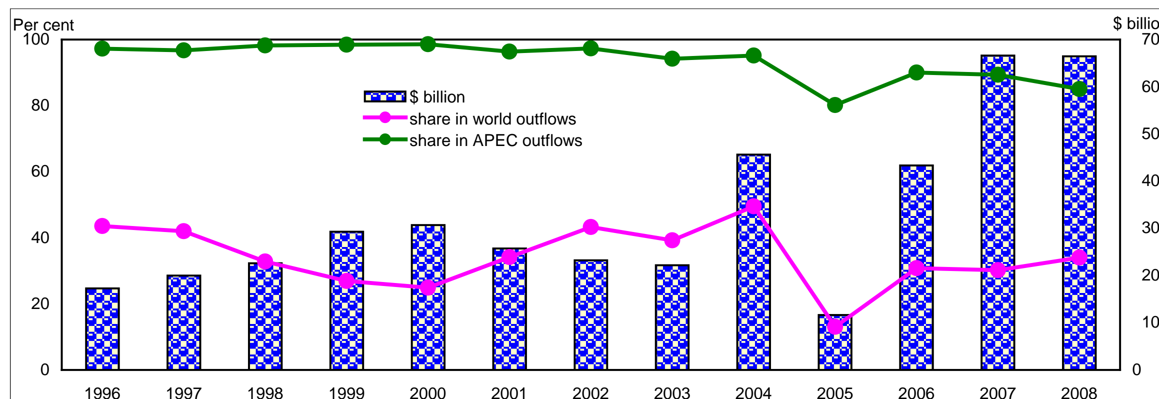
Region/economy	1996	2000	2005	2006	2007	2008
World	396 385	1 232 721	893 805	1 406 986	2 203 642	1 953 884
APEC	177 649	311 256	145 483	481 244	745 577	781 747
13 APEC economies	172 770	306 889	116 579	433 027	665 922	664 645
6 advanced economies	132 803	229 607	67 249	358 080	556 061	559 913
Canada	13 096	44 678	27 538	44 401	59 637	77 667
United States	84 426	142 626	15 369	224 220	378 362	311 796
Australia	5 142	4 221	- 31 137	25 396	16 822	33 404
Japan	23 426	31 557	45 781	50 264	73 548	128 019
New Zealand	- 1 239	610	- 1 521	501	3 234	100
Singapore	7 951	5 915	11 218	13 298	24 458	8 928
7 other economies	39 966	77 282	49 330	74 947	109 861	104 731
Chile	1 133	3 987	2 183	2 171	2 573	7 988
Hong Kong, China	26 531	59 352	27 201	44 979	61 119	50 581
Korea, Republic of	4 670	4 999	4 298	8 127	15 620	18 943
Malaysia	3 768	2 026	2 972	6 084	11 119	15 046
Mexico	38	363	6 474	5 758	8 256	1 157
Peru	- 17	- 146	174	428	66	729
Taiwan Province of China	3 843	6 701	6 028	7 399	11 107	10 287

Source: UNCTAD, FDI/TNC database (www.unctad.org/fdistatistics)

While six advanced economies (Canada, United States, Australia, Japan, New Zealand and Singapore) account for around 60% of FDI flows to APEC economies, the share of the remaining three economies (Chile, Hong Kong (China) and Peru) in FDI inflows of the groupings hovered around 10% (table 6). At the country level, the United States and Canada have long accounted for the bulk of international production and, together with Hong Kong (China), have received most of FDI inflows to APEC. In terms of relative

shares, Australia's share in total APEC inflows has been increased to 6% in 2008 compared to 2% in 1996, and Japan found its way to the top two investing countries among APEC economies.

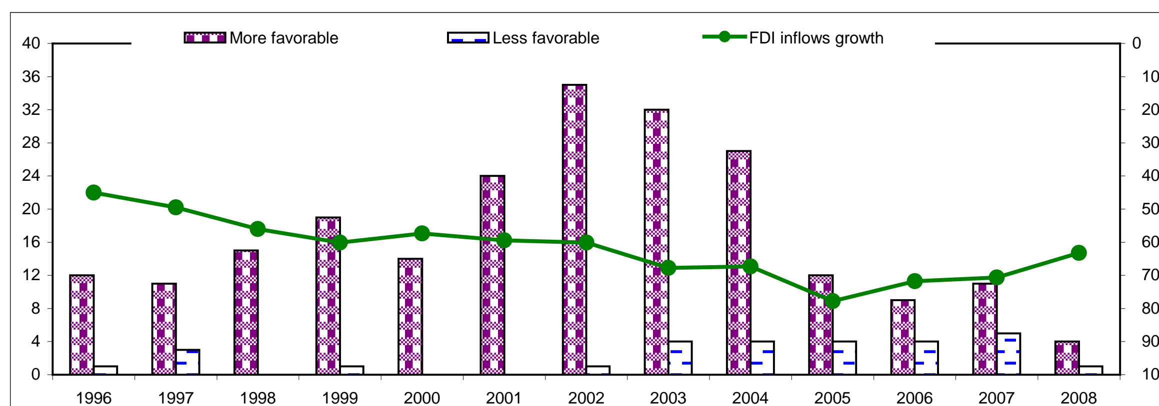
Figure 2. FDI outflows from thirteen APEC economies and their share in world outflows and total APEC outflows, 1996-2008
(Billions of dollars and per cent)



Source: UNCTAD, FDI/TNC database (www.unctad.org/fdistatistics).

