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Progress Report on 2011 Baseline Study on Good Regulatory Practices

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Executive Summary

Earlier work done by APEC has shown the dynamism in adopting and strengthening the application of Good Regulatory Practices (GRPs) across APEC economies. Each of the 21 economies has made visible progress in recent years in applying GRPs in domestic regulatory activities.

This 2013 survey of the use of selected GRPs and comparison with APEC's 2011 GRP Baseline Report confirm that APEC economies continue to invest substantial political and financial resources in improving the quality of their domestic regulatory regimes. The rate of change in the use of GRPs has not slowed from 2011 to 2013; rather, it is accelerating, and there is more attention currently to improving the application of GRPs to get meaningful results on the ground. For example, the number of economies that apply no form of regulatory impact analysis (RIA) has dropped from 7 in 2011 to 5 in 2013. It can be fairly concluded that RIA has become a norm of economic management in the APEC region. More economies have adopted regulatory quality policies and more economies have institutions to apply those policies. By contrast, there have been fewer improvements in regulatory transparency and consultation from 2011 to 2013 in the APEC region.

There is growing demand in the APEC region for more concrete and operational information on GRPs that produce results. In support of this trend, APEC institutions have opportunity to enhance the effective application of GRPs by promoting learning across the region, and the design of robust and effective GRPs as they are adapted to the context in each economy.

1. Background

This report updates progress, during the period 2011 to 2013, in adopting selected good regulatory practices recommended by the 2005 APEC-OECD Integrated Checklist on Regulatory Reform. It covers 16 of the 21 APEC economies.¹ This report should be read in conjunction with the 2011 report, *Good Regulatory Practices in APEC Member Economies Baseline Study* (2011/CSOM/032, Agenda Item: 6c)), because it omits much of the detail and many examples given in the earlier report.

The principles of the 2005 APEC-OECD Integrated Checklist on Regulatory Reform set out APEC's commitment to Good Regulatory Practices (GRPs) on regulatory quality, competition policy, and market openness. The Checklist reflects an integrated rule-making approach, emphasizing key good governance principles, such as accountability, consultation, and transparency. This document has helped many economies improve their regulatory systems, including by drawing attention to the fact that sustained and active political support is needed to sustain regulatory reforms. However, implementation of GRPs has been mixed among APEC economies.

In 2011, Senior Officials agreed that APEC should consider concrete, specific actions that economies can take by 2013 to strengthen the implementation of GRP in the areas of internal coordination of regulatory work, use of regulatory impact analysis (RIA), and public consultation mechanisms. To support this self-examination, APEC member economies endorsed in 2011 a US self-funded study through APEC TATF (2011 Good Regulatory Practices in APEC Member Economies Baseline Study (2011/CSOM/032, Agenda Item: 6c)). The study examined economies' implementation in three key areas of the checklist:

- **Internal coordination of rulemaking activity**, particularly the ability to manage regulatory reform and coordinate with trade and competition officials
- **Regulatory impact assessment (RIA)**, particularly the capacity to ensure that better policy options are chosen by establishing a systematic and consistent framework for assessing the potential impacts of government action, including impacts on trade.
- **Public consultation mechanisms**, particularly “publication for comment” and other practices that allow wide access, and the quality of consultation mechanisms

That study found that all APEC economies have implemented various aspects of GRPs, but that there is great diversity in the application of various GRPs. This was as expected, since it is widely agreed and supported by many years of work in this field, that application of GRPs should not follow a rigid format. It is entirely possible that an economy can achieve good

¹ The economies not included in this report are People's Republic of China, Indonesia, Papua New Guinea, Thailand, and Philippines. If these economies provide responses to the survey in the near future, the report will be revised accordingly to take into account their input.

results by following something different from the established good practice, or by applying very well only a few selected GRPs that are particularly relevant to its priorities and needs. For that reason, the 2011 study did not score or rank individual economies, but attempted to identify, across 21 economies, where more attention to good regulatory practices is likely to yield better outcomes.

Yet, while the form of GRPs might be different among economies, the functions of the GRPs (such as transparency, regulatory efficiency, trade-friendliness, and domestic capacity for regulatory reform) have been shown to be universally important to economic performance. Lack of regulatory transparency, for example, increases the risks and costs of doing business, and slows trade and investment, in every economy where it occurs.

The economic relevance of GRPs is true not only domestically, where regulatory reform has become a core component of domestic microeconomic and competitiveness strategies, but also internationally. It is widely understood today that regulatory quality is a shared value among APEC member economies because the quality of regulation in one member affects the opportunities and wealth of other members connected by trade or investment. That “shared interest” was the central logic behind the creation of the APEC-OECD Integrated Checklist on Regulatory Reform.

The specific GRPs contained in the 2005 Checklist and discussed in the 2011 baseline report should be seen as choices that have worked well in many economies in achieving results, and should be considered as good options by APEC economies. Institutional relations and procedures that safeguard the quality of regulations are today at the heart of a modern domestic regulatory system. To support market openness, much more precise and effective regulatory reform in economic and social policy content, as well as reform to open up the processes of making regulations, will be needed in the APEC region. GRPs can guide the design of such reforms, and avoid the loss of time and resources caused by failed reforms.

The adoption of GRPs has important social dimensions as well as economic dimension. The quality of the regulatory system must be improved during a period of rapid economic growth to ensure that rapid growth does not open the public to horrific health, safety, and environmental risks arising from industrial failures. In other words, an effective legal infrastructure is needed to improve the *quality* of economic development in parallel with rapid growth in the *quantity* of economic production. Reforms that create effective rules to protect social interests also support private investment and business development. This insight about the connection between economic and social needs is in the mainstream of thinking today about sustainable economic development, and GRPs are widely seen today as contributing both to economic and social development.

2. Purpose of Updating Baseline Report

Since the information collection for the 2011 study was concluded in August 2011, only 24 months have passed. This is not a great deal of time to substantially strengthen the implementation of the GRPs identified in the 2011 report. However, three points should be noted:

- The 2011 report found substantial “dynamism in GRP across the APEC economies. Each economy has made progress in applying GRP in domestic regulation. Some have made substantial and rapid progress.” This implies that some economies might have important changes to report in this time period.
- The 2011 study found that, while progress was clear in many economies, “there is still an enormous agenda ahead in implementing the GRP recommended in the APEC-OECD Checklist.” This agenda allows many opportunities for economies to move ahead.
- Most important, changes over time are much more important to the future economic prospects in the APEC region than a static view of where economies are at any one point in time. This update permits APEC economies to chart trends, and to identify economies and areas that demonstrate good practice.

These points highlight the relevance of an update in 2013 – to document the continuing change in GRPs among APEC economies against key areas of the Checklist, and to provide a clearer idea of the trends in GRPs, and where they are occurring, and not occurring.

3. Method and Timing of Update

The 2011 report contained two important components. A summary report reviewed patterns of implementation of GRPs across the APEC region and presented examples from many economies. An annex to the report contained summaries of GRPs in each of the 21 APEC Members, using an identical format for each summary. The information for the summary reports was collected using existing documents and sources, and the draft summaries were reviewed and commented on by each economy.

The 2011 report used a highly structured approach based on common questions, indicators, and definitions in order to provide a more rigorous and consistent view across many economies. The 2011 report identified practices using the following approach:

- Three areas of the checklist were included in the report: internal coordination of rulemaking activity; regulatory impact assessment; and public consultation mechanisms. These areas are at the core of the “better regulation” agenda successfully applied around the world in economies with different economic strategies, legal systems, and administrative cultures.
- To provide more precision and consistency in understanding the application of GRPs in the three key areas, 13 questions were identified and answered for each of the 21 economies.
- Across the 13 main questions, 57 key quality indicators were assessed for each economy.

This method of precise questions and indicators was adapted from the review process developed by the OECD in 1997, and more recently applied by the World Bank/IFC. It permitted a fairly rapid approach to the review and provided opportunities for correction and completion by Member economies, but had limitations. The brief summaries did not contain the enormous contextual information needed for in-depth reviews. Also, the summaries focused on formal policies, not the quality of application of the formal policy framework. The actual results of GRPs in an economy might be different from the formal policies. A highly developed consultation process that is not respected in one economy, for example, might produce worse results than a simpler process in another economy where implementation is more successful. Assessing the actual implementation of GRPs in each economy is a much larger task that cannot be completed without more detailed reviews.

The 2013 update follows the method of the 2011 report, for two reasons: a structured approach based on common questions and definitions continues to be necessary to provide a consistent and relevant view across many economies, and it is necessary to follow the content of the original report to satisfy the purpose of identifying trends across time for APEC economies. Annex 1 contains the *Request for information for the update to the 2011 baseline study on GRPs*.

4. Comparing Progress on GRPs, 2011 and 2013

The 2011 baseline report found widespread dynamism in GRPs across APEC economies. Each of the 21 economies had made visible progress in recent years in applying GRPs in domestic regulatory activities. Progress has continued and even accelerated in the two years since 2011. Significantly more economies are implementing the GRPs reviewed in 2013 than in 2011, and economies that have already adopted the GRPs are investing substantial political and financial resources in strengthening and widening the application of the GRPs.

