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**Proposal for an APEC Common
Understanding on RTAs**

Rob Scollay and PECC RTA Task Force

PECC

Pacific Economic Cooperation Council

4 Nassim Road Singapore 258372 Tel: +65 67379822 Fax: +65 67379824 Email: info@pecc.org
www.pecc.org

Proposals for an APEC Common Understanding on RTAs

Relation to the “Pathfinder” Concept

While preferential trading arrangements (PTAs) may not meet the formal criteria for “Pathfinder” initiatives, the array of PTAs in which APEC economies have engaged may usefully be viewed in the spirit of the “Pathfinder” concept. This implies that they should be fully consistent with APEC objectives and principles.

Conformity with APEC Liberalization Objectives

Commitment to the Bogor Goals

It is important that APEC members engaging in PTAs re-affirm that they remain committed to the Bogor goals and that pursuit of PTAs does not detract from that commitment.

Timetable

The timetable for liberalisation within PTAs between APEC members should be consistent with the Bogor dates i.e. it should not extend beyond 2010 in PTAs involving developed APEC economies and beyond 2020 in other PTAs.

MFN Liberalisation

It is important that MFN liberalization should proceed in parallel with PTAs being implemented by APEC members. This will assist in minimising negative effects of PTAs and providing assurance that the Bogor goals will ultimately be reached. In order to minimise negative effects it is important that all MFN barriers be reduced to moderate levels as soon as possible, thereby limiting margins of preference in PTAs and so reducing the scope for trade diversion. Elimination of peak tariffs and tariff escalation must be a priority.

Conformity with APEC Principles in the Osaka Action Agenda

Non-Discrimination

In line with the APEC principle of non-discrimination, credible assurances should be given that the concessions provided within the PTAs between APEC members will eventually be available to all APEC members, by one of the three following means:

- *a credible up-front commitment on the part of APEC members to eventually multilateralise the concessions that they make to PTA partners.*
- *inclusion in each PTA of an “open accession” clause, providing for the automatic acceptance of a membership application from any economy willing to join the*

- PTA on the same terms and conditions.*
- *a credible form of commitment to inclusiveness, whereby each member demonstrates preparedness to entertain the possibility of a PTA relationship with every other member, whether through negotiation of a bilateral PTA or through membership of a larger PTA grouping, and that no APEC member will be permanently excluded from larger PTA groupings that may develop among APEC economies.*

WTO-Consistency

In line with the APEC principle of WTO-consistency, PTAs between APEC members should be fully consistent with GATT Article XXIV and GATS Article V, recognising that this is a necessary but not sufficient condition for ensuring that these PTAs contribute to the achievement of APEC objectives.

Comprehensiveness and Flexibility

In line with the APEC principles of comprehensiveness and flexibility, PTAs among APEC members should cover trade in both goods and services, and should also cover all sectors, with sensitive sectors being liberalised on a slower timetable with due regard to the sensitivities of member economies.

Transparency

In line with the APEC principle of transparency, APEC members should institute their own process of peer review of PTAs involving APEC members. To be fully effective, peer review should occur before the PTAs are finally concluded. It is also important that provision be made for the inclusion of PTAs in the IAPs of APEC members. Also in the interests of transparency, the texts of PTAs should be made publicly available as soon as possible after agreements are concluded.

Cooperation

In line with the APEC principle of cooperation, peer reviews of PTAs involving APEC members should provide an opportunity for discussion of any problems that the PTAs being reviewed may be causing for other APEC members, and of ways of resolving those problems.

Consistency with other APEC Principles

Where relevant, provisions in PTAs among APEC members should be linked to the specific sets of Principles that APEC members have adopted such as the Principles on Competition and Regulatory Reform, the Non-Binding Investment Principles, the Principles on Government Procurement, and the Principles on Trade Facilitation.

Promoting Convergence and Minimising “Spaghetti Bowl” Problems

Rules of Origin

Rules of origin are not an appropriate mechanism for protecting “sensitive sectors” or for facilitating adjustment to liberalisation. Complex rules with protectionist purposes should be avoided. Ideally rules of origin should as far as possible be neutral in their impacts on trade flows. Rules of origin should be as straightforward as possible, and should be transparent, clear and consistent, and should not impose unnecessary compliance costs. It is important to allow full cumulation in PTAs with multiple members. The development by APEC members of “best practice guidelines” for rules of origin would be a very useful contribution.

Facilitation Measures

Adoption of harmonised provisions across PTAs in the APEC region should be encouraged, especially for provisions on trade and investment facilitation. Use should be made wherever possible of international standards and APEC-wide agreements and processes, including mutual recognition agreements.

Consideration should be given to the development of “best practice” guidelines for each type of provision typically found in PTAs.

“Best Practice” Guidelines for PTA Liberalisation

APEC members should endeavour to ensure that the liberalisation of both goods and services within PTAs is progressive and automatic.

In the case of services trade, binding of the status quo should be regarded as acceptable. Where liberalisation is undertaken, MFN liberalisation should be regarded as the norm, especially in key infrastructure sectors. APEC members should not insist on preferential liberalisation by their PTA partners in these key sectors. To facilitate liberalisation of trade in services, relevant domestic regulations should be subject to a necessity test, and should be applied in the least trade restrictive manner possible.

In cases where liberalisation cannot commence immediately “negative lists” should be employed, with provision for regular reviews aimed at removing all remaining trade restrictions. This should apply to both goods and services trade, including “sensitive sectors”. The “negative lists” should be subject to “sunset clauses” and there should be no permanent exclusions.

Development Dimension

PTAs and Closer Economic Partnerships (CEPs) between APEC economies should allow

for assistance in capacity building to be provided to developing economy members by their developed economy partners. The potential for CEPs to serve as vehicles for the provision of regional public goods should be recognised and exploited.