Despite the efforts towards improving the region's investment environment, the number of more favourable regulatory changes introduced during 1996-2008 appear to have a low statistical correlation with the growth rate of FDI inflows (figure 3). While depending on what kind of measures introduced, it is debatable whether FDI growth has a strong relationship with the number of FDI-related measures introduced (or the degree of liberalization).

Figure 3. FDI flows growth rate into nine APEC economies and number of regulatory changes relating to FDI, 1996–2008
(number and per cent)



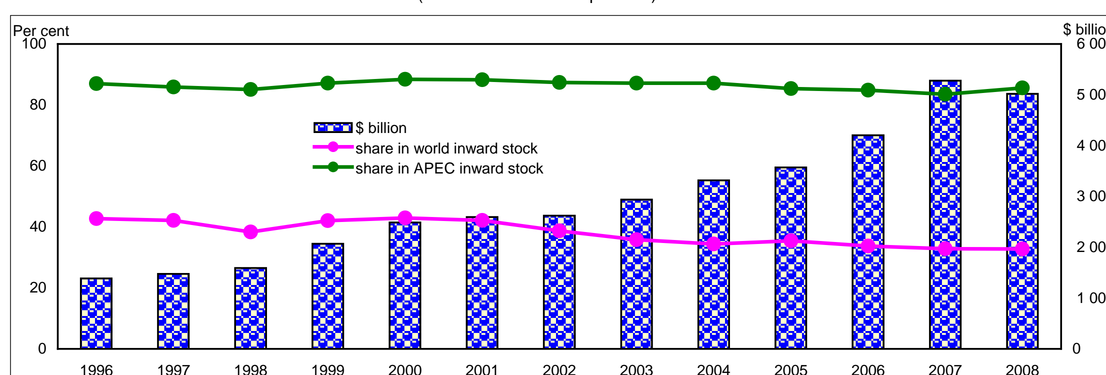
Source: UNCTAD, FDI/TNC database (www.unctad.org/fdistatistics).

In addition, although absolute FDI flows have increased over the years, the shares of FDI inflows and stocks into those economies in global and APEC totals decreased over the last fifteen years. Indeed, the share of inward FDI stock into the thirteen economies in global flows declined from 43% in 1996 to 33% in 2008, while their share in the APEC total stock remained stable at 87% (figure 4). This decline reflects mostly the decrease in the share of the United States (from 18% in 1996 to 15% in 2008) resulting from a slowdown in economic growth, the deterioration of cost competitiveness, and the increased attractiveness of the EU market. The trend is similar with respect to relative share of these thirteen

economies in other macroeconomic indicators such as population, GDP, investment and trade (table 8).

Figure 4. FDI inward stock into thirteen APEC economies and their share in world inward stock and total APEC inward stock, 1996-2008

(Billions of dollars and per cent)



Source: UNCTAD, FDI/TNC database (www.unctad.org/fdistatistics).

Table 8. Thirteen APEC economies: Shares in world and total APEC population, GDP, investment and trade 1994, 1995,1996, 2007 and 2008

(Per cent)