Yet the report found important gaps and mapped out the enormous agenda ahead in implementing the GRPs recommended in the 2005 checklist. The intensity of application of several GRPs in 2011 and in 2013 is indicated below:

Table 1

Summary of Intensity of Application of Selected GRP in APEC Economies

2011	2013 changes
STRONG (FREQUENT TO UNIVERSAL APPLICATION)	
Does the government systematically review regulations for cost and effectiveness?	Stronger
MODERATE (ABOUT HALF OF APEC ECONOMIES)	
Is a regulatory reform strategy adopted at the center of government?	Still Moderate but slightly stronger
Has the government published a set of good regulatory principles applicable across the government?	Still Moderate but stronger
Does the government have a capacity to manage a government-wide program of regulatory reform?	Still Moderate, but substantially stronger
Is there a mandatory RIA process?	Moved upward to Strong
Is feedback given to stakeholders after consultation is completed?	Still Moderate, but slightly stronger
WEAK TO MODERATE (LESS THAN HALF OF APEC ECONOMIES)	
Does the content of the RIA meet good practices?	Moved upward to moderate
Are draft legal documents and RIAs published for comment before adoption?	Still weak to Moderate
Does the government publish at least annually a regulatory/legislative plan?	Moved upward to Moderate
WEAK (A SMALLER MINORITY OF APEC ECONOMIES)	
Are trade and competition principles integrated into regulatory reviews and analysis?	Still Weak, with some improvement in trade and competition impacts in RIA

2011	2013 changes
Provide plainly written, clear, and concise draft measures for public comment with adequate time for review, so that stakeholders and government can have a genuine dialogue that leads to improved regulatory outcomes	Still Weak

REVIEW OF GRPs RELEVANT TO “INTERNAL COORDINATION OF RULEMAKING ACTIVITY”

Conclusion: Performance on this GRP was moderate in 2011 and in 2013 but is improving.

Is a regulatory reform strategy adopted at the center of government?

The OECD has long recommended that economies “Adopt at the political level broad programmes of regulatory reform that establish clear objectives and frameworks for implementation.” The APEC-OECD Checklist restates this GRP as “To what extent is there an integrated policy for regulatory reform that sets out principles dealing with regulatory, competition and market openness policies?” This recommendation for an explicit and politically accepted regulatory reform policy is based on long-standing awareness of how regulatory reforms fail: they are isolated and marginal changes to large systems, and therefore unsustainable; they do not have enough support of the political level of government to survive resistance from interests who do not want reform; they do not integrate the various components of good regulation such as efficiency, transparency, competition, and market openness; and they do not have clear goals and objectives that enabled them to produce good results that are visible and significant.

The 2011 report found that performance along this GRP was moderate in APEC economies. Out of 21 economies, a little more than half had an explicit strategy and the rest did not. Of those that did not, various elements of good regulatory practice were integrated into other kinds of domestic strategies. For example, it is common to have efficiency goals for regulation in competitiveness and domestic development strategies, as in Malaysia, China, Brunei, Papua New Guinea, and The Philippines. GRPs were integrated into strategies for institutional development and public sector reform, in legal reforms such as administrative procedure laws, as in Viet Nam, and in targeted sectoral reforms, as in China.

The table below compares the situation in 2013 to 2011. Performance is still moderate, but improving. The Russian Federation has adopted a domestic regulatory reform strategy, moving from earlier and more general policies, and five economies with existing strategies have revised them to widen their scope and improve effectiveness. Malaysia, for example, adopted the National Policy on the Development and Implementation of Regulations, which took effect from 15 July 2013, and the Best Practice Regulation Handbook to ensure the adoption of best regulatory practices by all federal government agencies.

Table 2

Is there a regulatory reform strategy adopted at the center of government?

Answer	Number of economies, 2011	Number of economies, 2013
Yes, an explicit strategy	12	13

Explicit strategy deepened, improved 2011-2013	-	5
Not an explicit strategy	9	7
Elements of GRP referenced in other domestic strategies	6	8

Economies that have adopted or improved domestic regulatory reform strategies

Australia: In December 2012, the Australian Government announced Better Regulation Measures to further strengthen regulatory policy and to improve the development of regulations and to improve regulator performance. The Government's whole of government approach to reducing the regulatory burden for individuals, businesses and community organisations includes a \$1 billion annual target for the reduction of red and green tape; auditing and costing by Australian Government departments of existing regulatory burdens; identification of regulations for reform or repeal; reforms to the regulatory impact assessment process; in-depth reviews of regulation within specific sectors; and reforms to improve the behavior of regulators. All Cabinet submissions will include a Regulatory Impact Statement and departments will need to establish stronger public consultation mechanisms.

In 2012, the Productivity Commission, the Australian Government's independent research and advisory body on a range of economic, social and environmental issues, assessed that the full implementation of the 17 reforms assessed under the National Partnership Agreement to Deliver a Seamless National Economy could reduce business and other costs by around \$4 billion per year (in 2012 dollars).

Canada: A new Cabinet Directive on Regulatory Management came into effect on April 1, 2012. It directs federal departments and agencies to implement a number of new regulatory reforms and adds a number of additional requirements to the previous 2007 Cabinet Directive on Streamlining Regulation

Malaysia: The Malaysia Productivity Corporation (MPC) has produced the *National Policy on the Development and Implementation of Regulations*, which took effect from 15 July 2013, and the *Best Practice Regulation Handbook* to ensure the adoption of best regulatory practices by all federal government agencies. These two documents provide guidelines to ensure the implementation of the Best Practice Regulation system in the Ministries and Agencies.

Mexico: The domestic program was expanded in 2011 to states and municipalities. A Common Agenda for Regulatory Improvement for states and municipalities was signed. The Common Agenda provides to the states and municipalities a full regulatory governance system, including: establish the Regulatory Reform Policy at the constitutional and legal level; create a public authority for the implementation and supervision of regulatory reform; and, implement systems, methods and procedures to implement regulatory impact assessments and public consultation at the administrative level, both ex-ante and ex-post, in order to measure the benefits, costs and potential risks of existing and draft regulation, and to identify areas of opportunity to promote competition, transparency and citizen participation.

New Zealand: The 2013 Regulatory Stewardship Expectations of the Cabinet has replaced the 2009 Government Statement on Regulation. Regulatory Stewardship Expectations lays out a series of performance standards for the quality of regulations and holds departments explicitly accountable for ensuring that they are meeting the Cabinet's regulatory

expectations. Monitoring should be built into the Chief Executive performance management framework. The new approach is built on the continuing idea that “An efficient and effective regulatory environment is vital for supporting New Zealand’s economic performance.”

Russia: A roadmap for “Enhancing the quality of the regulatory environment for business” was approved by Federal Government decree on June 11, 2013 (№ 953-p). The Directive was prepared by the Ministry of Economic Development as part of the National Entrepreneurial Initiative for Improving the Investment Climate in Russia. The roadmap sets out measures to improve government regulation of business and is based on proposals of the business community.

Chinese Taipei: In September 2012, Chinese Taipei incorporated several GRP elements, including RIA, into the work items of the government’s “Action Program for the Economic Power-up Plan.”

Does the government publish a regulatory and/or legislative plan at least annually?

Conclusion: Performance along this GRP in 2011 was weak to moderate in APEC economies. By 2013, this improved marginally.

Preparation and publication of an annual regulatory and legislative plan is a good practice that is based on the APEC-OECD Checklist question: “*What are the accountability mechanisms that assure the effective implementation of regulatory, competition and market openness policies?*” Relatively neglected as a management tool in the OECD and APEC work, the annual regulatory planning process greatly improves the quality of regulation and regulatory in several ways:

- Preparation of the annual plan improves transparency of the regulatory activities in the government, with respect to the center of government, other regulators, and stakeholders;
- Preparation of the plan improves orderliness and predictability of action by regulators, and provides a good opportunity to ensure that the regulatory development process includes key quality inputs such as inter-ministerial consultation, stakeholder consultation and appropriate research in impact assessment;
- The annual plan improves consultation and participation by stakeholders by providing advance warning of the future activities in the government;
- The annual plan improves the management capacities of the government by providing a management tool for setting priorities, coordinating, sequencing regulatory activities, and ensuring that adequate quality control is built into the regulatory/legislative schedule.

Particularly for economies that are suffering from high levels of regulatory unpredictability, which increases the risks for investors and other participants in the market, the annual regulatory and legislative plan provides an excellent and low-cost means to reduce the risk of unexpected or nontransparent activity that would harm economic performance.

Performance along this GRP in 2011 was **weak to moderate** in APEC economies. The summary table below shows that, out of 21 economies, less than half published some kind of annual regulatory plan. This had improved marginally by 2013 with the addition of one

additional economy (Malaysia). Two economies had improved their regulatory plans. Australia, for example, states that, from 30 June 2013, the Commonwealth Annual Regulatory Planning and Regulators (CARPR) website will provide a single access point for business and other stakeholders to access information on Commonwealth regulatory activities, including the agenda.

Table 3

Does the government publish at least annually a regulatory/legislative plan?

Answer	Number of economies, 2011	Number of economies, 2013
Yes	10	11
Annual plan improved 2011-2013		2
No	11	10

With the IT tools available today, preparation and publication of an annual regulatory and legislative plan would seem to be a low-cost investment with potentially high returns increasing the predictability and transparency of domestic regulatory systems.

