

CHAPTER 6

PECC's Intellectual Contribution to APEC: **Some Case Studies**

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PECC'S INTELLECTUAL CONTRIBUTION TO APEC: SOME CASE STUDIES

Introduction¹

When the Asia-Pacific Economic Cooperation (APEC) group was established, the Pacific Economic Cooperation Council (PECC) was designated as an observer, together with the Association of Southeast Asian Nations (ASEAN) and the South Pacific Forum. This was in recognition of PECC's pioneering work to promote regional economic cooperation, which helped built the trust and confidence in the region needed to establish an intergovernmental process. In a sense, as discussed in the previous chapter, PECC gave birth to APEC. This is perhaps PECC's biggest contribution to APEC. However, PECC's seat as an observer in APEC signified APEC's expectation that PECC would continue to provide intellectual support and contributions.

ASEAN's inclusion as another observer symbolizes the subregion's political support – critical to APEC's establishment and development. ASEAN governments were cautious about participating in APEC. There was genuine concern that the vast disparities in income, technology, and skill levels among the APEC economies could lead to asymmetrical dependence, heightened tension, and North–South polarization within APEC.² In the 1980s discussions on regional economic cooperation in the Asia Pacific clearly showed the ASEAN fears of dilution in a wider regional organization, and ASEAN's concern that its

members would be overshadowed by much larger economies led it to stress informal arrangements and the non-institutionalization of APEC, at least initially.³ ASEAN leaders also emphasized that APEC must address the issue of economic disparity among its members. The full participation of ASEAN members in APEC and ASEAN's political support for APEC were based on ASEAN's "Kuching Consensus", crafted in 1990.⁴

The inclusion of the South Pacific Forum, as the third observer, recognizes the rightful place of the small Pacific island nations in APEC as they represent the people that live right in the middle of the Pacific Ocean.

This chapter is about PECC's intellectual contribution to APEC. It describes and examines four examples: PECC's intellectual involvement in the process of drafting an Asia Pacific investment code that led to APEC's adoption of the Non-binding Investment Principles (NBIP) in 1994; the clarification of the modality for APEC's trade liberalization initiative, known as concerted unilateral liberalization; the development of guiding principles for competition policy; and the development of guiding principles to help address the challenge posed to open regionalism by the proliferation of preferential trading arrangements. These case studies highlight the importance and role of regional networks of scholars and research institutions in the development of ideas on

¹ The author wishes to thank Dr Ross Garnaut, Dr Andrew Elek, Dr Kerrin Vautier, Dr Robert Scollay, Dr Christopher Findlay and Mr David Parsons for their valuable comments and inputs to the draft of this chapter.

² See Tan Kong Yam et al. (1992).

³ See Soesastro (1997).

⁴ The Kuching Consensus is shown in Appendix 5.2.

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regional cooperation. PECC's strength draws from these networks. The Pacific Trade and Development (PAFTAD) conference series, which began in 1968, is one such network. In its search for intellectual input in September 1992, APEC established an Eminent Persons Group (EPG). It was an ad hoc group, but many of its members came from the existing PECC and PAFTAD networks.

APEC's Non-binding Investment Principles

The proposal for an investment code for the Asia Pacific region was first articulated by Stephen Guisinger in early 1991.⁵ This proposal came to the attention of PECC at the eighth general meeting (PECC VIII) in Singapore in May 1991. In August 1991 the PECC Trade Policy Forum (TPF V) initiated research on the idea of a regional investment code. The first PECC investment workshop was held in May 1992 in Seattle, followed by another in Batam, Indonesia, at TPF VI, in July 1992.

At PECC IX in San Francisco in August 1992, the concluding statement endorsed the idea of further study on an Asia Pacific investment agreement. Subsequently the TPF established an Investment Study Group, consisting of business and academic representatives and some government officials drawn from 10 PECC members.⁶ The Investment Study Group met in Jakarta on 29–30 April 1993 and drew up an initial draft of an Asia Pacific investment code.

This draft was presented at the Global Contribution Seminar hosted by the Japan External Trade Organization in Tokyo on 1–2 June 1993. Senior opinion leaders from more than 10 economies from the Asia Pacific region, including several members of the APEC EPG, welcomed the proposal. Although there was insufficient time to discuss the draft code in detail, the group reached a clear consensus that such a code was desirable, provided it was recognized to be a voluntary code at the outset, and was consistent with the central principles of PECC – namely, openness, equality, and evolution – as well as with the more specific investment-related principles of transparency, non-discrimination (or most favored nation, MFN, treatment) and national treatment. In Tokyo, the Investment Study Group drew up a second draft of the code. The second draft was reviewed at TPF VII in Puerto Vallarta, Mexico, on 23–25 June 1993. This led to the third and final draft, which was introduced into the APEC process through presentations made before the APEC working group on trade and investment during the APEC senior officials meeting in Seattle in June 1993.

The draft was also brought to the attention of the EPG through Ippei Yamazawa (Japan), Hank Lim (Singapore), Rong-I Wu (Chinese Taipei), and Narongchai Akrasanee (Thailand) – people who were members of both the EPG and the PECC TPF. In its first report to the APEC ministerial meeting in Seattle in November 1993 (APEC 1993: 37–39), the EPG recommended that “APEC should adopt an Asia Pacific Investment Code to reduce the

⁵ See Guisinger (1991, 1993).

⁶ The 10 PECC members were Australia, Canada, Indonesia, Japan, Korea, New Zealand, Singapore, Chinese Taipei, Thailand, and the United States.

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uncertainties and transactions costs of trade and investment in the region”.

The EPG did not draft a code, but suggested that the PECC draft could be used as a basis for one. At the Seattle ministerial meeting, ministers agreed to make foreign direct investment policy a priority for the newly created APEC Committee on Trade and Investment (CTI). The vision statement of the 1993 APEC economic leaders meeting urged APEC “to undertake work aimed at deepening and broadening the outcome of the Uruguay Round, strengthening trade and investment liberalization in the region”. This work would include the development of a non-binding Asia Pacific investment code.