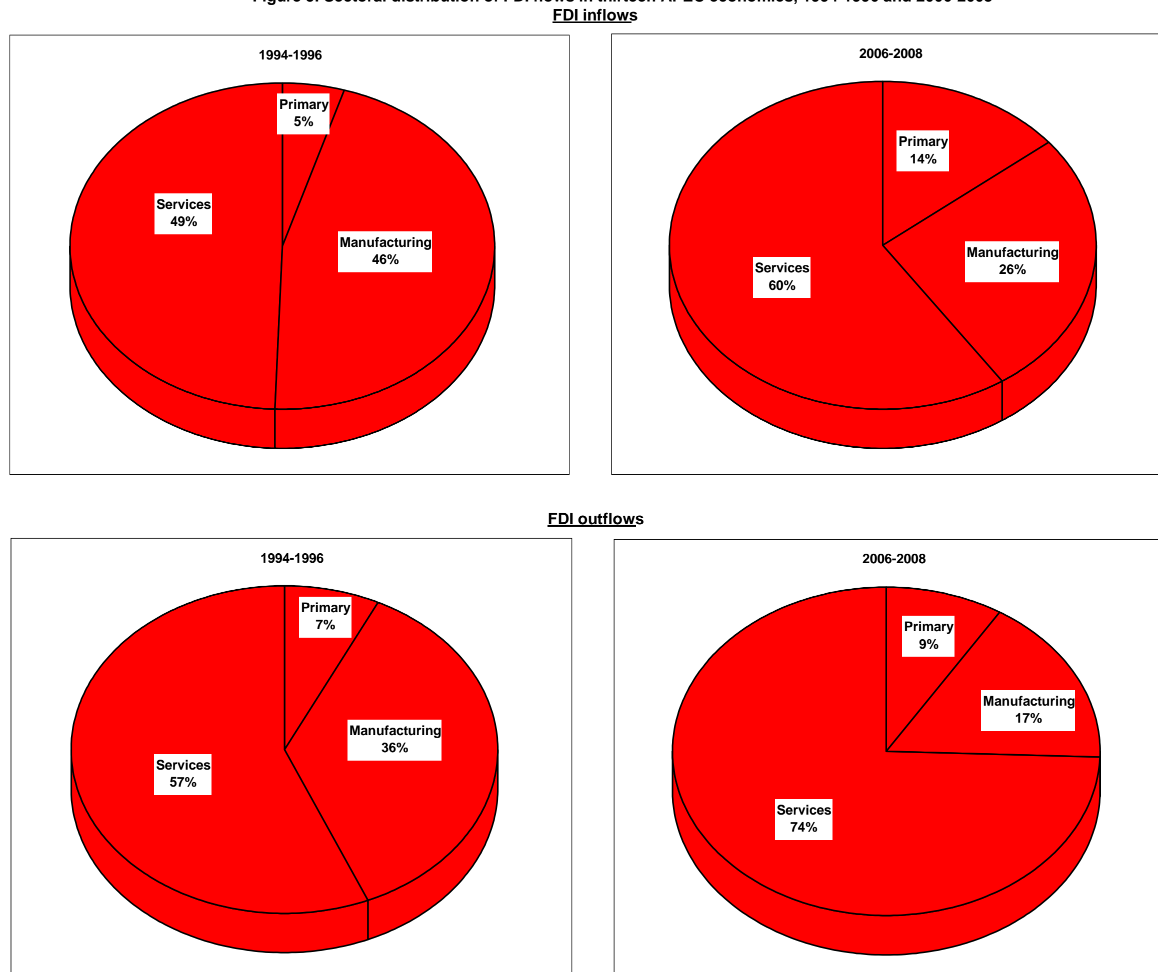
Variable	1994	1995	1996	2007	2008
Population					
World	11.8	11.8	11.7	11.4	11.3
APEC	27.6	27.6	27.6	28.0	28.0
GDP					
World	53.1	50.9	50.0	43.5	41.3
APEC	90.9	90.2	89.2	81.1	78.0
Investment					
World	54.6	52.9	52.1	39.5	37.2
APEC	88.4	87.6	86.5	72.1	67.7
Exports					
World	38.9	37.9	38.1	30.6	29.2
APEC	85.2	84.4	84.9	70.3	67.1
Imports					
World	39.7	38.6	39.4	34.0	32.9
APEC	85.9	84.7	85.5	76.7	73.9

Source: UNCTAD, FDI/TNC database (www.unctad.org/fdistatistics).

Note: Investment refers to gross fixed capital formation. Trade (exports and imports) refer to trade in goods and non-factor services.

Regarding sectoral distribution, the share of services in inward and outward FDI inflows of those thirteen economies has been rising steadily during the past fifteen years, to reach 60% in 2006-2008, especially at the expense of the manufacturing sector (figure 5). Cross-border M&As are the preferred mode of entry for FDI in services, with more deals concluded in infrastructural industries than in business services. The shift towards services is in line with the ascendancy of services in GDP. FDI in services have risen steadily during the past two decades as further liberalization especially in industries previously closed to foreign entry has made larger inflows possible (ex. the liberalization of banking and telecommunication in Singapore in 1999-2000 triggered significant increase of FDI in 2001, see following section for other examples).

Figure 5. Sectoral distribution of FDI flows in thirteen APEC economies, 1994-1996 and 2006-2008



Source: UNCTAD, FDI/TNC database (www.unctad.org/fdistatistics).