Economies that have adopted or improved on publishing a regulatory/legislative plan at least annually

Australia: From 30 June 2013, the Commonwealth Annual Regulatory Planning and Regulators (CARPR) website will provide a single access point for business and other stakeholders to access information on Commonwealth regulatory activities. The CARPR website consolidates the Annual Regulatory Plans prepared by Australian Commonwealth Government departments and agencies on a single website. The Australian Commonwealth Government has also committed to the development of a whole-of-government annual regulatory plan in 2013-14. Departments will also begin recording red and green tape reductions in their public annual reports.

Malaysia: The intent to publish an annual regulatory plan is incorporated into the Best Practice Regulation Handbook and this will take effect after the circular on GRP is issued.

Mexico: Mexico strengthened its existing regulatory planning by adopting a legal mandate for a regulatory agenda, at least every two years as part of the 2011-2012 Mexico Biennial Regulatory Program that aims to cut 25% of the administrative burdens from federal government formalities.

New Zealand: In January 2013, the Treasury published Regulatory Planning Guidance for Departments Annual Portfolio Regulatory Plans. Under the guidance, Departments prepare Annual Portfolio Regulatory Plans for the portfolios they administer. Each plan is discussed with and signed off by the responsible Minister. Annual Portfolio Regulatory Plans list all regulatory instruments that departments anticipate will be changed (either by being introduced, amended, or repealed) over the next year.

Has the government published a set of good regulatory principles applicable across the government?

Conclusion: APEC economies saw improvement in this GRP as compared to performance in 2011, and it appears that most or all of the APEC economies can agree on the core principles of transparency and efficiency, which might suggest a channel for future APEC cooperative activity.

The core of the OECD work has been the creation of a guiding set of explicit regulatory quality principles that will improve the results of the regulatory activities of governments. The OECD has recommended that governments “Establish principles of “good regulation”, drawing on the 1995 OECD Recommendation on Improving the Quality of Government Regulation.” This GRP is stated in the APEC-OECD Checklist as “Such a policy often takes the form of a statement setting out principles to govern regulatory reform which provides strong guidance and benchmarks for action by officials, and also sets out what the public can expect from government regarding regulation.”

The purpose of such principles is stated in the Checklist: explicit quality principles are to provide a basis for guiding government decisions on regulation across the government. If a government does not have a clear statement of what the quality of regulation means, how can it expect that ministries and regulators across the entire government know how to design and implement good regulation? A statement of the regulatory quality that is expected increases accountability and performance across the government, while acting as a public government commitment to citizens in the economy that its regulatory activities will meet defined quality standards.

Performance along this GRP was *moderate* in 2011 in APEC economies. The summary table below shows that, out of 21 economies, 13 had published regulatory quality principles, and eight had not. However, other kinds of principles stated by governments that are not explicitly related to regulatory activities may, in fact, be quite relevant to regulatory activities. Almost all of the economies have adopted other “good governance” or economic principles that are similar to some GRPs. An example is a commitment to transparency and publication of government policy, which might be translated as a commitment to transparency in regulatory development. Regulators might be following “good governance principles” that are not explicitly called “regulatory quality principles”.

Performance improved on this GRP, with two additional economies (Malaysia and Russia) adopting explicit regulatory quality principles. Three other economies made improvements in the principles to be applied as part of their revision of their domestic regulatory strategies.

Table 4

Has the government published a set of good regulatory principles applicable across the government?

Answer	Number of economies, 2011	Number of economies, 2013
Yes	13	15
GRP Principles strengthened 2011-2013		3
No	8	6

The most common principles are those on low-cost regulation or efficient government, or regulation that is consistent with market needs, or regulation that needs other efficiency criteria such as benefit cost tests. Some 19 APEC economies have adopted principles such as these to guide government action.

Transparency principles are the next most common. Twelve economies adopted principles calling for various forms of regulatory transparency and consultation by 2011, and this improved to 14 by 2013. It appears that most or all of the APEC economies can agree on the core principles of transparency and efficiency, which might suggest a channel for future APEC cooperative activity.

There is less explicit agreement on other important principles:

- In 2011, 5 of the 13 economies with explicit regulatory quality principles had a principle on consistency /coordination with other legal instruments. By 2013, this had improved marginally to 6 out of 14 economies. This lack of attention to consistency is odd, because lack of consistency across regulations is one of the most common complaints heard from businesses about the quality of regulatory systems in the APEC region.
- In 2011, only 6 of the economies with explicit regulatory quality principles included principles on trade openness or competition, or compliance with trade and investment commitments. This had increased to 8 by 2013, a significant increase, but still a significant minority of APEC economies. Here, the Checklist is clearly correct when it states:

If competition and market openness considerations are to be more closely integrated into the regulatory management system, including both primary and secondary rule-making and reviews of the stock of existing regulatory legislation, then this needs to be reflected in institutional structures, policy development processes, administrative procedures, official responsibilities, and accountability arrangements.

Economies that have adopted or improved on publishing a set of good regulatory principles applicable across the government

Australia: The National Compact on Regulatory and Competition Reform was signed by First Ministers of the Australian and state and territory ministers, the President of the Australian Local Government Association and representatives from business groups in December 2012. The Compact sets out principles to guide regulatory reform efforts and how governments and business will work together to develop, implement and review significant national regulatory and competition reforms. Governments will, among other duties:

- Promote competition through effective oversight of, and support for, well-functioning markets.
- Free the business environment from unnecessary regulation by reviewing and removing regulation that is no longer necessary or failing to achieve its original purpose, and reducing the rate of change of regulation.
- Prioritise reforms that will provide the biggest boost to productivity and ensure the reform agenda remains focused and feasible.
- Engage early, engage genuinely and consult at each stage of the reform process.
- Apply best-practice RIA and be responsible for demonstrating that the benefits of regulations outweigh the costs.

- Be flexible in the approach taken to regulation. Unnecessary duplication and overlap between jurisdictions will be avoided and national market approaches adopted when appropriate. However, in some circumstances bilateral agreements, multilateral approaches, or competition between jurisdictions will lead to the best outcome.
- Ensure regulators adopt a risk-based and best-practice approach to implementation and enforcement of regulation.
- Engage early, engage genuinely and consult at each stage of the reform process.
- Apply best-practice regulation impact assessment and ultimately be responsible for demonstrating that the benefits of regulations outweigh the costs, including having regard to the differential impact and experience of regulation on small and large businesses.
- Be flexible in the approach taken to regulation. Unnecessary duplication and overlap between jurisdictions will be avoided and national market approaches adopted when appropriate. However, in some circumstances bilateral agreements, multilateral approaches, or competition between jurisdictions will lead to the best outcome.
- Ensure regulators adopt a risk-based and best-practice approach to implementation and enforcement of regulation, and there are effective mechanisms for business to provide feedback on regulators' performance

Russia: Principles of publicity and transparency during preparation of regulatory decisions of the Government of the Russian Federation were implemented in the Decree of the Government of August 25, 2012 № 851 «On the procedure of disclosing by the federal bodies of executive power the information about preparation of draft regulations and results of its public discussion». The principle of efficiency assessment of planned regulatory decisions of the Government was strengthened in the Decree of the Government of July 29, 2011 № 633 «On examination of normative legal acts of federal executive authorities aimed at identifying their provisions, unreasonably complicating management of business and investment activities, and on amendments to certain acts of the Government of the Russian Federation»,

Does the government systematically review regulations for cost and effectiveness?

Conclusion: Investment in regulatory review is high and seems to be increasing across the APEC region. Performance along this GRP was strong in 2011 and improved even further by 2013. 100% of APEC economies have some kind of regulatory review underway.

The emphasis by the OECD and APEC on the review of existing regulations is based on a regulatory failure that is universal. Without some system of regular regulatory review, regulatory systems become outdated, inconsistent, and inefficient, in many cases actively damaging economic and social development. Lack of review also leads to regulatory accumulation. The 1997 OECD report stated that, without review, regulations “are long-lasting and immutable. They survive, disappearing into regulatory jungles that, without pruning, become denser and denser.” In implementing this concept, the Checklist asks, “Are the legal basis and the economic and social impacts of existing regulations reviewed, and if so, what use is made of performance measurements?”

Regulatory reviews in APEC economies have ranged from very focused reviews, mostly organized around the rules and procedures in the *Doing Business* agenda, to the largest regulatory reviews in the world, such as those in the Republic of Korea in 1998 (11,000 regulations in 11 months) and Vietnam in 2008-2010 (6,000 regulations in two years). Many economies have programs of *ad hoc* or one-off reviews, while others have systematic annual programs of rolling reviews, in which new targets and priorities are chosen for review each year.

Investment in regulatory review is high and seems to be increasing across the APEC region. Performance along this GRP was **strong** in 2011 and has improved by 2013. The most institutionalized form of regulatory review (an annualized and regularly scheduled review program) was used in 11 of the APEC economies in 2011, and 12 by 2013. Three economies had strengthened these kinds of reviews.

But 100% of APEC economies have some kind of regulatory review underway. Those who do not have regular or annual reviews have launched one-off reviews that are targeted at specific problems, or specific sectors (16 economies in 2011, with 6 of these economies investing in strengthening these targeted reviews by 2013), or focused on the procedures included in the World Bank's *Doing Business* indicators (5 economies in 2011 - no change by 2013). A targeted review method that was popularized in Europe is increasingly spreading to the APEC region – a focus on cutting administrative costs (a subset of full regulatory costs, but the most easily measured and monetized). Mexico has adopted the Standard Cost Model (SCM) model to cut administrative costs by 25%, while Canada is focusing on administrative costs to implement its new one in-one out approach. In contrast to these more simple review methods, other economies are increasing the complexity of reviews by basing them on competition principles (Australia), cumulative impacts (United States), and performance of regulatory regimes in general (New Zealand).