Early in the development of the proposal for an Asia Pacific investment code it was realized that a legally binding code would not be acceptable, at least initially, to many APEC members, including the ASEAN countries. Chia (1994) suggested that “to gain acceptability, a regional investment code should seek to encourage investment openness among APEC members and not to coerce countries that are not yet ready”.

The PECC draft code was based on a number of ideas and principles. First, an investment agreement should encourage a more harmonized approach to investment on a voluntary basis. It should not seek uniformity but should encourage greater transparency and more consistency. Furthermore, an investment code should not demand any immediate policy changes or require legal compliance with externally imposed rules. As Bora (1994) has noted, “the rules are not designed to punish, handicap or restrict activities, but are designed to ensure an open cooperative investment regime”.

Second, the PECC code was designed so that members would adhere progressively more closely to the guidelines. It should require neither negotiations nor any regional mechanism to “enforce” such a voluntary code. The code should be self-enforcing in the sense that scarce investment funds are more likely to flow to those who sign and adhere, voluntarily, to its basic guiding principles. Bora (1994) also argued that the code would encourage progressive liberalization of investment rules and policies.

Third, the code was designed to promote MFN treatment, consistent with the objective of open regionalism. Fourth, the code was designed so that it would be capable of responding to the continuing evolution of the region and of the nature of international investment itself.

In view of the very rapid growth of investment in the APEC region since the late 1980s some people questioned why the region needed collectively agreed guidelines on investment. The reason given was that while investment policies in the APEC region had been significantly liberalized, considerable differences still existed. Moreover, many countries in the region had already entered into bilateral investment agreements, but it was argued that investment in the region cannot flow smoothly in a complex web of bilateral agreements that cannot ensure uniformity of treatment. In addition, believing that they had no leverage vis-à-vis the capital exporters, developing countries continued to resist bilateral investment agreements for fear that such agreements would tend to favor capital exporters over capital importers.

In drafting the NBIP, the CTI made liberal use of the PECC draft code, which emphasized the central principles of transparency, non-discrimination, and national treatment. The draft

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code had seven sections: (1) guiding principles; (2) responsibilities of signatories (transparency, MFN treatment, establishment of investments, national treatment, transfers, nationalization and compensation, performance requirements, taxation and investment incentives); (3) responsibilities of investors; (4) dispute resolution; (5) extensions; (6) relation to other agreements and institutions; and (7) participation.⁷

The NBIP contains 12 points, including the four main elements of restrictions (discrimination) against foreign investors: right of establishment, national treatment, MFN treatment, and transfers. According to Lloyd (1994), the removal of barriers and discrimination in these four areas could provide the standard for completely free movement of capital. Bergsten and Graham (1994) suggested that an effective investment code should contain five central elements. Three of these elements are statements of basic obligations of host countries to investors: transparency, right of establishment, and national treatment. The fourth element is a dispute settlement mechanism. The fifth central element is a set of further obligations of host nations and investors, covering expropriation, taxation, investment incentives, and performance requirements.

The NBIP contains all the above important elements affecting the movement of investment capital except for a dispute settlement mechanism. It is only logical that a non-binding code need not have its own mechanism for dispute settlement. The NBIP proposes that disputes be settled through procedures for arbitration in accordance with

members' international commitments or through other arbitration procedures acceptable to both parties.

The NBIP was agreed upon at the APEC Ministerial Meeting in Jakarta in November 1994 after a compromise was reached at the eleventh hour. Representatives of the US government made it known in the meeting of the CTI and in the subsequent APEC senior officials meeting that the document did not go far enough. The draft was finally adopted with the understanding that the NBIP should be seen as an evolutionary document.

The NBIP is much weaker than the recommendation of the EPG. In its second report, the EPG proposed that the concord should include a dispute settlement mechanism. In the opinion of the EPG, the concord should begin as a voluntary instrument, but member economies that adopt the code voluntarily should be bound by its principles. The EPG further suggested that such a concord could provide the basis for one of APEC's initial collective actions (APEC 1994). As argued by Bergsten and Graham (1994), an agreement on a regional investment code would be APEC's first tangible action, and therefore it would have important precedent-setting implications. Bergsten and Graham rightly pointed out that the implications go beyond the substance of the agreement.

Skeptics believed that a document such as the NBIP would not add significantly to existing principles of investment as outlined by the Organisation for Economic Co-operation and Development or the World Trade Organization

⁷ See PECC (1993).

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(WTO). Lloyd (1994) thought that a non-binding code would not strengthen the observance of those principles. However, accepting the fact that at that stage only a non-binding investment code was acceptable APEC-wide, Pangestu, a coordinator of the TPF, argued that “by having to put down on paper what can be universally accepted principles governing investment, all participants begin to think about their rights and obligations not just from their narrow perspectives, but to consider the full consequences of their actions and policies internationally” (Pangestu 1994). This process, she further noted, is important as a confidence-building measure, and it could well be that unilateral liberalization would lead to the agreed upon principles faster than would any binding code.

The NBIP have proved quite effective. Most APEC governments have revised their legislation on foreign direct investment since 1994. As summarized in Davidson (2003), their revisions have moved their policies on investment ever closer to the guidelines of the NBIP. PECC played a crucial role in this by developing the idea of an Asia Pacific investment code and pursuing it in APEC forums. PECC's efforts helped to build understanding of the significance of the code and helped to bring about the consensus among APEC members to adopt the NDIP.

APEC's Concerted Unilateral Trade Liberalization

The APEC Bogor Declaration is the most significant decision made by the APEC leaders

to date.⁸ It stipulates the following principles:

- the APEC goal of free and open trade and investment will be pursued promptly by further reducing barriers to trade and investment and by promoting the free flow of goods, services, and capital among APEC economies;
- this goal will be achieved in a manner consistent with the General Agreement on Tariffs and Trade (GATT);
- this goal will be achieved no later than the year 2020;
- the pace of implementation will take into account the differing levels of economic development among APEC economies, with the industrialized economies achieving the goal no later than the year 2010 and developing economies no later than the year 2020;
- APEC opposes the creation of an inward-looking trading bloc that would divert from the pursuit of global free trade; and the APEC goal will be pursued in a manner that will encourage and strengthen trade and investment liberalization worldwide;
- the outcome of APEC liberalization will not only be the reduction of barriers among APEC economies, but also the reduction of barriers between APEC economies and non-APEC economies;
- particular attention will be given to trade with

⁸ The “APEC Economic Leaders’ Declaration of Common Resolve” dated 15 November 1994 is commonly known as the “Bogor Declaration”. See PECC (1995) for further details.