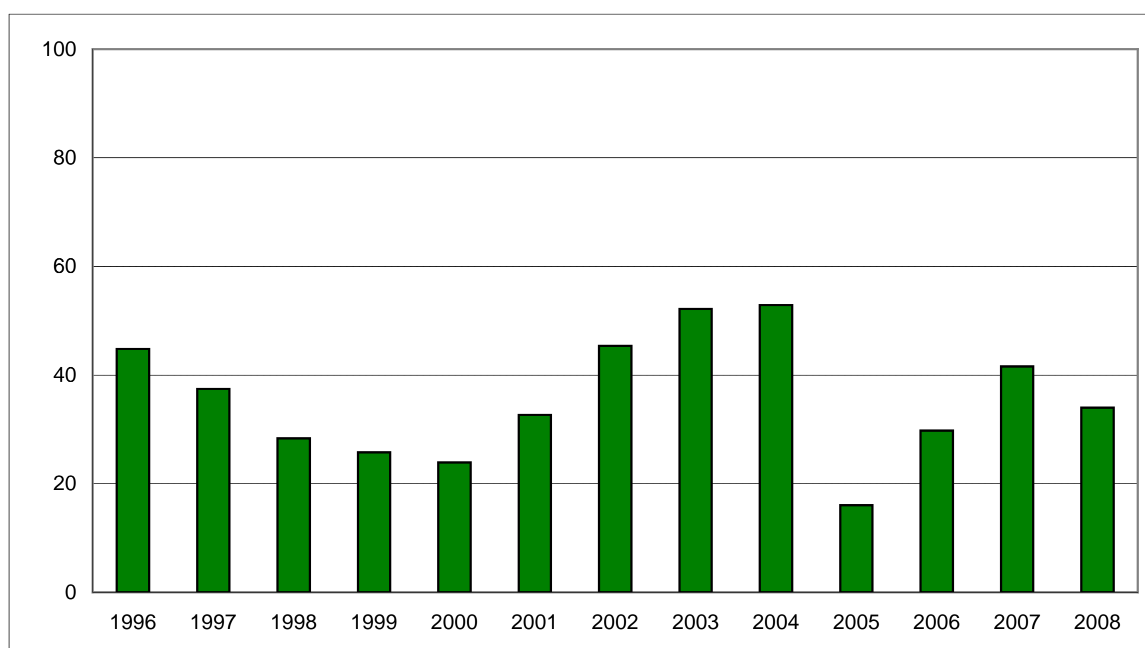
Note: Data should be interpreted with caution. The total was extrapolated on the basis of FDI by industry breakdown for the thirteen APEC member countries. However, only countries for which data for the three main sectors were available were included (i.e. excluding Hong Kong, China, Singapore and Malaysia [in 1994-1996] and New Zealand for inflows and Hong Kong, China and Malaysia [in 1994-1996] Mexico, New Zealand, Peru and Singapore for outflows). The distribution share of each industry of these countries was applied to estimate the total in each sector. Data for Japan in 1994-1996 and Taiwan Province of China are on an approval basis.

b. Regional integration and intra-regional FDI flows

Intra-APEC FDI flows and stocks are placed in an important position in the broad picture of inflows and outflows to and from the thirteen APEC economies. As far as FDI inflows are concerned, the share of intra-APEC for those thirteen economies has reached 34% in 2008 i.e. in 2008 one third of FDI inflows to those thirteen economies were originated from within the APEC region. As far as dynamics is concerned, it has fluctuated between 24% in 2000 and 53% in 2004 while after very small shares in 2005 due to large divestments by United States TNCs,[27] the intra-APEC flows picked up again reaching 42% in 2007 (figure 6).

[27] The American Jobs Creation Act of 2004 contributed to the decline of FDI inflows to other countries, as it allowed repatriated earnings of United States foreign affiliates to be taxed at a lower rate than the normal one, leading to a one-off fall in reinvested earnings (UNCTAD, 2006). For example Australia recorded negative bilateral inflows of $45 billion in 2005 from the United States due to this act.

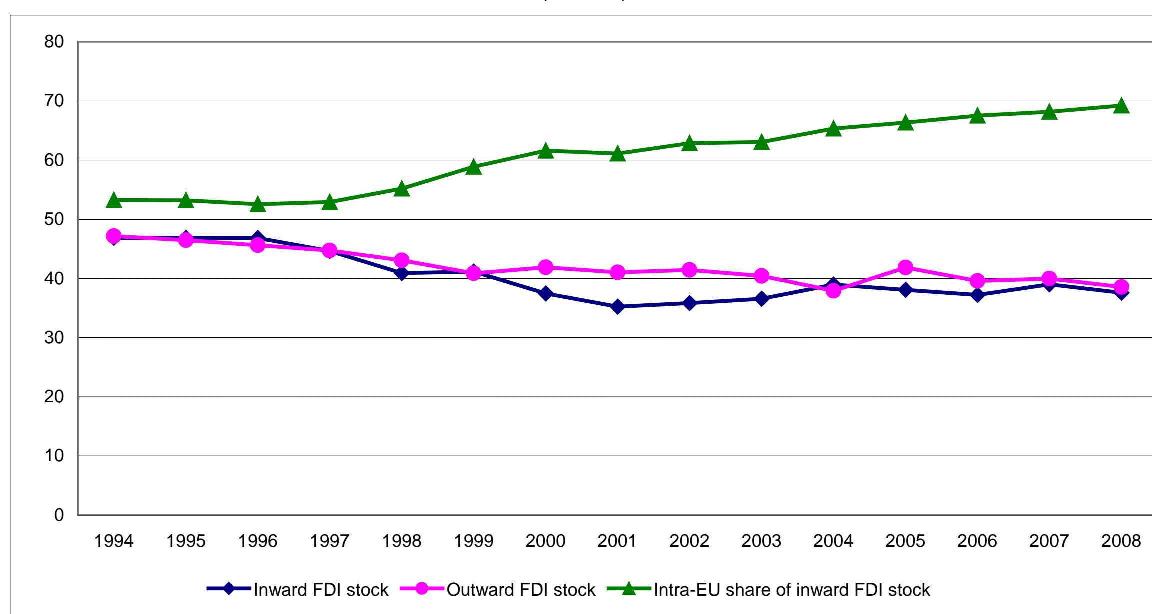
Figure 6. The share of intra-APEC FDI in the total FDI inflows of the thirteen selected economies, 1996–2008
(Per cent)



Source: UNCTAD, FDI/TNC database (www.unctad.org/fdistatistics).