The number of economies in the figure below adds up to more than 21, because some economies have launched multiple kinds of reviews, both regular and *ad hoc*.

Table 5

Does the government systematically review regulations for cost and effectiveness?

Answer	Number of economies, 2011	Number of economies, 2013
Yes. Annual program of reviews	11	12
Annual reviews improved, 2011-2013	-	3
Yes, targeted or sector based reviews	16	16
Targeted reviews improved, 2011-2013	-	6
Yes, reviews of <i>Doing Business</i> procedures	5	5
No	1	0

Effectiveness of these regulatory reviews cannot, of course, be assessed in this review. Ideally, one would assess the results of regulatory reviews against clear performance indicators. Since each economy's regulatory reviews might have different performance goals, and since only a few economies have actually reported quantitative results, evaluation of the effectiveness of different review approaches and strategies can be done only in the basis of a much more data-intensive assessment.

Some characteristics of the reviews were identified in this review. Fourteen of the regulatory reviews in 2011 were based on standard methods that included cost and effectiveness information: By 2013, four of these economies had improved the cost assessment methods in their reviews. These methods should encompass 100% of reviews, because it is difficult to imagine how regulatory review can be done effectively without clear and consistent criteria to assess the quality of the regulations under review.

Many of the reviews (14 economies) included stakeholders in one way or another. This had increased by only one economy by 2013. Some have used stakeholder input to set priorities or the scope of the review, while others used stakeholders to actually conduct the reviews through various forms of public-private cooperation. Finally, in only five economies did the reviews explicitly include issues of international trade and barriers to investment in 2011 – this was unchanged by 2013. This seems to signal a disconnect between regulatory reformers and trade issues. It is contrary to what the OECD sees as good practice. The OECD recommends that governments “Target reviews of regulations where change will yield the highest and most visible benefits, particularly regulations restricting competition and market openness, and affecting enterprises, including SMEs.”

Economies that have adopted or improved on systematically reviewing regulations for cost and effectiveness, 2011-2013

Canada: The government has adopted a mechanism to force review and reform of older regulations as new ones are adopted. The so-called One-for-One Rule will reduce administrative burden (i.e., the time and resources spent by business to show compliance with government regulations) by requiring regulators to remove an existing regulation each time they introduce a new regulation that imposes administrative burden.

Japan: In 2013, the government launched intensive regulatory reviews under the Regulatory Reform Council (RRC) in four strategic fields: health and medical treatment, energy and environment, employment and establishment of businesses. The Comprehensive Special Zone (CSZ) initiative was started in 2011.

Malaysia: Regulators must ensure that all regulations are reviewed once every 5 years.

Mexico: Mexico has adopted a legal mandate to review the regulatory stock and develop regulatory agenda at least every two years. In the 2011-2012 Mexico Biennial Regulatory Program, Mexico adopted for the first time a goal to cut 25% of the administrative burdens from federal government formalities. The method of review was the regulatory guillotine approach using the Standard Cost Model to track costs.

New Zealand: NZ continues to review priority sectors in a rolling programme, but has also adopted a wider approach to regulatory review than the instrument-by-instrument reviews typically seen. The Treasury has proposed principles for a Best Practice Regulation Model to assess 56 regulatory regimes in the NZ government. This assessment covers the ability of the regime as a whole to meet good regulatory practices.

United States: Building on previous initiatives for retrospective analysis, President Obama issued Executive Order 13610, *Identifying and Reducing Regulatory Burdens* (May 10, 2012), to institutionalize regulatory look-back and specifically require agencies to prioritize

“initiatives that will produce significant quantifiable monetary savings or significant quantifiable reductions in paperwork burdens.”

Executive Order 13610 also requires agencies to “give special consideration to initiatives that would reduce unjustified regulatory burdens or simplify or harmonize regulatory requirements imposed on small businesses.” Finally, Executive Order 13610 requires agencies to focus on “cumulative burdens” and to “give priority to reforms that would make significant progress in reducing those burdens.”

Viet Nam: The government is following up implementation of Project No. 30 on simplifying public administrative procedures through an annual review process. The Ministries, line Departments and localities must prepare annual plans for review of regulations, and carry out the reviews using standardized forms that focus on cost, and consultation with stakeholders.

Does the government have the capacity to manage a government-wide program of regulatory reform?

Conclusion: Performance along this GRP was moderate in 2011 and continues to be moderate in 2013, with some improvement.

One of the most dynamic elements of the OECD regulatory quality framework is the institutionalization of responsibilities for good regulation within the traditional management structures of a government. This element is dynamic because economies are continually revising the relationships and roles of institutions responsible for the quality of regulation. For this reason, the OECD has been reluctant to recommend any specific model for centralized quality management, and admitted in 2010 that “There is still little understanding on what specific institutional setup— or more precisely, governance mechanisms to prepare new rules and shape regulatory regimes – should be in place to offer the performance in a specific context.”² Yet, without knowing what approach works best, there is widespread acceptance that some kind of whole of government oversight of regulatory quality improves results. There are very few, if any, cases, in which regulators spontaneously reformed themselves. The APEC-OECD Checklist asks a functional question, “To what extent are there effective inter-ministerial mechanisms for managing and coordinating regulatory reform and integrating competition and market openness considerations into regulatory management systems?”

Performance along this GRP was *moderate* in 2011 and continues to be moderate in 2013, with some improvement. The approach taken in the review is to determine if there is some kind of centralized body with explicit authority to manage and coordinate a multi-year program regulatory reform. Such authorities can range from case-by-case regulatory reviews, to managing inter-ministerial processes, to actual program implementation such as government-wide regulatory reviews. Eleven of the APEC economies had created some kind

² Cordova-Novion, C. and S. Jacobzone (2011), “Strengthening the Institutional Setting for Regulatory

Reform: The Experience from OECD Countries”, OECD Working Papers on Public Governance, No. 19, OECD Publishing.

of central body or authority explicitly tasked with oversight of regulation by 2011, and two more economies joined this group by 2013. Three existing bodies were strengthened in their authorities in 2011-2013. Given the difficulty of this institutional reform, that level of improvement is substantial.

Table 6

Does the government have a capacity to manage a government-wide program of regulatory reform?

Answer	Number of economies, 2011	Number of economies, 2013
Yes, a central body or authority explicitly tasked with oversight of regulatory quality	11	13
Capacity strengthened, 2011-2013	-	3
No	10	8

This is not the whole story, however. While only 13 economies have created dedicated bodies with explicit authorities to oversee long-term programs of regulatory reform, these and other economies have used many other bodies with other authorities and responsibilities to take on some aspect of regulatory reform, usually ad hoc or one-off reforms. If we include these kinds of ad hoc bodies in the analysis, most of the 21 APEC economies are managing regulatory reform with some kind of central authority that is accountable to the top political level of the government and has an explicit cross government mandate to promote and organize some kind of regulatory reform initiative, even if only a short-term project.

The range of bodies engaged in regulatory reform activities is again diverse. They include cabinet offices, trade bodies, general economic policy coordinators and domestic development planning agencies, public service delivery and reform units, ministries of industry or commerce, units to facilitate business services, law reform committees, and special task forces.

Again, the effectiveness of these central bodies cannot be determined in this review. There are some indications however, that their effectiveness could be increased. For example, while 15 of these bodies monitor results and report on performance, only a few of them set clear goals for regulatory reforms, and publish schedules and deadlines for the work. This means that many of them are working under very general mandates or are actually unclear about what exactly they are trying to accomplish. It is likely that their accountability for performance could be improved with some basic performance management tools.

The implications for APEC work are not very clear since international good practices themselves are not very specific about the form of central management. Agreement on their functions is clearer. They should be able to coordinate across regulatory jurisdictions, meaning that they should be able to take a whole of government perspective. They should be able to take a long-term perspective, meaning that they should not be *ad hoc* special task forces focused on a single reform. They should be able to focus on regulatory quality, meaning that they are dedicated and expert, not simply added on to a body that already is overloaded with other issues. They should be able to take a consistent approach across government even against resistance, meaning that they should be accountable to high political level. APEC should be able to foster the expertise of such units by creating a more focused network in which these units come together to trade experiences, engage in joint training, set up staff exchanges, and even set up peer review mechanisms.

Economies that have adopted or improved on having capacity to manage a government-wide program of regulatory reform

Hong Kong, China: Prior endorsement from the Policy Committee, comprised of all ministers and principal officials, is required for new policies. Starting from August 2012, this mechanism was strengthened by setting up several specific policy groups under the Committee. These groups provide an institutional platform for a smaller group of senior officials of government agencies concerned to be involved early in the process of policy formulation, including evaluation of options, and identifying and resolving policy, resource and political issues.

Japan: The Regulatory Reform Council (RRC) was established in January 2013. The RRC is a council to respond to the consultation of the Prime Minister from the perspective of promoting measures on basic and important policies related to economy, to research and examine regulatory reforms for carrying forward the structural reform of economy and society, and to give opinions to the Prime Minister on relevant items.