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non-APEC developing countries to ensure that they will benefit from APEC liberalization in conformity with GATT and WTO provisions.

The Bogor Declaration was prepared by the leaders' "shepherds", and received inputs from the EPG. In Seattle in 1993, the APEC leaders and ministers asked the EPG to present specific proposals for achieving the vision of "free trade in the Asia Pacific". The EPG presented their proposals in their second report (APEC 1994). To implement the goal of free and open trade in the region, the report recommended that APEC adopt a non-mutually-exclusive four-part formula containing the following elements:

- the maximum possible extent of unilateral liberalization;
- a commitment to continue reducing its barriers to non-member countries while it liberalizes internally on an MFN basis;
- a willingness to extend its regional liberalization to non-members on a mutually reciprocal basis; and
- recognition that any individual APEC member can unilaterally extend its APEC liberalization

to non-member countries on a conditional or an unconditional basis.

The Bogor Declaration did not clearly specify the modality by which the APEC goals would be achieved. The leaders reluctantly addressed the issue of whether the group should extend its trade liberalization to all other trading partners (on a non-discriminatory, unconditional MFN basis) or move all the way toward forming a free trade bloc that would extend preferences to non-members on a reciprocal basis. President Kim Young Sam of South Korea stated his strong commitment to supporting free trade in the region on a non-discriminatory or MFN basis.⁹

There was concern among some leaders that the Bogor Declaration implicitly endorsed the EPG's "temporary" or "partial" free trade agreement. This prompted Malaysia to issue a six-point reservation and Thailand to issue its observations on the Bogor Declaration.¹⁰ In a press interview, Prime Minister Mahathir reported that President Soeharto, as chairman of the APEC leaders meeting, did not want a flood of amendments; in order to avoid too many changes to the declaration, Soeharto suggested that member economies express their differing opinions in the form of an annexure.¹¹

⁹ *Straits Times* (Singapore), 8 November 1994.

¹⁰ Malaysia's six-point reservations were the following: (1) the liberalization process to achieve the goal will not create an exclusive free trade area in the Asia Pacific region; (2) the liberalization process will be GATT/WTO-consistent and on an unconditional MFN basis; (3) the target dates of 2020 and 2010 are indicative dates and non-binding on member economies; (4) the liberalization process to be undertaken will be on a best endeavor basis; (5) APEC member economies will liberalize their trade and investment regime based on their capacity to undertake such liberalization commensurate with their level of development; and (6) the liberalization process will only cover a substantial portion of Asia-Pacific trade and should not go beyond the provisions of GATT/WTO. Thailand's observations included the following three points: (1) the goal is not to create a free trade area, and APEC liberalization must proceed in consonance with the decisions of the Uruguay Round and the WTO; (2) the time frame specified should be seen as the target for achieving the goal; (3) the "elimination" of trade and investment barriers in the region should be done on a gradual basis.

¹¹ *New Straits Times* (Kuala Lumpur), 16 November 1994. Neither the reservations from Malaysia nor the observations from Thailand were ever attached to the Bogor Declaration.

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The problem with the EPG's four-part formula was anticipated by a research group convened by the Australia–Japan Research Centre (AJRC) in cooperation with the Center for Strategic and International Studies (CSIS) and the International House of Japan in Tokyo.¹² In their view, the first part of the four-part formula was fully consistent with “open regionalism”. However, the other three could not be followed without the creation of a trading bloc. For trade in most goods, most APEC participants are bound by Article I of the GATT/WTO which precludes discrimination among other WTO participants. The only way WTO members of APEC could discriminate against non-participants in APEC would be to negotiate a formal trading arrangement sanctioned under Article XXIV of the WTO. To qualify for acceptance under Article XXIV, a preferential trading arrangement would require a binding commitment by all participants in APEC to remove all barriers to trade in substantially all products. In other words, if the discriminatory options suggested by the EPG were to be followed, then APEC would have to become a trading bloc. Therefore, some of the modalities for liberalization suggested by the second EPG report were quite contrary to its rejection of the conversion of APEC into a trading bloc (AJRC 1994: 5).

In preparation for the APEC meeting in 1995 in Osaka, APEC senior officials invited inputs from non-governmental groups for the action agenda to implement the Bogor Declaration. The above research group (Elek, Soesastro and Yamazawa) produced a report on “Implementing the APEC Bogor Declaration” (AJRC 1995). Amongst its recommendations, the report proposed the

following in the area of APEC trade liberalization:

- APEC governments should reaffirm the standstill commitments made in Bogor.
- Each government should set out schedules for meeting their Uruguay Round obligations in accordance with, or ahead of, schedule.
- The combination of these, plus any additional unilateral commitments, will become the initial medium-term schedule of concerted unilateral liberalization by APEC governments.
- APEC governments should develop a common guideline for future liberalization involving coverage and instruments to meet the agreed 2010 and 2020 targets for the dismantling of border barriers to trade and investment.
- APEC participants need to commit to the monitoring and review of the progress of trade liberalization associated with implementation of the Uruguay Round as well as additional unilateral commitments.

These recommendations became known as concerted unilateral liberalization. This concept was based on earlier proposals by Ross Garnaut. As early as 1980, he had suggested that western Pacific economies could make the most efficient progress on liberalization by implementing reforms at the most rapid pace permitted by domestic political constraints. Those constraints could be eased if their most important trading partners were doing likewise.¹³

¹² Members of the research group were Andrew Elek (Australia), Hadi Soesastro (Indonesia) and Ippei Yamazawa (Japan). The first meeting was held in Canberra on 2 September 1994, and the second meeting was held in Tokyo in early 1995.

¹³ See Garnaut's background paper for PECC I in 1980 (Garnaut 1981).

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This approach was well suited to accelerating the ongoing process of unilateral liberalization that had been undertaken by many western Pacific economies since the 1960s, based on the correct perception that the bulk of the benefits of trade liberalization accrued to those undertaking these reforms. This was preferable to a reversion to formal trade negotiations, where governments viewed liberalization as a “concession” to others.