The intra-APEC FDI stock of those thirteen economies has been more stable, although a declining trend from 47% in 1994 to 38% in 2008 could be observed. Similarly, the share of intra-APEC outward FDI stock in the same thirteen economies decreased from around 47% in 1994 to 39% in 2008 (figure 7). However there is a divergent trend with intra-EU shares which reached 69% in 2008.

Figure 7. Intra-APEC shares of inward and outward FDI stock to and from the thirteen countries and intra-EU shares, 1994-2008
(Per cent)



Source: UNCTAD, FDI/TNC database (www.unctad.org/fdistatistics).

In 2008, the bulk of investment from the APEC economies as a whole to these thirteen economies went to the United States, while other destinations included Hong Kong (China) Canada and Australia. Considering the dynamics of shares over the years, that of Hong Kong (China) experienced an increase from 6% in 1998 to 14% in 2008. Regarding outflows, among the thirteen economies, the United States remains an important source for FDI into APEC. Other main sources of outflows are Japan, Canada and Hong Kong (China). The share of Hong Kong (China) as a source of outflows to APEC increased from about 9% percent during 1998 to about 16% in 2007 and 11% in 2008.

Examining data on intra-APEC inward stock for individual APEC economies, New Zealand, Malaysia and Canada stand out from the rest of the thirteen economies as relying mostly on intra-APEC inward FDI. These three economies have attracted FDI from neighbouring countries, the United States, Japan and Singapore and Australia respectively. The lowest share is in the case of the United States and Peru, where only 25-30% of inward stocks are from other APEC economies. However, there is a downward trend of intra-APEC shares of inward FDI stock in almost all thirteen economies from 1996 to 2008[28] (table 9).

Table 9. Intra-APEC shares of inward FDI stock in the individual thirteen economies, 1996-2008
(Per cent)

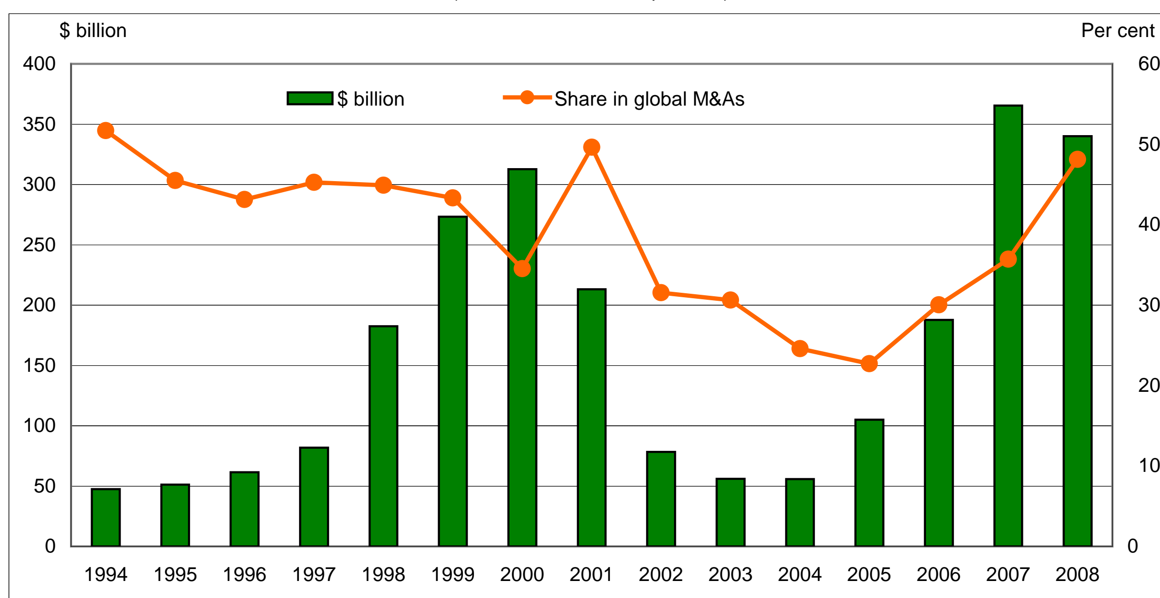
Economy	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Australia	49.6	49.7	51.0	50.7	44.0	50.8	41.7	46.6	54.5	40.5	40.9	42.5	44.9
Canada	73.8	73.0	73.1	75.4	65.1	69.0	69.4	68.4	69.0	68.5	66.1	64.0	62.5
Chile	66.6	62.3	60.5	52.4	52.5	52.8	52.5	52.5	49.7	49.9	51.4	51.5	52.7
Hong Kong, China	..	..	30.3	41.3	44.3	44.6	42.1	41.7	45.4	42.5	44.6	47.1	44.8
Japan	55.4	65.8	69.3	49.9	41.2	47.4	54.3	50.9	53.9	54.2	49.3	41.9	45.8
Korea, Republic of	69.3	63.0	58.4	55.3	52.0	50.4	49.9	47.6	49.5	49.7	49.6	..	..
Malaysia	77.1	76.5	77.2	76.0	75.6	76.0	74.2	71.9	70.1	70.5	69.9	68.1	67.9
Mexico	..	..	..	..	..	..	..	..	..	62.5	62.3	60.0	59.5
New Zealand	76.0	69.1	66.1	64.8	65.2	49.8	79.4	50.6	58.9	63.7	65.7	85.2	85.5
Peru	30.0	29.5	30.5	30.3	25.1	23.9	21.5	21.7	22.1	26.5	28.2	27.8	30.0
Singapore	55.3	53.2	50.6	46.5	45.2	43.0	40.8	39.1	37.0	36.4	32.3	31.2	..
Taiwan Province of China	76.1	75.0	73.2	71.2	67.6	65.3	64.3	63.3	62.2	61.4	55.5	51.9	52.0
United States	32.5	31.5	29.4	28.4	25.0	20.7	22.0	22.1	23.9	25.4	23.9	25.3	26.1