Malaysia: The government has developed an institutional structure to oversee implementation of the new national regulatory strategy. The National Development Planning Committee (NDPC) has been entrusted to assume the role of a gatekeeper for improving the process and quality of developing a new business regulation.

Russian Federation: The Ministry for Economic Development (MED) is responsible for promoting and overseeing regulatory reform. MED previously conducted RIA of other ministries' legislative proposals, but under recent decrees has become more of an oversight agency checking the quality of the work by the other ministries and agencies

Are trade and competition principles integrated into regulatory reviews and analysis?

Conclusion: Across the region, performance along this GRP was weak in 2011 and has barely improved by 2013.

Both the OECD principles and the APEC-OECD Checklist emphasize the importance of integrating trade and competition principles into regulatory decisions. The OECD states that good regulation should be “compatible as far as possible with competition, trade and investment-facilitating principles at domestic and international levels.” The APEC-OECD Checklist asks, “To what extent are there mechanisms in regulatory decision making to foster awareness of trade and investment implications?” The answer, unfortunately, is “not to a very great extent.”

Performance along this GRP was *weak* in 2011 and has barely improved by 2013. The summary table below shows that only a handful of APEC economies, in 2013, explicitly include trade or competition authorities or principles into regulatory drafting and/or regulatory reviews. The only real improvement has been through the RIA, where there is somewhat more consideration of trade and competition impacts in 2013 than there was in 2011. However, the effectiveness of the RIA methods for these two impacts is still untested, and the extent to which trade and competition authorities actually influence or provide substantive input into the regulatory process is unclear.

Table 7*Are trade and competition principles integrated into regulatory reviews and analysis?*

Answer	Number of economies, 2011	Number of economies, 2013
Consultation by regulators with trade authorities in drafting process	5	6
Coordination of regulatory reviews with trade authorities	8	8
Inclusion of trade impacts in RIA	4	5 (2 improved 2011-2013)
Consultation by regulators with competition authorities in drafting process	6	7
Coordination of regulatory reviews with competition authorities	7	7 (1 improved 2011-2013)
Inclusion of competition impacts in RIA	8	10

Economies that have adopted or improved on integrating trade and competition principles into regulatory reviews and analysis

Canada: The Cabinet Directive on Regulatory Management requires that departments and agencies comply with Canada's international obligations. Furthermore, the Regulatory Impact Analysis requires the consideration of international cooperation and the limitation and justification of specific Canadian requirements. The Canadian Cost-Benefit Analysis Guide has explicit requirements on international and regional issues. For medium and high impact regulations, the RIAS requires a statement on domestic and international coordination and cooperation including trade impacts. The Guide states that, "By limiting the number of specific Canadian requirements, one can often obtain the same level of benefits with minimal trade impacts if any."

Mexico: The Regulatory Improvement Program specifies that proposed regulation should not impose unnecessary barriers to market competition and trade and is enforced by the COFEMER. In November 2012, Mexico included in the regulatory improvement process a competition analysis checklist with 17 questions to try identify the regulations that could unnecessarily restrain competition. The RIA format includes questions to explain and evaluate suitable alternatives and impacts. This improvement allows competition analysis to be integrated in the policymaking process at an early stage. An official agreement was signed and published by which the Mexican Competition Authority is obligated to provide its opinion on these regulatory proposals to be integrated within the RIA process and with the final opinions by COFEMER.

United States: Integration of Trade Impacts: Executive Order 13609, "Promoting International Regulatory Cooperation", issued in May 2012, emphasizes the importance of international regulatory cooperation as a key tool for eliminating unnecessary differences in regulation between the United States and its major trading partners. Among other things, Executive Order 13609 provides that agencies that are required to submit a Regulatory Plan must "include in that plan a summary of... international regulatory cooperation activities that are reasonably anticipated to lead to significant regulations" and consider "reforms... that address unnecessary differences in regulatory requirements between the United States and its major trading partners."

REVIEW OF GRPs RELEVANT TO “REGULATORY IMPACT ASSESSMENT”

Conclusion: Performance along this GRP was moderate in 2011, but has moved upward to strong by 2013. It can now be fairly concluded that RIA has become a norm of economic management in the APEC region. Even more impressive is the investment made by several economies in improving the quality of their RIAs actually performed. Continuing a trend that began several years ago, RIA continues to be developed within the mainstream of good policy making and economic management.

No regulatory quality tool is better known than regulatory impact assessment (RIA). RIA is used routinely in over 60 economies today, up from two or three in 1980. In the structure of government management, RIA has developed as the method for assessing the full impacts of government action, including both the budget costs and the non-budget regulatory costs that have long been invisible and therefore ignored. RIA has always been, for the OECD, a transformative regulatory quality tool that changes not only the decisions on specific instruments, but more importantly positively changes the culture inside regulatory agencies, the accountability for regulatory performance, and the relationship between regulators and stakeholders. The APEC-OECD Checklist similarly states that:

The development of a Regulatory Impact Analysis (RIA) helps to organise and consolidate all the possible impacts and elements for the decision at various stages of policy development. In particular, RIA can become the main vehicle to systematically review the legal basis and economic impacts of existing or new regulations and to structure the adjoining decision-making process...

This report examines whether the use of RIA is required when writing new regulations. Performance along this GRP was *moderate* in 2011, but has moved upward to *strong* by 2013. The number of economies that apply no form of RIA has dropped from 7 in 2011 to 5 in 2013. It can be fairly concluded that RIA has become a norm of economic management in the APEC region.

Even more impressive is the investment made by several economies in improving the quality of their RIAs actually performed. For example, three economies published RIA Handbooks, and five economies revised RIA guidance to strengthen the problem definition (probably the most important component of the RIA) and the identification and comparison of options. RIA training has been carried out in several APEC economies. Continuing a trend that began several years ago, RIA continues to be developed within the mainstream of good policy making and economic management.

Is there a mandatory RIA process?

Conclusion: Performance along this GRP was weak to moderate in 2011, but has moved to moderate by 2013 due to continued investment on the entire spectrum of methodological quality issues in the RIA.

However, performance varied on specific parts of the RIA process. For example, when it came to the first step of the RIA process, the problem definition, APEC economies did not perform well. This in contrast to structured analysis in terms of impacts assessed, where APEC economies showed substantially better performance in 2013.

Sixteen APEC economies adopted some form of mandatory RIA by 2013, up two from 2011, although the scope varies from economy to economy. For example, in some economies the RIA applies only to legislation, while in other economies the RIA applies only to subordinate forms of regulation. In one economy, RIA is mandatory only for technical standards. In some economies RIA is only done by one or two ministries. In one economy (Indonesia) RIA is not widely used at the central level but is used by two local governments. Methods also vary. Many of these economies apply some form of benefit cost analysis, while others use methods that can be considered partial RIA. For example, the Standard Cost Model is an example of partial RIA because it assesses only a small subset of actual regulatory costs.

Table 8

Is there a mandatory RIA process?

Answer	Number of economies, 2011	Number of economies, 2013
Yes	12	13
Partial RIA	2	3
No RIA	7	5

This indicator, while moderate, overstates the actual influence of RIA in APEC economies. A key question that should always be asked when examining a RIA system is this: What effect does the RIA have on regulatory decisions? RIA systems fail in many ways that have been well documented by the OECD and others. The 16 economies that have adopted some form of RIA are in various stages of implementation, with varying results. There are obviously severe challenges to effective application of RIA in most APEC economies.

Economies that have adopted or improved on having a mandatory RIA process

Malaysia: RIA is now required under the July 2013 regulatory policy. The National Development Planning Committee (NDPC) oversees the implementation of the National Policy on the Development and Implementation of Regulations. It monitors the RIS process, examines and endorses the adequacy of all RIS prior to submission for decision by the decision maker. Regulators are to notify Malaysia Productivity Corporation (MPC) on proposals to introduce or amend regulations. MPC will assess whether the regulator is required to submit a RIS (Regulatory Impact Statement) for the proposed regulation. The MPC is responsible for assessing the need for RIS and for performing a review of RIS for

adequacy prior to submission to the NDPC. It also provides guidance to regulators in facilitating RIA and developing RIS.

Russian Federation: On July 1, 2013, a Decree came into force to require developers of draft regulations to prepare RIAs with the participation of representatives of the professional community. A new RIA methodology was approved by Decree of the Ministry of Economic Development in May 2013.

1. Does the RIA or other explanatory document define the problem to be solved?
2. Does the impact analysis or other justification include options for solving the problem?
3. Does the impact assessment include a reasonable selection of potential major impacts, both negative and positive?
4. How are [trade friendly] alternatives to regulation assessed?

The APEC-OECD Checklist contains a series of questions about the actual analytical content of the RIA, and asks, “To what extent are clear and transparent methodologies and criteria used to analyse the regulatory impact when developing new regulations and reviewing existing regulations?”

Economies that have improved the quality of RIA application and methods.

Australia: In July 2013, the Australian Government will move to a two stage process for RIA or Regulatory Impact Statement (RIS). – an options stage and a details stage. The Commonwealth’s Office of Best Practice Regulation released a New Best Practice Regulation Handbook on 25 July 2013 setting out the new process. The guidelines provide for greater and earlier consultation, and departments will now have a greater role in certifying the adequacy of RISs. Accompanying guidance notes on cost-benefit analysis, consultation, risk analysis, independent reviews, the Small Business Advisory Committee and sunseting instruments were also released.