The report of the research group was submitted to some members (Australia, Indonesia, Japan) of the APEC senior officials meeting. It was also presented to PECC at TPF VIII in Taipei in April 1995, and received support there. The PECC TPF adopted the section of the report on trade liberalization in its own statement. In May 1995 the TPF presented this statement to the PECC Standing Committee meeting in Guangzhou, where it was endorsed as a PECC statement.¹⁴ The PECC statement was widely circulated and became the basis upon which the APEC senior officials meeting decided to introduce concerted unilateral liberalization as the modality for APEC trade liberalization towards realizing the Bogor goals.¹⁵

As summarised in Garnaut (2000) and Garnaut and Ligang Song (2005), concerted unilateral liberalization proved quite effective in several Asia Pacific economies, particularly China, Indonesia, Australia and the Philippines. It also led to an agreement by APEC leaders, in

1996, that information technology products should remain freely traded. As noted by Hugh Patrick (Chapter 9, this volume), this led to a WTO-wide agreement to that effect within a few months.

Unfortunately, the process of concerted unilateral liberalization later ran out of steam as the liberalization of the most sensitive products reached the top of the agenda. The attempt to deal with them through the so-called early voluntary sectoral liberalization process was doomed to failure. As a voluntary process of cooperation, APEC is not suited to trade negotiations. In the coming years, concerted unilateral liberalization will be able to eliminate already low nuisance tariffs. Concerted unilateral liberalization could also help to prevent trade barriers to all new products (Elek 2005).

But getting rid of the protection of the most sensitive products will need negotiations. Early advocates for working towards free and open trade and investment through concerted unilateral liberalization always recognized that the process for some difficult sectors would end in a round of WTO negotiations (Garnaut 1994, reproduced as Chapter 5 in Garnaut 1996). Other observers of APEC continue to propose the negotiation of an APEC-wide trading bloc as part of the path to achieving the Bogor goals. That is not feasible, but PECC can help APEC governments to make more effective use of the WTO to get rid of the heavy protection of the most sensitive products.

¹⁴ These recommendations were also reflected in the Beijing Declaration issued by the Standing Committee at the PECC plenary meeting in 1995.

¹⁵ This was conveyed to the author by Ambassador Wisber Louis, the APEC senior officials meeting member from Indonesia who tabled this proposal at the senior officials meeting to formulate the Osaka Action Agenda.

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PECC's Competition Principles Project¹⁶

Competition policy appeared on the TPF agenda in 1993. It was widely regarded as one of the “new” trade-related issues. There was an opportunity for intellectual leadership to clarify the nature and role of competition policy in the context of promoting trade and investment liberalization and facilitation.

As part of its response to the 1994 Bogor Declaration, APEC economies undertook to cooperate in order to enhance the competitive environment in the region, in the interests of efficient operation of markets and consumer benefits. But, as APEC's individual action plans (IAPs) soon revealed, there was no consensus on either the objectives or scope of “competition policy”. PECC supported APEC's Collective Action Plan to “consider developing non-binding principles on competition policy and/or laws”.

At its 1997 meeting in Montreal, the TPF formally resolved to examine what non-binding principles might guide the development of a competition policy framework for PECC and APEC economies in the short, medium and long term. A core group to undertake the Competition Principles Project (CPP) was led by New Zealand research economist and competition law/policy specialist Kerrin Vautier.

Process and Outcome

At the PECC XII General Meeting in Santiago, in late 1997, the TPF organized an experts roundtable on the topic of cooperation for

increasing competition. The roundtable included a presentation of work-in-progress on the CPP and discussion of the emerging view that an integrated, coherent, transparent and comprehensive competition framework should be developed. Feedback suggested that the broad concerns of developing economies in particular needed to be better reflected in subsequent drafting, as did a number of practical issues.

The CPP convener, who was also the NZPECC chair, brought the theme of “government cooperation for business competition” to the PECC Standing Committee in early 1998. She stressed the timeliness of focusing on competition principles, given their relevance for a wide range of PECC activities. Further, the financial crisis in Asia suggested that the time was right to emphasize the basic tenets of free and better functioning markets and how these could be internalized within domestic policy making. She reported that the emerging emphasis in the CPP was on principles rather than rules; a competition-based policy framework rather than prescriptive policies for individual economies; and convergence of intentions rather than policy conformity. These considerations proved crucial in building consensus and securing endorsement of the CPP approach within the TPF and the PECC Standing Committee, which approved the principles which were published in May 1999 (PECC 1999). Further consensus building led to the endorsement of the PECC principles by APEC leaders. In November 1999, the PECC Competition Principles were approved with some modification as APEC Principles to Enhance

¹⁶ This section was contributed by Kerrin Vautier.

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Competition and Regulatory Reform (APEC 1999).¹⁷

This endorsement by APEC reflected a considerable effort not only by APEC officials, but also by PECC's TPF and CPP groups, including within the APEC Competition Policy and Deregulation Group, the Committee on Trade and Investment and at trade ministers meetings. As concluded from the earlier case studies, the role of "champions" within APEC itself undoubtedly facilitated PECC–APEC dialogue at critical junctures of the consensus-building process. The CPP and TPF carefully adhered to an extensive and inclusive consensus building process, helping to gain respect for the final product. PECC's competition principles, and the APEC principles that flowed from them, fitted comfortably with the modality of consensus building and concerted unilateralism.

While time-consuming, the process itself enriched the whole exercise, reinforcing ongoing research and other relationships. A number of collaborative endeavors on competition laws and policies followed, one of which was of special relevance to PECC's program of work on services trade liberalization and facilitation.¹⁸

Applying the Competition Principles

In preparing the PECC principles (PECC 1999: 23), it was envisaged that APEC's IAPs would provide the primary and most transparent vehicle for incorporating some of the

competition principles into a range of interrelated policy areas. Two other important initiatives have been taken, both of which are consistent with the CPP view that technical assistance and cooperation in building institutional capacity constitute an integral part of applying the principles in practice.