Source: UNCTAD, FDI/TNC database (www.unctad.org/fdistatistics).
Note: Data for Malaysia and Taiwan Province of China are on an approval basis.

Cross-border M&As have emerged as the most common mode of entry for FDI in and from the thirteen APEC economies. Over the past decade and a half (1996─2009), the value of net cross-border M&A sales[29] in those economies has grown almost six-fold, reaching $340 billion (table 10). Although cross-border M&A sales declined in 2003, they resumed their growth in 2004, reaching a peak in 2007 (figure 8). Between 1996 and 2008, net sales of companies in the thirteen APEC members to all APEC economies increased by more than 5 times from $22 billion to $122 billion.

[28] The exception is Hong Kong (China) and New Zealand. In Hong Kong (China) a part of it is round-tripping.
[29] Net cross-border M&A sales in a host economy are sales of companies in the host economies to foreign TNCs (excluding sales of foreign affiliates in the host economy). Net cross-border M&A purchases by a home economy are purchases of companies abroad by home based TNCs (excluding sales of foreign affiliates of home based TNCs).

Figure 8. Net cross-border M&As sales into thirteen APEC economies, value and share in global M&As, 1994-2008
(Billions of dollars and per cent)



Source: UNCTAD, cross-border M&A database.

Note: Net cross-border M&A sales in a host economy are sales of companies in the host economies to foreign TNCs (excluding sales of foreign affiliates in the host economy). Net cross-border M&A purchases by a home economy are purchases of companies abroad by home based TNCs (excluding sales of foreign affiliates of home based TNCs).

Table 10. Thirteen APEC economies : value of cross-border M&A sales and purchases, by region/economy, 1996 and 2008
(Millions of dollars)

Region / economy	Net sales of companies in the thirteen APEC economies		Net purchases by companies in the thirteen APEC economies worldwide	
	1996	2008	1996	2008
World	61 479	339 989	64 759	211 949
APEC	23 104	145 939	24 051	128 680
13 APEC economies	22 468	122 430	22 468	122 430
Australia	2 881	13 324	1 563	15 956
Canada	4 894	22 549	2 770	15 767
Chile	558	-	193	622
Hong Kong, China	- 236	- 180	1 048	2 145
Japan	2 757	41 240	1 169	2 684
Korea, Republic of	1 251	2 015	314	- 179
Malaysia	2 525	4 535	194	1 116
Mexico	64	- 676	1 300	110
New Zealand	212	4 099	3 167	285
Peru	-	-	274	212
Singapore	1 633	6 717	110	6 529
Taiwan Province of China	4	- 898	16	1 543
United States	5 926	29 705	10 351	75 638

Source: UNCTAD cross-border M&A database (www.unctad.org/fdistatistics).

Note: Net cross-border M&A sales in a host economy are sales of companies in the host economies to foreign TNCs (excluding sales of foreign affiliates in the host economy). Net cross-border M&A purchases by a home economy are purchases of companies abroad by home based TNCs (excluding sales of foreign affiliates of home based TNCs).

APEC members have been significant investors, in terms of ***greenfield projects*** too**,** accounting for around half of projects in those thirteen economies, although that share declined from 55% in 2003 (the earliest year for which data are available) to 43% in 2008. Similarly, in 2003, 56% of greenfield projects from those thirteen economies took place in all APEC members, compared to 49% in 2008 (table 11).