Hong Kong, China: A Business Compliance Cost (BCC) framework was introduced in April 2012. Prior to this, there was no uniform approach in assessing compliance costs.

Mexico: COFEMER recently reformed the RIA system to align with OECD best practice. It has included competition assessment and risk assessment, for example, and is improving quality management to improve analytical quality in the ministries. It also has put in place an ex post RIA which is mandatory for technical standards. All of these improvements are established in a published agreement and are legally binding.

New Zealand: New legislation is expected to strengthen the regulatory impact analysis expectations so that departments will improve the quality of their work. The Treasury will report on the level and quality of compliance with regulatory impact analysis requirements.

Performance along this GRP was *weak to moderate* in 2011, but has moved to moderate by 2013 due to continued investment on the entire spectrum of methodological quality issues in the RIA. APEC economies still have fairly inconsistent and weak standards for the content and methods of the RIA, but the standards are more rigorous in 2013 than in 2011. Three

more economies have issued a RIA Handbook that lays out the RIA methods, an essential precondition for the quality of RIA.

The content of the RIA methods focus more in 2013 than on 2011 on key challenges, such as the problem definition, the selection of options, the comparison of options, and the measurement of costs and benefits. The table below lists a series of fairly modest content standards for RIA, and shows the number of economies through improved in each area from 2011 to 2013.

Peru: The government has proposed in the Competitiveness Agenda 2012-2013 that legal dispositions enacted by the Executive Branch must be accompanied by a RIA in order to show the economic implications for social welfare and public spending measures (Target 51 of the Competitiveness Agenda).

Chinese Taipei: On May 16, 2012, Chinese Taipei integrated its original regulatory impact assessment and gender impact assessment into the “Regulatory and Gender Impact Assessment Checklist,” incorporating items that should be contained in RIA reports, including problem definition, policy objectives, possible options, necessity of regulation, financial, manpower and regulatory preparedness, cost-benefit analysis, and public consultation.. The checklist went fully into effect on June 1, 2013. The Council for Economic and Planning Development (CEPD) in August 2012 associated with Australia in organizing an APEC RIA workshop in Taipei, invited experts from New Zealand, Australia and Mexico to train officials responsible for rule-making or regulatory reform, and compiled the content of the instructions and discussions into teaching materials which are available online.

Table 9

Does the content of the RIA meet good practices?

	Number of economies, 2011	Number of economies in 2013
Does the RIA or other explanatory document define the problem to be solved?	10 (specific section on problem definition)	5
Does the impact analysis or other justification include options for solving the problem?	<ul style="list-style-type: none"> • 10 (RIA includes options) • 8 (require that at least one option be non-regulatory) • 7 (specify clear principles for deciding which option is best) 	<ul style="list-style-type: none"> • (RIA includes options) • 2 (require that at least one option be non-regulatory) • 1 (specify clear principles for deciding which option is best)
Does the impact assessment include a reasonable selection of potential major impacts, both negative and positive?	<ul style="list-style-type: none"> • • 8 (potential major impacts) • 5 (Impacts systematically compared for each option) • 10 (A reasoned explanation for why an option is recommended is included in the analysis or other document) 	<ul style="list-style-type: none"> • 5 (potential major impacts) • 2 (Impacts systematically compared for each option) • 2(A reasoned explanation for why an option is recommended is included in the analysis or other document)
RIA Handbook published?	• 11	• 3 more than 2011
Does analytical content of the RIA meet good standards?	<ul style="list-style-type: none"> • 10 (Structured analysis with identification of potential negative and positive impacts, even if qualitative) • 5 (Benefits are precisely stated in quantitative terms with a measurement of impacts that can be measured) 	<ul style="list-style-type: none"> • 4 (Structured analysis with identification of potential negative and positive impacts, even if qualitative) • 2 (Benefits are precisely stated in quantitative terms with a

	Number of economies, 2011	Number of economies in 2013
	<ul style="list-style-type: none"> • 10 (Direct costs are stated in monetary terms) 	measurement of impacts that can be measured) <ul style="list-style-type: none"> • 4 (Direct costs are stated in monetary terms)
How are [trade friendly] alternatives to regulation assessed?	5 (trade impacts explicitly included in RIA)	1 (trade impacts explicitly included in RIA – one more than 2011)

The first content question asks about the most important part of the RIA – the problem definition. People who have never done a RIA underestimate the importance of this step. Many regulatory failures can be traced back to the failure to understand the nature or causes of the problem being resolved through regulation. For example, governments may regulate the market in the belief that there is a market failure, when the problem is actually caused by a regulatory failure. Governments that do not understand problems often actually make things worse by regulation. If the problem definition is wrong, then the entire rest of the regulatory process will be wrong, because it is focused on the wrong problem. A structured process of defining the problem is necessary in order to ensure that the regulatory solutions are actually focused on the right issues.

APEC economies did not perform well on this indicator. In 2011, of the 12 economies that mandated full RIA, only ten required a specific section on problem definition, only seven had a standard format for the problem definition, and only five required that the baseline (or future trends in the problem if the government takes no further action) be identified. By 2013, all of the 14 economies that mandated full RIA required clear problem definitions, and around 7 require a baseline assessment.

The second content question asks about another critical element of the RIA. “Does the impact analysis or other justification include options for solving the problem?” The RIA is basically a structured process of identifying options for solving a clearly defined problem, assessing those solutions against clear criteria, ranking the solutions against the criteria, and making an informed choice about the best solution for the economy. If the RIA does not do a good job of identifying practical options, then the value of the analysis is greatly reduced.

In 2011, APEC economies using RIA did not perform very well in this content issue. In ten cases, the RIA required options, but only three economies specify that at least three options be examined. Eight of the 12 economies using RIA required that at least one option being non-regulatory, which is a good practice because it requires the regulator to step outside the usual regulatory habits and consider other potential policy tools that might solve the problem at lower cost. In 2013, attention to the options analysis had increased, with 5 economies clarifying guidance on the selection and comparison of options, and two more economies requiring that non regulatory options be considered in the RIA.

Finally, only seven of the 12 specified clear principles for deciding which option is best, which is a good practice because it reduces the discretion of the analyst to pick an option that might be politically appealing, but produces inferior results. The 2011 and 2013 principles are compared below.

Table 10*Principle for Ranking Options*

Principle for ranking options	Number of economies using this principle, 2011	Number of economies using this principle, 2013
Benefits of the option to the community outweigh the costs	3	4
The preferred option has the greatest net benefit or the largest net present value for the community, taking into account all the impacts	5	5
The preferred option is the most cost effective	2	2
The preferred option has the lowest burden or lowest cost of any option	2	3

The third group of content questions, “Does the impact assessment include a reasonable selection of potential major impacts, both negative and positive?” addresses the key question of which consequences matter in the RIA. To say that the RIA should assess costs and benefits requires that we define clearly “Which costs?” and “Which benefits?” so that the analysis can proceed consistently and predictably, focusing on the issues of most importance to the economy and the political values of the day. For this GRP, APEC economies performed better in 2011 than on the other content issues, and showed substantially better performance in 2013. The table below shows for 2011 and 2013 a series of good RIA practices that improve the clarity, consistency, quality, and credibility of the analysis.

Table 11*Structured Analysis in Terms of Impacts Assessed*

Structured analysis in terms of impacts assessed	Number of economies using this approach, 2011	Number of economies using this approach, 2013
RIA handbook or guide published	11	14
Structured analysis with identification of potential negative and positive impacts, even if qualitative	10	11
Benefits are precisely stated in quantitative terms with a measurement of impacts that can be measured	5	7
Direct costs are stated in monetary terms	10	12
Impacts of benefits and costs are systematically compared for every option examined	5	7
A reasoned explanation for why an option is recommended is included in the analysis or other document	10	11

There is still a great deal of room for improvement in this area. For example, some economies still focus on a few direct operating costs to businesses, such as the subset of costs included in the *Doing Business* indicators. This gives the impression that the RIA is only a business impact test that is meant to increase business profits. A RIA can indeed greatly reduce the direct costs to businesses of complying with government regulations, and most RIAs do measure business costs. Some economies have developed specific measurement techniques focused on business costs:

- Commonwealth of Australia: For medium-cost regulatory proposals, the Business Cost Calculator (BCC) is an information technology-based tool designed to assist policy officers estimate the business compliance costs of various policy options during the policy development process.
- Hong Kong, China: A partial RIA, called a Business Impact Assessment (BIA) framework, has been developed by the [“Be the Smart Regulator” Program](#) to help bureaus and departments assess the implications of their regulatory proposals and explore ways to minimize the regulatory impact on business.

The fourth content question, “How are [trade friendly] alternatives to regulation assessed?” returns to an issue that was discussed in earlier parts of this review. APEC economies are having a difficult time including trade impacts and alternatives in the RIA process. In 2011, only five economies explicitly included trade impacts in the RIA, and only six economies explicitly included trade officials in the consultations on the RIA. This is not much changed in 2013, although both the United States and Canada have made progress in adopting policies to address unnecessary differences in regulatory requirements between them and major trading partners.