The first is the APEC–OECD Co-operative Initiative on Regulatory Reform, which has been responsible for seven international workshops on the central role of regulatory reform in the promotion of open and competitive markets, economic efficiency and consumer welfare. A regulatory checklist approach has been used to assist member economies in building and benchmarking their capacity for quality domestic regulation – in the context of the APEC Competition and Regulatory Reform Principles and the OECD's Policy Recommendations on Regulatory Reform.

The second initiative, APEC training courses on competition policy for member economies, has led to five programs between 2002 and 2004, with a further set of workshops agreed for 2005–09. Implementation of the APEC principles, especially competition policy, is the main objective, with provision of technical cooperation and assistance to that end, together with the sharing of accumulated knowledge and expertise.

Beyond APEC

APEC competition principles were cited in the WTO's deliberations on the interaction between trade and competition policy¹⁹ – one

¹⁷ Further details of formal meetings and the consensus building process can be found in PECC (1999).

¹⁸ See Illescas and Vautier (2002).

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of the four Singapore issues.²⁰ However, they were not used to good effect in this multilateral forum, even though they were clearly relevant to the WTO's mandate to address the relevance of general principles, international cooperation and the link between competition policy and WTO objectives.

The APEC principles have been finding their way into subregional agreements, for example the Trans-Pacific Strategic Economic Partnership Agreement among Brunei Darussalam, Chile, New Zealand and Singapore. This agreement reaffirms a joint commitment to the APEC principles of non-discrimination, comprehensiveness, transparency and accountability, "with a view to protecting and promoting the competitive process and the design of regulation that minimizes distortions to competition". Promotion of adherence to these competition principles reinforces the need to implement other parts of the partnership agreement – for example, services, government procurement and intellectual property.

Regional Trading Arrangements²¹

The PECC TPF was quick to recognize the

challenge posed to open regionalism by the proliferation of preferential trading arrangements (PTAs). Since 2000, the issue has been a central element on the agenda of the TPF and its successor, the Trade Forum. After some early deliberations on the issue at its Brunei meeting in 2000, the TPF convened a major conference on regional trading arrangements (RTAs)²² in Bangkok in June 2001, at which a wide range of relevant issues were aired. PTA issues also featured prominently on the agenda of subsequent Trade Forum seminars and meetings in Lima (2002), Vancouver (2002), Washington (2003), Phuket (2003), Beijing (2004), Viña del Mar (2004) and Jeju (2005). These meetings, and related TPF and Trade Forum work programs on PTA issues, have been notable for the strong contribution of Latin American members of the PECC network, in addition to regular contributors from East Asia, North America and Australasia. Through the expertise available from Latin American PECC members, and also from regional institutions in the Americas – the Inter-American Development Bank, the Organization of American States, and the Economic Commission for Latin America and the Caribbean – the TPF and Trade Forum were

¹⁹ Deliberations of the special working group in the period from December 1996 when the working group was established in Singapore to mid-2004 when the multilateral initiative in respect of "Competition Policy" failed and ceased to be part of the Doha Round.

²⁰ These four issues, which were suggested for the Doha Development Agenda of the WTO, were competition policy, investment, trade facilitation and government procurement. Of these, only trade facilitation was included.

²¹ This section was contributed by Robert Scollay.

²² Terminology can be confusing. "RTA" ("regional trading arrangement") is widely used as a generic term to describe all forms of discriminatory trade agreement, whether they are bilateral or regional in character. The PECC Trade Forum members, and many other economists, consider that the term "PTA" ("preferential trading arrangement") is a more appropriate term, as it accurately reflects the inherently discriminatory nature of these agreements. This will be the default term used here. Free trade areas (FTAs) and customs unions are the two forms of RTA or PTA sanctioned by the WTO under GATT Article XXIV. Recent PTAs in the APEC region have generally followed the FTA model, although customs unions are more common in the Americas. APEC now refers to PTAs as "RTAs/FTAs".

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able to draw on the long experience of Latin America with various forms of PTA.

It was evident at the Bangkok and following meetings that it would be difficult to reach a consensus view on PTAs within the PECC trade forums. Some members viewed the trend to PTAs with alarm, and were inclined to be sharply critical. Other members insisted that PTAs are a valid and understandable approach to liberalization. It was agreed that PECC needed to understand and help deal with the issues.

An undercurrent to these views was the sense that the WTO and APEC had proved inadequate as instruments for liberalization. The accelerating trend to PTAs also coincided with the upsurge of support for "East Asian regionalism" following the East Asian economic crisis of 1997–98, and a number of East Asian TPF and Trade Forum members were increasingly drawn into various work programs aimed at the creation of some form of East Asian PTA as part of an East Asian economic entity, with a corresponding decline in focus on Asia Pacific integration based on open regionalism.

Some ASEAN members of the PECC trade forums appeared to be torn between support for open regionalism and attraction to the opportunity that the new developments apparently offered to ASEAN as a way to re-assert its central role in regional economic affairs through a PTA based on the ASEAN+3 group or, better still, a series of ASEAN+1 preferential arrangements. Many Latin American participants considered that their Latin American experience demonstrated the positive role that PTAs can play in promoting liberalization within regional and global trading systems.

With all these views in play, TPF and Trade Forum deliberations on PTA issues during

this period were lively and stimulating, but consensus on how to respond remained elusive. Regardless of initial positions, however, it was soon apparent that the momentum behind the trend towards PTAs in the region is unstoppable in the short run. At the same time, PECC Trade Forum members were able to find common ground in the view that for this trend to take the form of uncoordinated and undisciplined development of a "spaghetti bowl" of PTAs in the Asia Pacific region would be a highly undesirable outcome, undermining rather than promoting prospects for region-wide integration and increasing transaction costs for business as well as continuing to undermine the multilateral trading system.

Interaction with APEC

APEC officials did not initially share the TPF's enthusiasm for debate on PTA issues. Following the TPF's 2001 Bangkok meeting, a "Trade Policy Dialogue" was convened with some difficulty at the APEC meetings later that year in Dalian, over the strong objections of some APEC members. At the meeting, Trade Forum representatives were invited to make a presentation on behalf of PECC. They took the opportunity to express some of the key concerns held by TPF members over the unconstrained use of PTAs as liberalization instruments. They emphasized that PTAs would have both positive and negative implications for regional integration and the multilateral trading system, and that whether the positive or negative impacts would predominate would depend very much on how the PTAs were designed and implemented. However, PTA issues then largely disappeared from the APEC agenda until the Thailand APEC year in 2003.