Table 11. Greenfield FDI projects in the thirteen APEC economies, by investor/destination region, 2003-2008

(Number)

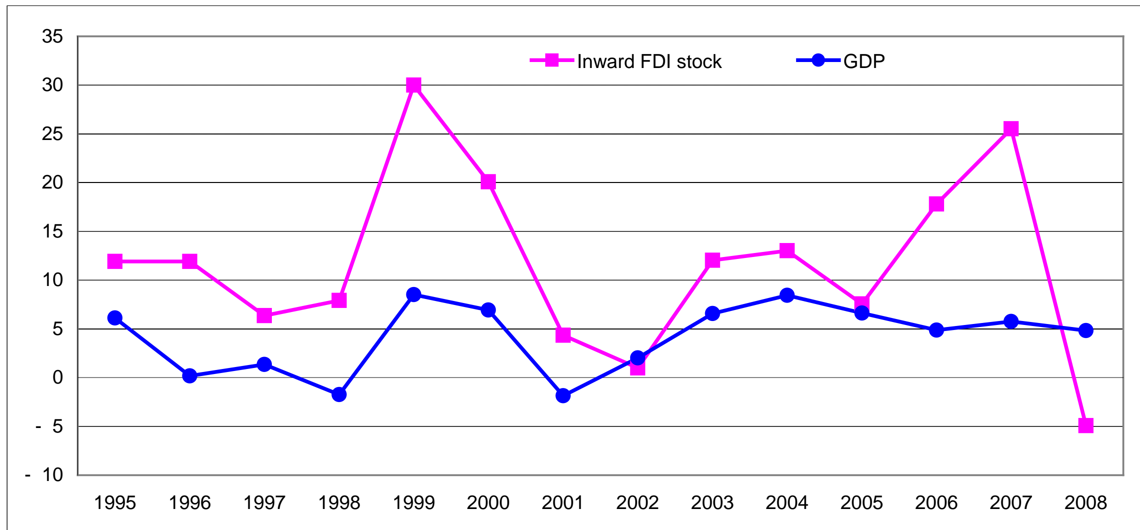
Partner region/economy	Thirteen APEC countries as destination		Thirteen APEC countries as investors	
	2003	2008	2003	2008
	By source		By destination	
World	2 109	3 030	4 484	6 138
APEC	1 218	1 401	2 490	2 978
13 APEC economies	1 150	1 309	1 150	1 309
Australia	53	57	112	124
Canada	119	114	161	131
Chile	5	8	40	24
Hong Kong, China	22	33	42	116
Japan	242	226	68	97
Korea, Republic of	36	45	71	46
Malaysia	10	10	102	89
Mexico	13	4	115	201
New Zealand	9	13	22	14
Peru	1	1	16	30
Singapore	14	35	94	144
Taiwan Province of China	17	21	76	48
United States	609	742	231	245

Source: UNCTAD, based on information from the Financial Times Ltd, fDi Markets (www.fDimarkets.com).

c. Role of FDI in capital formation and economic growth

The long-run relationship between capital formation, capital stock and economic growth is of paramount importance to development process. While FDI plays an important role, even a critical role in that relationship, in the thirteen APEC economies, it was not certain whether FDI has any major positive or adverse impacts on domestic investment. A first representation of foreign and domestic investments seems to indicate a relevant and important relationship in those thirteen economies (figure 9).

Figure 9. Thirteen APEC economies, GDP and inward FDI stock growth rates, 1995-2008



Source: UNCTAD FDI/TNCs database for FDI stock and IMF for current GDP.

However, the fact that FDI constitutes at most 14% of gross capital formation in those economies implies that much of the economic growth should be linked with domestic investment, even if foreign affiliates produce more per dollar of investment than local counterparts. However, the existence of foreign affiliates may affect domestic firms and, in some cases, may crowd them out from markets. As a whole, if foreign affiliates cause a reduction of investment by local firms through crowding-out effects, host countries may lose opportunities of longer-term growth by their own firms.

Empirical evidence for those thirteen economies indicates that in the majority of cases the effect of FDI is crowding out (table 12). Based on a particular model,[30] crowding-out prevails in Australia, Canada, Japan, New Zealand and Singapore. While in Chile and the United States FDI seems to be neutral, in Peru and Hong Kong (China) crowding-in dominate.

[30] The econometric model used here to examine the empirical evidence, which was developed in WIR99 (UNCTAD 1999), is as follows:
$I_{i,t} = \alpha_i + \beta_1 F_{i,t} + \beta_2 F_{i,t-1} + \beta_3 F_{i,t-2} + \beta_4 I_{i,t-1} + \beta_5 I_{i,t-2} + \beta_6 G_{i,t-1} + \beta_7 G_{i,t-2} + \varepsilon_{i,t}$ where I = investment to GDP ratio; F = FDI inflows to GDP ratio; G = growth of GDP.

Table 12.Thirteen APEC economies: effects of FDI on investment,

	1996-2008	
Region/economy	*Long term coefficient linking FDI with Investment*	*Long term effect*
APEC (13)	**-0.30**	**crowding out**
Australia	**-1.39**	**crowding out**
Canada	**-0.13**	**crowding out**
Chile	**0.14**	**neutral**
Hong Kong, China	**3.54**	**crowding in**
Japan	**-1.32**	**crowding out**
Korea, Republic of	**-0.53**	**crowding out**
Malaysia	**3.21**	**crowding in**
Mexico	**-0.80**	**crowing out**
New Zealand	**-1.02**	**crowding out**
Peru	**0.43**	**neutral**
Singapore	**0.48**	**neutral**
Taiwan Province of China	**-0.43**	**crowding out**
United States	**0.80**	**neutral**

Source: UNCTAD based on UNCTAD 1999

[a] Parameter not significantly different from one at 10% level (Wald test).