REVIEW OF GRPS RELEVANT TO “PUBLIC CONSULTATION MECHANISMS”

1. Are draft legal documents and RIAs published for comment before adoption?
2. Provide plainly written, clear, and concise draft measures for public comment with adequate time for review, so that stakeholders and government can have a genuine dialogue that leads to improved regulatory outcomes
3. Is feedback given to stakeholders after consultation is completed?

Conclusion: Performance on the various consultation and transparency GRPs included in this review was weak to moderate in 2011, with only marginal improvements by 2013. On sum, it seems that the balance has not yet been reached. Regulators appear to have too much discretion in applying even minimal standards of good consultation, and there is not enough predictability for stakeholders in knowing how they should engage the regulatory process.

Even more than efficiency, a key characteristic of a high-quality regulatory system is transparency. Transparency reduces the risk of all the other causes of regulatory failures. With transparency, for example, problems with efficiency can be corrected more quickly and easily. One part of transparency as consultation with stakeholders, which has a number of purposes in the regulatory system. The OECD recommends that regulators “Consult with all significantly affected and potentially interested parties, whether domestic or foreign, where appropriate at the earliest possible stage while developing or reviewing regulations, ensuring that the consultation itself is timely and transparent, and that its scope is clearly understood.” The APEC-OECD Checklist recommends “Well publicised, well-organised, highly accessible and well-timed opportunities for public comment, as well as clear lines of accountability for explaining how public comments have been handled are important features of a high-level commitment to public consultation.” This review assessed a series of GRPs associated with consultation.

Performance on the various consultation and transparency GRPs included in this review was *weak to moderate* in 2011, with only marginal improvements by 2013. Most regulators in the APEC region continue to have enormous discretion about how they consult, who they consult, when they consult, what information they collect in consultation, on what documents they consult, and how they respond to consultations. The APEC-OECD checklist calls for some predictability and transparency in the consultation process, at the same time that flexibility is needed so that the regulator can adjust the consultation to the specific context. A balance is needed. On sum, it seems that the balance has not yet been reached. Regulators appear to have too much discretion in applying even minimal standards of good consultation, and there is not enough predictability for stakeholders in knowing how they should engage the regulatory process.

The first GRP assessed here is use of the simple consultation method called “publication for comment”. The review asked, “*Are draft legal documents and RIAs published for comment before adoption?*” APEC economies use a wide variety of consultation methods, which are discussed below. The reason that this review focused first on the publication of draft regulatory text for comment is that this form of consultation provides the widest access to economic actors, such as those engaged investment and trade. Because of the wide access that it provides, and because it is extremely cost-effective, governments have increasingly used publication for comment on the Internet as the minimum standard for consultation, supplemented as needed with other more proactive forms of consultation such as hearings, focus groups, advisory committees, expert groups, and so forth.

Performance along this GRP was *weak to moderate*. Of the 21 APEC economies, only 8 required that all draft legal documents be published for comment before adoption in 2011, and only 9 by 2013. Fourteen economies have some kind of legal requirement for publication in 2013, up by one from 2011, but in some cases the legal requirement applies only to some kinds of regulations, such as draft legislation, and not to others, such as subordinate regulation. A little more than half (13 in 2011, and 14 in 2013) of APEC economies do routinely publish drafts on the Internet, and nine of them have by 2013 created a centralized Web portal for consultation, which is a good practice because stakeholders can monitor a single website and reduce the time needed to participate.

Table 12

Are draft legal documents and RIAs published for comment before adoption?

Answer	Number of economies, 2011	Number of economies, 2013
Publication is required for all draft legal documents	8	9
Consultation requirement is legal requirement established by law or high level decree	13	14
Published routinely on the Internet	13	14
Publication is done on a central web portal rather than on individual ministry websites	8	9

The second GRP assessed is “Provide plainly written, clear, and concise draft measures for public comment with adequate time for review, so that stakeholders and government can have a genuine dialogue that leads to improved regulatory outcomes.” This GRP focuses on the quality of the consultation process, which is extremely important because governments invest in many consultation activities that, in practice, are not very effective due to poor design.

Performance along this GRP was *weak* in 2011 and continues to be weak in 2013. Of the 21 APEC economies, only three (including the United States, Viet Nam) have in 2013 an explicit requirement to allow at least 60 days for response to published drafts. Others require at least 30 days, or even 20. Korea has extended the minimum period from 20 days to 40 days. Most economies have no minimum requirement at all. The international standard for consultation periods, which 10 years ago was 30 days, has been extended in some economies to 60 days, and even longer in complex cases. The WTO TBT Committee has recommended with respect to Article 2.9 of the TBT Agreement a minimum comment period of 60 days. Canada requires in its Regulatory Policy that regulations covered under international trade agreements be pre-published for a minimum 75 days. Sixty days might not be needed in all cases, which is why some economies permit regulators the flexibility to decide how long they will consult, but a mandatory minimum period is a good practice because consultation is often the first victim of a lack of time. A common complaint is that regulators simply allow too little time, sometimes only a few days, for response. If consultation is to be taken seriously by stakeholders, there must be adequate time for response.

Economies that have adopted or improved on publishing draft legal documents and RIAs for comment before adoption

Australia: From 1 July 2013, an agency preparing regulations will be required to issue an options-stage RIS which will be released for public consultation. Following consultation, the details stage RIS will be finalised and provided to the decision-maker prior to the final regulatory decision. Both the options-stage RIS and the details stage RIS will be published on the OBPR website as soon as practicable from the date of the regulatory announcement.

Malaysia: Any proposed regulation or change to regulation will now involve consultation with relevant stakeholders, including the main parties affected by the proposal. Regulators will publish their draft of RIS on their website and also on the RIS portal for comment before adoption.

United States: In February 2013, Regulations.gov implemented a “read” API (Application Programming Interface) for developers to use content from Regulations.gov and develop their own sites/systems around the data. Independent reviewers believe the improvement will make public consultation more accessible and easier.

Table 13

Are plainly written, clear, and concise draft measures provided for public comment with adequate time for review?

Answer	Number of economies, 2011	Number of economies, 2013
Comment period is at least 60 days	2 (8 economies set other minimum periods)	2 (+ longer comment periods in 2 economies)
Consultation document describes the reason for the consultation	7	8 (+1 economy improved)
Consultation includes a request for comments on all the options considered	6	7 (+ 2 economies improved)
Web portal allows for online comments to be submitted	7	9 (+ 2 economies improved)
Publication is accompanied by other consultation opportunities	14	15

Other aspects of consistent consultation practices also continue to be weak. In 2013, only 7 out of the 21 economies ask stakeholders to consider all of the options, not only the solution chosen by the government. The RIA document has improved the consultation practices when it is published for comment. Only 8 economies actually prepare a consultation document describing the purpose and content of the consultation. Around 10 economies use the RIA as a consultation document. This is a good practice because the RIA describes the problem to be solved, identifies the options that were considered, identifies the consequences of various options, and explains why the government's proposed solution is the best one for the economy. This information gives the stakeholder much more scope to engage in constructive debate about the right solution. Although several economies use online publication for consultation, only seven economies permit stakeholders to submit comments online.

A strong - and a weak - aspect of consultation in APEC economies is the wide diversity of consultation methods, which include stakeholder networks, hearings, symposia, surveys, public-private committees and councils, working groups, high level advisory groups, and many more. Having available a range of consultation options is a strength, because different issues call for different kinds of information and discussion, and different stakeholders have different capacities to participate in different kinds of fora. Regulators in Hong Kong China, for example, in addition to publication, use quantitative (surveys) and qualitative (interviews, focus groups, etc) techniques to gain a full understanding of different views. Focused consultation methods that respond to the specific context can greatly increase the value of consultation.

Economies that have adopted or improved on providing plainly written, clear, and concise draft measures for public comment with adequate time for review, so that stakeholders and government can have a genuine dialogue that leads to improved regulatory outcomes

Chile: Law No. 20,500 on Associations and Community Participation in Public Management was published on the Official Gazette on February 16th, 2011. Since August 2011, this law has been implemented progressively across all government agencies, principally by including a link for “public consultation” on each government service web site where most of the new bills of law are submitted for consultation. Law 20,500 also requires that responses be given to comments.

Republic of Korea: All ministries should attach the RIA report on their website and provide opportunity for stakeholder consultations. The public can freely suggest regulatory improvements via phone, mail, individual ministry websites, or the RRC. The minimum period allowed for consultation was extended from 20 days to 40 days in 2012.

It is a weakness because, without some kind of standardization and consistency, it is very difficult for stakeholders to understand when and how to participate in the system. This is particularly true for outsiders such as potential investors and foreign trading partners. In addition, some common consultation methods raised risks of capture and bias, because they involve very narrow interests who are not representative of the diversity of interests in a modern economy and society.

The third GRP assessed with respect to consultation is this: “*Is feedback given to stakeholders after consultation is completed?*” Feedback to stakeholders is universally considered

important, because it closes the loop between the government and stakeholder. It provides assurance that stakeholder has been listened to, and that, even if the government does not agree with stakeholders' views, they have been fully considered. Sustaining a constructive relationship between stakeholders and regulators over multiple consultations requires that the regulator explain and react to the information received. This is what is meant by the APEC-OECD Checklist when it states, "Regulators should be held accountable for the consultation and how comments are handled so that the credibility of the consultation process is maintained".

Table 14

Is feedback given to stakeholders after consultation is completed?