At the first APEC senior officials meeting in 2003, people began to voice concerns about

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the implications of the spread of PTAs. Some people – for example, Singapore officials – suggested there might be a need for a “common understanding” on how PTAs should be designed and implemented to minimize their negative effects and maximize their positive effects. Senior officials scheduled a “Senior Officials Meeting Dialogue on RTAs” for the next senior officials meeting in Khon Kaen in early June. PECC was invited to make a presentation at this meeting, in recognition of the leadership that it had shown in raising and debating issues relating to the implications of PTAs for APEC and its objectives.

As APEC officials began to pay more attention to PTA issues and became more willing to involve PECC in their debates, PECC Trade Forum members were encouraged to focus on how best they could contribute to APEC’s deliberations. Within the Trade Forum a consensus developed that the most constructive approach would be to focus on APEC’s Bogor goals, as the agreed overriding objective, and on the conditions under which PTAs could make a positive contribution to achievement of the Bogor goals. These conditions were to be embodied in a set of “RTA Principles”, setting out the design and implementation features required in PTAs to be consistent with APEC’s Bogor goals. Following the Trade Forum meeting in Washington in April 2003, a group of interested Trade Forum members met to map out the main elements of the proposed “RTA Principles”.

Based on these discussions, the Trade Forum coordinator, Rob Scollay, prepared a draft set of “Principles” and a supporting paper setting out the analytical considerations on which the “Principles” were founded, drawing on the contributions of participants at TPF and Trade Forum meetings over the preceding two

years. These drafts were considered at the Trade Forum meeting in Phuket, and became the basis of the PECC presentation at the Khon Kaen senior officials dialogue.

Following consultation between PECC Director-General David Parsons and APEC officials, it was decided that the PECC proposals would be described as a “Proposal for an APEC Common Understanding on RTAs” rather than as “RTA Principles”. The supporting analytical paper was entitled “Asia-Pacific RTAs as Avenues for Achieving APEC’s Bogor Goals”. The two papers were presented at the Khon Kaen Dialogue and then revised for formal release at the PECC General Meeting in Brunei later that year. At their meeting at the end of the year, APEC ministers “supported continued work (on RTAs) within APEC and with relevant organizations, for example, the Pacific Economic Cooperation Council (PECC), to develop their work for maximising the contribution of RTAs/FTAs to the achievement of the Bogor Goals”.

APEC senior officials continued work on RTAs/FTAs through 2004, eventually agreeing, after much debate, that a set of guiding principles for RTAs/FTAs among APEC members would indeed be desirable. The outcome was a set of guidelines on “Best Practice for RTAs/FTAs in APEC”, adopted by senior officials and endorsed by APEC ministers in Santiago at the end of 2004. The “Best Practice” guidelines have much in common with PECC’s proposed “Common Understanding”, and were accordingly welcomed by the PECC Trade Forum as a step forward in ensuring that PTAs in the APEC region are consistent with APEC principles and contribute to the achievement of APEC’s Bogor goals.

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The Way Ahead

PECC's "Common Understanding" and APEC's "Best Practice" guidelines reflect a degree of consensus within the respective organizations on the way to address the issue of how the pursuit of PTAs by individual APEC member economies can best be reconciled with pursuit of APEC's Bogor goals. At the same time, they are silent on many detailed issues of design and implementation. In particular they leave entirely unanswered the question of how the region is to move from a "spaghetti bowl" of FTAs to the region-wide integration that is envisaged in the Bogor goals.

At the most recent Trade Forum meeting in Jeju in May 2005, several tasks were identified to which PECC could contribute. The first task is to monitor the consistency of the "Best Practice" guidelines of existing and future PTAs among APEC members. A second task is to further develop the guidelines to provide more practical guidance on ways to ensure consistency of PTAs with APEC principles and with the Bogor goals. The third and perhaps most difficult task is to identify possible steps through which the region could make the transition from the "spaghetti bowl" to region-wide integration.

It was interesting to note that at subsequent APEC senior official meetings a number of people suggested an agenda broadly congruent with that articulated at the Trade Forum's Jeju meeting, including monitoring and further development of the "Best Practice" guidelines. In particular, several senior officials

suggested the need to look for ways of promoting greater coherence or even convergence among PTAs in the region, for example by developing "model provisions". These three elements thus appear likely to provide the core of a future agenda on PTAs for both APEC and PECC.

Concluding Note

The above case studies have described different processes of interactions between PECC and APEC, through which PECC provided some intellectual input to the APEC process. A common feature is the significance of finding champions within the APEC process who see the value of the intellectual input provided by PECC.

In the case of the NBIP, the critical role was played by the CTI member from the United States who also chaired the investment working group. It should be noted that at a meeting with APEC senior officials in December 1992, the acting US Secretary of State, Lawrence Eagleburger, suggested that 1993 should be seen as a year of transition for APEC to "move beyond the phase of institutionalizing APEC to making it operational"; he specifically mentioned that APEC members should consider an APEC investment agreement.²³

Turning to trade liberalization, senior APEC officials from Indonesia (the APEC chair in 1994) and Japan (the APEC chair in 1995) sought advice from outside when looking for a way to implement the Bogor commitment to free and open trade and investment. Members of the

²³ Secretary Eagleburger also mentioned, among other things, an APEC intellectual property agreement, an APEC dispute settlement mechanism, and an APEC customs cooperation treaty. See Soesastro (1997).

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PECC TPF provided such advice and their concept of concerted unilateral liberalization was accepted as the practical way to begin.

The competition principles project demonstrates that much can be achieved from the voluntary and dedicated effort of expert teams within PECC; from the support of national PECC committees; from adherence to the consensus-building processes that are the hallmark of economic cooperation in the Asia Pacific region; and from constructive cooperation between the PECC and APEC memberships. It was very gratifying for those involved that not only were the competition principles endorsed at the highest level in both PECC and APEC, but also they provided a platform for a range of substantive initiatives in the region aimed at giving impetus to their application in practice.