Note: Figures in paranthesis after the region's name indicate the number of countries covered.

Although these results should be also interpreted with caution, differences in the effects of FDI on domestic investment between regions and individual countries imply that national development strategies and investment policies (e.g. policies strengthening linkages between foreign affiliates and domestic firms) should be coordinated to ensure the maximizing of synergies between FDI and domestic investment.

For any economy, investments that meet the objectives of development better are preferable over other investments, no matter the source of these investments (domestic or foreign firms). However, it is difficult to determine which firms perform better from a development perspective as results differ depending on the context and the assumptions made. Based on the performance of the United States affiliates in the economies under study, in almost all cases, foreign affiliates are more capital efficient than domestic firms (table 13).

Table 13. Comparison of foreign affiliates [a] and domestic firms in capital efficiency [b], by host region/economy, 1994-1996 and 2005-2007

(Billions of dollars)

Host region/economy	United States TNCs						All firms [d]					
	Capital expenditure		Value added of foreign affiliates [c]		Capital efficiency [b]		Gross capital formation		Value added [e]		Capital efficiency [b]	
	1994-1996	2005-2007	1994-1996	2005-2007	1994-1996	2005-2007	1994-1996	2005-2007	1994-1996	2005-2007	1994-1996	2005-2007
World	75.8	151.4	455.9	1 010.1	6.0	6.7	6 301	11 044	28 973	49 792	4.6	4.5
APEC economies	28.5	60.3	139.4	326.5	4.9	5.4	3 828	6 277	16 486	27 286	4.3	4.3
13 APEC economies	24.0	50.8	127.4	279.2	5.3	5.5	3 348	4 735	14 851	22 747	4.4	4.8
Australia	3.4	4.8	15.9	38.2	4.6	8.0	88	215	378	792	4.3	3.7
Canada	9.2	26.4	50.9	110.6	5.5	4.2	107	283	590	1 280	5.5	4.5
Chile	1.0	0.6	2.2	4.5	2.2	6.9	17	29	68	143	3.9	5.0
Hong Kong, China	1.1	0.6	5.6	9.8	4.9	15.7	44	40	146	192	3.3	4.8
Japan	2.5	4.3	23.9	38.9	9.5	9.1	1 380	1 035	4 881	4 432	3.5	4.3
Korea, Republic of	0.3	1.9	2.0	10.8	6.2	5.5	185	272	499	949	2.7	3.5
Malaysia	1.4	2.1	4.2	7.5	2.9	3.6	37	34	88	160	2.4	4.7
Mexico	2.1	5.9	9.3	28.3	4.5	4.8	62	209	346	986	5.6	4.7
New Zealand	0.4	0.2	2.0	3.1	4.6	13.1	13	27	60	115	4.6	4.2
Peru	0.4	1.0	0.9	4.2	2.2	4.3	12	18	51	93	4.3	5.1
Singapore	1.7	1.7	7.7	17.3	4.6	10.2	29	32	82	142	2.8	4.4
Taiwan Province of China	0.3	1.2	2.9	6.0	9.0	5.1	65	78	272	369	4.2	4.7
United States	..	..	..	..	..	..	1 309	2 462	7 388	13 095	5.6	5.3

[a] Represented as United States TNCs as data on value added of foreign affiliates are not available for other countries.

[b] Calculated as value added per dollar of investment expenditures. The higher the value is, the more one unit of investment produces.

[c] Data are based on majority-owned foreign affiliates.

[d] Only those countries for which data on gross fixed capital formation and value added were included.

[e] GDP.

d. Best practices policy cases: sectoral and issue-specific approaches

APEC economies have generally benefited from the development-enhancing effects of FDI. For these thirteen economies, UNCTAD's research series of on "Best Practices" in FDI attraction and utilization provides success stories and lessons learnt from e.g., the electricity sector (Chile, New Zealand), mining/extractive industries (Canada, Chile), and areas where FDI involvement is a relatively recent phenomenon, such as road concession (Australia and Peru).[31]

Experiences demonstrate the role that liberalization plays in attracting FDI (e.g. electricity, road), and highlight the importance of (i) taking a sequenced approach (e.g. introducing FDI over time, as shown in the electricity case studies) and (ii) accompanying liberalization reforms with a sound regulatory and institutional framework (e.g. to ensure competitive market frameworks, as described in the electricity or roads infrastructure case studies). UNCTAD The Best Practice studies also reveal the developmental benefits of FDI, showcasing, e.g., how FDI in Chile's mining sector has been associated with positive economic and development outcomes, and contributed to particularly improving management and operational standards, local enterprise development, environmental and corporate social responsibility related practices, and local enterprise development.

* * *

[31] See, for example, UNCTAD, *How to Utilize FDI to Improve Transport Infrastructure – Roads: Australia and Peru*, and *How to Utilize FDI to Improve Infrastructure – Electricity: Chile and New Zealand*, APEC Committee on Trade and Investment Experts Group, June 2009.

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