Answer	Number of economies, 2011	Number of economies, 2013
Yes, it is required	10	12
Economies with stronger requirements in 2013	-	2
No or at the discretion of the regulator	11	9

Performance along this GRP was *moderate* in 2011 and is slightly stronger in 2013. Of the 21 APEC economies, 12 require that feedback be provided in some form, usually by explaining when the final regulation is published on the regulator reacted to the comments. Two economies strengthened the requirements for feedback between 2011 and 2013. Only two economies publish feedback on the central Web portal.

Economies that have adopted or improved on giving feedback to stakeholders after consultation is completed

Chile: Law No. 20,500 on Associations and Community Participation in Public Management was published on the Official Gazette on February 16th, 2011. This law requires that responses be given to comments.

Malaysia: Feedback is given to stakeholders after consultation is completed through written feedback responded to the comments and it is published on the RIS portal.

5. Conclusions and Key Result Areas for APEC Economies

There is no model for good regulation across very diverse economies in APEC. The 2011 baseline report and this 2013 update have documented a wide variety of practices. Many of these practices can produce beneficial results, while others can produce results that do not meet the intended objectives. Within this diversity, the core GRPs contained in the APEC-OECD Checklist are, if applied, likely to yield significant benefits across the APEC region. These practices have been correlated with better outcomes over many years in many economies, and represent an important collective asset of APEC.

Evidence on the benefits of adopting these GRPs broadly in a domestic regulatory system is accumulating. It is clear that the GRPs are directly relevant to the most pressing economic priorities facing APEC economies – investment, jobs, productivity, competitiveness, and more productive use of domestic resources, increasing overall wealth. This evidence was reviewed and summarized in 2010 by Jacobs and Ladegaard³ and presented in the 2011 baseline report.

Those benefits will not be gained from isolated, episodic, ad hoc reforms. They will be gained only through sustained, multi-year reforms that institutionalize better means of regulating into the machinery of government, which is the purpose of the GRPs reviewed here. A successful regulatory reform program in economic terms probably includes a mix of the three GRPs assessed in this report: cost-cutting aimed at one-time reductions in existing costs, and regulatory governance tools such as regular reviews of existing regulations, regulatory quality principles and oversight, better forms of RIA and consultation, which are aimed at sustaining lower costs, reducing policy risks, improving resource allocation, and building a regulatory framework for socially beneficial and trade friendly growth.

The 2011 baseline study reached some conclusions about what might be the next steps to support the mutually advantageous adoption of GRPs across the APEC region:

- Regulatory transparency, and particularly consultation, across the APEC Region should be a high priority for additional attention. The APEC region offers experience with a range of tools that can be considered.

— **Consultation.** APEC could agree on minimum standards for quality consultation system. Such standards could include good practices such as development of a central Web portal, publication for at least 30 or 60 days, clear mandatory scope for

³ Jacobs and Ladegaard, 2010

consultation including legislation and important subordinate regulations, and a requirement for written feedback after consultation is completed.

- **Planning.** When introducing quality control into a regulatory system, the forward planning system is a key component. Forward planning requires the ministries to organize themselves, to plan ahead for consultation and other quality inputs, to provide information to the center of government and to stakeholders on their plans, and to empower managers at the center of government to set priorities, to coordinate between regulatory bodies, and to insist on quality control measures to be done during the development process.
- **IT tools.** One of the most exciting developments across the APEC region is the use of IT tools such as Web portals for consultation, collection of comments and feedback stakeholders, publication of RIAs to collect information, coordination across agencies, and even centralized management of the entire regulatory system from the center, as in Korea. APEC could assist in developing functionalities and specifications of IT tools.
- **Launching more and more effective regulatory review mechanisms** would significantly boost growth in developing and transition economies where regulatory environments create high barriers to market entry and competition, moving to market-friendly regulation seems to significantly add to growth performance. Again, the APEC region offers many different approaches to regulatory review – ranging from broad domestic reviews to targeted or sectoral reviews -- that are quite adaptable to all APEC economies.

It is clear that there is a growing demand in the APEC region for more concrete and operational information on GRPs. The 2005 Checklist met the needs of the time by providing a general framework for the kinds of GRPs that would support the goals of the APEC. But as APEC economies have implemented GRPs, they want to move beyond general frameworks into the details of design and implementation. The focus now is not so much on a checklist of GRPs, but on getting real results on the ground in terms of economic growth and opportunity. This requires more detail, more specificity, more evaluation, and more technical discussions among practitioners about how to get better results investment in GRPs.

In considering how APEC could support the continuing adoption and improvement of application of GRPs, four possible approaches should be considered:

1. *More directive and smaller commitments to specific reforms.* Some of the components of GRPs could be considered to be sufficiently field-tested with such positive results across so many economies in the APEC region and other regions that they are now “best practice”. Examples of this kind of reform are
 - A. Use of a central web portal for Internet consultations and regulatory information (a one-stop-shop for consultation),
 - B. Providing at least 30 days for responses to public comments, and
 - C. Development and publication of periodic regulatory agendas.

APEC institutions could facilitate an agreement among APEC economies to universally adopt specific reforms of this kind (perhaps in a defined schedule), develop cases and other information to facilitate these reforms, and promote continual improvement in their application.

2. *Larger and more general commitments.* Following on the experience of the 2005 checklist, APEC institutions might instead seek to adopt more general commitments to selected GRPs, which it would support through continued surveys of this kind, exchange of experience and information, and development of more operational materials that could be adapted by Member economies to their own needs. The appropriate APEC institution might:
 - A. Identify challenges in adoption of GRPs, such as methods for cost assessment of new regulatory proposals, or efficient ways of meaningful consultation during regulatory development, or organizing large-scale programs of regulatory review, and agree to a focused work program in those areas to improve application. Useful materials could include technical materials that lay out options for application, assessment of economies' experiences with various approaches, and more operational checklists for design and application of these GRPs.
 - B. Choose 3-4 regulatory quality principles, and focus cooperative work on gaining agreement on practical ways to implement those principles. A high level of consensus already exists in many areas, such as regulatory transparency, regulatory market-friendliness, SME-friendliness, or trade-facilitative regulation. With respect to the last, compliance with trade and investment agreements might be another APEC priority, given the relative capacity of APEC to move forward on this particular issue. Another area for this kind of work is to map out the details of good regulatory review programs, including the role of stakeholders, the development of explicit review criteria and performance indicators, and the procedures for organizing regular or large-scale reviews. The diversity and richness of experience across APEC economies suggest that there can be quite a lot of mutual information exchange and learning in the region.
 - C. Develop technical methods that could be practically applied. The explicit inclusion of some kind of review criteria reflecting impacts on trade, investment, or competition, would be quite useful in regulatory reviews. The exact form of these review criteria could be developed by APEC, reflecting the need to have a practical review methodology that can be carried out quickly and accurately within the usual constraints of time, data, and resources. The cost effectiveness of this could be quite high, because these criteria can simply be integrated into existing regulatory review processes, thereby getting more benefit out of the same investment.
 - D. Based on the growing investment in RIA across the APEC region, this would be an obvious area for work. APEC work in the RIA area should move beyond general GRP recommendations into the groundwork of actual methods and implementation. A great of work is needed to develop practical methods of RIA, build capacities for implementation, create the procedures within which RIA is integrated at an early stage into policy processes, create quality control for RIA such as central review and stakeholder scrutiny, and develop the data resources needed to produce credible and relevant analysis. The fastest way for economies to develop RIA expertise is to work with experts in other economies in creating a system that works for them. No economy has simply adopted a RIA method or model from another economy, but every successful economy has used extensive input from other economies to test ideas, reject approaches that simply have not

worked anywhere, and tailor a system that they can use in the day to day work of regulation.

3. ***Capacity building and promoting experience:*** Another channel of work might be to develop a series of training opportunities such as workshops and case studies that can be used by Member economies as they see fit. APEC members already have had good results from supporting APEC-region training programs in areas such as RIA. Continuing and expanding these kind of training and learning services would both raise awareness of the importance of adopting GRPs, and improve the performance of GRPs that are adopted. It would be most effective if a modular approach were adopted, in which APEC economies could choose from a range of more technical to less technical training services. As noted, the value of general information is declining, while the demand for more specific and operational information is increasing.

For example, more systematic and effective inclusion of trade and competition authorities into at least major regulatory decisions could probably be organized at low cost. APEC could collect information on the processes and methods by which these authorities become involved in the day-to-day basis with regulatory decisions, and developed some good practices. It may be that training of trade and competition authorities is needed to increase their capacity to assess regulatory instruments, and to identify and recommend more trade and competition friendly alternatives. Some economies have explicitly adopted competition impact tests, such as the one developed by the OECD, but in practice these tests are quite technical and difficult to implement. Consultation with competition authorities is probably a lower cost and more effective quality control method than a complex written analysis.

4. ***Continuing to survey progress across the APEC region.*** Most international groups of economies have developed some kind of periodic tracking system to follow the activities of members in key areas. This is important for GRPs as well, because without the broad picture of where and how GRPs are being implemented, it is quite difficult to know how to facilitate continued progress. The 2011 baseline report and this 2013 update demonstrate the value of presenting a structured and rigorous picture across the APEC region. An appropriate APEC institution should consider institutionalizing, every 2 to 3 years, further progress reports.

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