As for PTAs, PECC intends to continue working on these and hopes, once again, to make a positive contribution to APEC and the achievement of free and open trade and investment.

In each of these cases, PECC was in a position to provide timely responses, to a large extent because it was able to draw on the existing networks of researchers and research institutions in the region.

These case studies are not the whole story. Table 6.1 contains a much wider range of contributions to APEC. But even that matrix could be said to be the tip of an iceberg. The

extent of interaction with APEC is hard to capture in just two dimensions.²⁴

Members of PECC task forces and forums have worked almost continuously at several levels, often informally, using professional relationships and friendships developed over many years. Most of the interactions have been with APEC committees, especially the Committee on Trade and Investment and its working groups. PECC has also had the opportunity to interact with APEC senior officials at their policy dialogues and sometimes as advisors (formal or informal) to the chair of APEC senior officials.

For example, David Parsons was a vital advisor to the government of Brunei Darussalam during their leadership of APEC in 2000. A group convened by the Foundation for Development Cooperation, based in Australia, which included several PECC people (including Andrew Elek, Chen Luzhi, Robert Scollay, Hadi Soesastro and Ippei Yamazawa), had a significant influence on the evolution of a unique APEC approach to capacity-building.²⁵

PECC has also been able to provide independent assessments of APEC's progress, especially in terms of trade and investment liberalization and facilitation. Christopher Findlay, Mari Pangestu, David Parsons and Ippei Yamazawa led detailed and forthright evaluations of trade and investment liberalization and facilitation, as reflected in individual and collective action plans.

²⁴ Table 6.1 was prepared by David Parsons based on a record of PECC inputs to APEC prepared by the PECC Secretariat.

²⁵ The work of an experts group on capacity building through APEC, convened by the The Foundation for Development Cooperation, can be found at <www.fdc.org.au>. Some (including Elek 1997 and Elek and Soesastro 2000) have been published elsewhere (see references) with the permission of the Foundation for Development Cooperation.

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Backing these efforts, business people and researchers have had countless interactions at a technical level on the full range of PECC task forces and forums, on matters ranging from APEC dialogues on chemicals and automobiles to specific technologies needed to sustain supply chains, especially after the recent upsurge of concern with dealing with threats of terrorism.

The next chapter describes additional interactions between PECC and APEC on financial sector issues.

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Table 6.1: Highlights of PECC contributions to the APEC Process

The information listed in this table is only a small part of the contribution PECC has made to APEC. As official observers, PECC representatives have also carried out many additional projects, organized and participated in hundreds of workshops, working group and committee meetings, presented and tabled statements at senior official and ministerial meetings and worked directly with officials in individual APEC economies.

PECC's most significant contributions have been at the senior official level, when PECC itself initiated and worked on the development of principles to help focus APEC's future agenda. PECC helped build the architecture and develop a consensus around these difficult areas. Senior officials and the APEC Business Advisory Council have also commissioned PECC to undertake assessments and benchmarking of APEC progress in important areas. This work required analytical strength, a sense of independence and an appreciation of APEC capacities and processes. As noted in this chapter, PECC's contributions at the working group and sectoral level are too vast to document in this table. PECC has brought innovative ideas and strong support to APEC at that level and helped to link official networks with those in business and research. Finally, this table provides some examples of where PECC representatives in their individual and varying institutional capacities have worked informally to provide ideas and advice directly to the senior officials of the host or future host government of APEC.

	Year	Initiator	Background in Brief
<i>I. Contributions at the Senior Officials Level</i>			
Developing Principles and Architecture			
Investment Principles: Encouraging International Investment in the Asia Pacific Region: A Draft Asia Pacific Investment Code	1993-94	PECC	PECC's investment code was instrumental in the formation and adoption of the APEC Investment Principles in 1994 (see case study in this chapter). This was PECC's first significant formal contribution to APEC's anticipated agenda.
Competition Principles: PECC Competition Principles: for Guiding the Development of a Competition-Driven Policy Framework for APEC Economies	1999	PECC	PECC members worked closely with the New Zealand APEC chair in developing the PECC principles. APEC leaders acknowledged that they had drawn upon PECC's principles to endorse the <i>APEC Principles to Enhance Competition and Regulatory Reform</i> .

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Menu of Options on Services Trade and Investment: Menu of Options for Voluntary Liberalization, Facilitation and Promotion of Economic and Technical Cooperation in Services Trade and Investment	2000-03	PECC	PECC initiated the “menu of options” approach in APEC and experts worked closely with the APEC Group on Services developing a framework and options in several phases over nearly three years.
Corporate Governance: Guidelines for Good Corporate Governance Practice	2001	PECC	The guidelines were cited by APEC finance ministers and have consequently been cited widely including by the OECD. Dr Jesus Estanislao, who led the work in PECC, was presented with the International Corporate Governance Network’s International Award for 2002 for his contributions in PECC & other forums.
Regional Trade Arrangements: <ul style="list-style-type: none"> • Proposal for an APEC Common Understanding on RTAs; and • Asia Pacific RTAs as Avenues for Achieving APEC Bogor Goals 	2001-03	PECC	PECC’s comprehensive research on RTAs and its development of principles involved a wide network and research spanning nearly three years. APEC and its members drew heavily on this work formally and informally, particularly when they began addressing the RTA agenda in 2003 and influenced the “Best Practice for RTAs/FTAs in APEC” guidelines.
II. Assessing and Benchmarking APEC’s Progress			
Benchmarking Impediments: Survey of Impediments to Trade and Investment in the APEC Region	1995	APEC	This major survey, commissioned by APEC, was intended to define the starting point for APEC members as they formulated the Osaka Action Agenda as the means to achieve the Bogor goals.
Mapping Achievements: Milestones in APEC Liberalization: A Map of Market Opening Measures by APEC Economies	1995	APEC	As well as documenting existing impediments, APEC commissioned PECC to map the liberalization measures APEC members had already achieved as it embarked on implementing the commitment to the Bogor goals.
Illustrating Achievements: The Impact of Liberalization: Communicating with APEC Communities	1998-99	APEC	APEC has endeavored to illustrate some of the success stories of liberalization in the region and PECC experts were commissioned to conduct studies for wider readership in APEC.
Assessing Action Plans: Independent Assessment of the APEC Individual Action Plans	1999	APEC	By the end of 1998, there was concern in APEC about how progress in APEC’s individual action plans should be reviewed. APEC’s own peer review process did not begin until 2002. At the initiative of the NZ APEC Chair, PECC was commissioned to undertake an independent assessment. To avoid sensitivity, a wide network of PECC experts reviewed progress of APEC members as a whole in each of the chapters of the Osaka Action Agenda.
Assessing Implementation: PECC Assessment of the Implementation of the e-APEC Strategy	2003-04	APEC	In 2001, APEC Leaders adopted the e-APEC Strategy. This is a holistic strategy aimed at increasing efficiency and productivity across the entire economy from the use of ICT. PECC was commissioned to present an assessment of implementation to present to APEC ministers in 2004.

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Assessment of the Manila Action Plan for APEC	1997	ABAC	ABAC commissioned PECC to undertake this series of assessments of APEC's progress on trade and investment liberalization and facilitation and remaining impediments. These were used by ABAC in reports to APEC leaders.
Assessment of APEC Action Plans	1998	ABAC/PECC	
Report on Impediments to Tariffs, Investment, Services and Non-Tariff Measures	1998-99	ABAC/PECC	
An Assessment of Impediments to Foreign Direct Investment in APEC Member Economies	2002-03	ABAC/PECC Japan	
III. Examples of Issue Specific Analysis and Economic Cooperation			
Science & Technology: Study of Available Industrial Scientific and Technology Indicators	1994-95	ABAC/PECC	Since the inception of APEC working groups in the early 1990s, representatives of PECC's forums and task forces have been proactive "observers" in a wide range of APEC forums. In many forums they freely take part in discussions, provide updates of regional activities outside APEC, table specific papers and conduct projects at their own or APEC's initiative. In some cases, PECC had equivalent task forces and forums which have been able to provide systematic contributions. The coordination of the work program was made more effective when the APEC Secretariat was established in Singapore in 1993, effectively alongside the PECC Secretariat, which was established in Singapore in 1990.
Infrastructure: Regional Integration for Sustainable Economies (RISE)	1999	PECC	
Small and Medium Enterprises: <ul style="list-style-type: none"> • APEC SME Portal Hub; and • APEC PECC Entrepreneur Consortium 	2002-04	PECC	
Finance and Investment: <ul style="list-style-type: none"> • A Review of Cross-Border Mergers & Acquisitions in APEC; and • Venture Capital Investment in APEC Economies 	2002-03	APEC	
Education & Training: The Pacific Alliance for Use of Information Technology In Education and Training (EduPACT)	Ongoing	PECC	
Sectoral Liberalization: Information Resource Study on Voluntary Sectoral Liberalization	1998-99	APEC	
Trade and Security: Study on the Mutually Supportive Advancement of APEC Trade Facilitation and Secure Trade Goals post Sept 11, 2001	2003-04	APEC	
Business and Policy Dialogues for Sectoral Ministerial and Officials Meetings	Ongoing	PECC/APEC	In earlier years, APEC, which lacked a wide network outside the official process, turned to PECC to organize its official dialogues between ministers and business leaders at ministerial meetings. PECC played this role most prominently for energy ministers and ministers responsible for telecommunications. PECC made use of its network in business and associated organizations to bring high level non-government representatives to the table. PECC has also participated actively in policy dialogues convened by the Committee on Trade and Investment and senior officials.

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IV. Examples of Working with the Chair of the Senior Officials Meeting			
<p>Analytical Support: The <i>Manila Action Plan for APEC</i> which included the individual and collection action plans of APEC</p> <p>Conceptual Support: <i>Declaration on an APEC Framework for Strengthening Economic Cooperation and Development</i></p>	Philippines, 1996	APEC Chair	<p>Dr Mari Pangestu, Professor Christopher Findlay, Dr Stephen Parker and others, with the sponsorship of the Asia Foundation, provided analytical support to the Philippines Chair of Senior Officials to develop the Manila Action Plan.</p> <p>Dr Andrew Elek and others helped the chair develop the framework for strengthening economic cooperation. This was the first comprehensive declaration by leaders on the role of economic cooperation and capacity-building in APEC.</p>
<p>Conceptual Support: Developing APEC's economic and technical cooperation agenda</p>	Philippines, 1996 Malaysia, 1998 Brunei, 2000 China, 2001 Mexico, 2002 Thailand, 2003	APEC/FDC	<p>Since 1996, Dr Andrew Elek has led a group on capacity-building through APEC, convened under the auspices and sponsorship of the Foundation for Development Cooperation (based in Brisbane, Australia). The group, which includes several people involved in PECC, developed a comprehensive program to strengthen the economic and technical cooperation agenda in APEC. They worked informally with the APEC hosts, holding seminars and providing ideas, some of which have been taken up by APEC.</p>
<p>Analytical and Conceptual Support: APEC 2000 agenda for the Brunei goals on information and communication technology and human capacity-building</p>	Brunei, 2000 China, 2001	APEC Chair	<p>David Parsons, a former PECC Director General and long-term participant in the Minerals and Energy and Trade Policy Forums, was commissioned by the Brunei Government to work in the Ministry of Foreign Affairs on the APEC 2000 agenda. He helped the Brunei Government develop the concepts behind the leaders' goal to provide universal internet access in the region by 2010. He also helped to develop a new human capacity-building agenda which was launched jointly by the leaders of Brunei and China at a high-level meeting in Beijing in May 2001.</p>
<p>Support for APEC senior officials in each economy</p>	Ongoing	PECC/APEC	<p>In most PECC economies, senior members of PECC and PECC experts regularly consult with and support their own APEC senior officials with ideas that relate to their own economies in APEC. This contribution is vital and while it often goes unnoticed at a regional level it is well understood domestically. These links are often more formalized through the senior official's membership of the PECC Member Committee and senior PECC members holding membership of government consultative bodies.</p>

See the list of abbreviations for an explanation of acronyms.