
Submitted by: United States

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Advancing a decade of APEC work on Good Regulatory Practices (GRPs)

- This 2016 report advances a decade of coordinated work by APEC members to improve application of agreed GRPs.
- The 2005 APEC-OECD Integrated Checklist on Regulatory Reform lays out a voluntary GRP framework of principles for self-assessment on regulatory quality, competition policy, and market openness.
- These GRPs are important for the prosperity of the region because GRPs contribute directly to trade, investment, job creation, economic integration, and sustained economic growth in the APEC region.
- This work provides a framework for the next phase: effective application of GRPs on the ground. Providing more concrete and operational information on GRPs would support APEC economies in getting better results.
Final Report on GRPs across 21 APEC economies, 2011-2016: Content

• Based on the 2005 APEC-OECD Integrated Checklist on Regulatory Reform, this report reviews performance and changes from 2011-2016 against selected GRPs across the 21 APEC members:
  – 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 to improve transparency, such as “publication for comment” and other practices that allow wide access, and the quality of consultation mechanisms
• These three areas are at the core of the “better regulation” agenda successfully applied in economies with different economic strategies, legal systems, and administrative cultures.

This report also follows up on 2014 Ministerial Declaration

• A business survey in 2014 and the GRP survey in 2015 followed up on the GRPs identified by the “APEC Actions on Public Consultations on Proposed Regulations in the Internet Era” acknowledged by the 2014 Ministerial declaration.
• These surveys included more detailed questions on 3 components of consultation quality:
  1. Establish notice-and-comment procedures that provide all public stakeholders with a meaningful opportunity to comment on regulatory proposals,
  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, and
  3. Ensure that regulators are held publicly accountable for how they consider public comments.
Final Report on GRPs across 21 APEC economies, 2011-2016: Process


- 2014: APEC Ministerial Declaration on Implementation of APEC Actions on Public Consultations on Proposed Regulations in the Internet Era asked that this report include information on actions in that area. A business survey was circulated in 2014 for that purpose.

- June 2015: the final survey was circulated by the SCSC, and responses were received through mid-2016.

Methods of data collection

- Success stories and case studies
  - We asked economies to tell us about major advances or success in application of GRPs since 2011

- Structured survey questions to collect comparable time series data
  - Each of three surveys (2011, 2013, 2015) asked each economy to respond to 40-50 questions on adoption and implementation of the key GRPs
Final Report on GRPs across 21 APEC economies, 2011-2016: Key findings

• APEC economies continue to invest substantial political and financial resources in improving the quality of their domestic regulatory regimes.
• There is measurable progress in adopting every key GRP included in the study.
• APEC economies are converging in using key GRPs. Each of the 21 economies made visible progress from 2011 to 2016 in applying the key GRPs to domestic regulatory activities.
• The rate of change in the use of GRPs did not slow from 2011 to 2016, rather, seems to be accelerating as trade agreements and regional groupings place more emphasis on the need for better regulation as a condition of beneficial economic integration.

Changes in adoption of key GRPs in APEC economies, 2011-2016

Source: Calculated from survey results, 2011-2016
Rapid uptake of key GRPs

• Two GRPs in particular show rapid uptake:
  – Economies are moving quickly to consult using central web portals (14 economies in 2016, up from 8 in 2011), an improvement that businesses say makes consultation easier and more predictable.
  – Regulatory Impact Assessment (RIA) is becoming a norm of economic management in the APEC region. Performance along this GRP was moderate in 2011, but moved upward to strong by 2016.
  – Just as impressive is the investment made by several economies in improving the quality of how their RIAs actually perform.

More investment in implementation on the ground to improve results

• GRP application is both becoming more widespread, and better implemented on the ground.
• Even economies that have applied GRP’s for decades are engaged in continual refinement and improvement of the quality of their programs. On average, 20-30% of GRPs already adopted by 2011 had been strengthened and improved by 2016.
• The focus on application of GRPs to get meaningful results on the ground emphasizes the need for operational strategies, information exchanges, and performance measurement that move beyond the aspirational statements of the 2005 Checklist.
Ability to manage regulatory reform: Changes from 2011-2016

Good progress in improving the capacities to manage regulatory reform

- Most APEC economies now have in place the principles and institutions needed to move ahead on implementation
- A recent and valuable development is more attention to performance measurement and monitoring of GRP limitation and results.
- Every APEC economy is engaged in some form of review of existing regulations, and the quality of these reviews is improving as they become more transparent, more based in system analytical framework such as cost assessment, and more participative in including more stakeholders.
Regulatory Impact Assessment (RIA): Changes from 2011-2016

<table>
<thead>
<tr>
<th>GRP</th>
<th>% change 2011-2016</th>
<th>% of APEC economies adopting this GRP in 2011</th>
<th>% of APEC economies adopting this GRP in 2016</th>
</tr>
</thead>
<tbody>
<tr>
<td>Is there a mandatory RIA process?</td>
<td>8%</td>
<td>57%</td>
<td>62%</td>
</tr>
<tr>
<td>Does the government use any form of RIA?</td>
<td>29%</td>
<td>62%</td>
<td>90%</td>
</tr>
<tr>
<td>Are trade and competition principles integrated into regulatory reviews and analysis?</td>
<td>74%</td>
<td>30%</td>
<td>62%</td>
</tr>
</tbody>
</table>

(Color coding: Green = 80-100% adoption; Yellow = 60-80%; Red = <60%)

RIA expands as a norm of APEC rulemaking, though there are still gaps and weak application

- Adoption of RIA shows strong progress – in 2016, nearly all APEC economies use some form of RIA somewhere in their governing processes.
- Thirteen APEC economies adopted some form of broad-based and mandatory RIA by 2016, although the scope varies from economy to economy.
- Governments are paying more attention to trade and competition principles as they design and review regulations, a large improvement from the 2013 report, which found a disconnect between regulation and trade issues. There is still considerable room for improvement across the region.
- Encouragingly, standards for the content of RIA are improving toward a more structured and consistent RIA approach.
- However, adoption of RIA frameworks is usually followed by frustration in implementing RIA on the ground. Much more work in RIA training, methods, and data collection standards are needed in most economies.
2013 report found that regulatory transparency was a continuing and growing problem

- While demands for transparency are growing, there were few improvements in regulatory transparency and consultation from 2011 to 2013 in the APEC region.
- Businesses working in the APEC region reported in 2015 that regulatory transparency continues to be a concern. Non-transparent regulations create uncertainty and information asymmetries in domestic markets that reduce investment and firm expansion.

For example, 2015 report found consultation was often not systematic

- Almost 60% of businesses that responded stated that consultation was offered sometimes rarely, or never. Unpredictable consultation produces uncertainty, discretion, and unpredictability in consultation procedures.

<table>
<thead>
<tr>
<th>In the process of developing new regulations that affect your business, are businesses usually consulted or provided an opportunity to provide comments?</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Always</td>
<td>20.12%</td>
</tr>
<tr>
<td>Mostly</td>
<td>19.51%</td>
</tr>
<tr>
<td>Some of the time</td>
<td>34.76%</td>
</tr>
<tr>
<td>Rarely</td>
<td>17.07%</td>
</tr>
<tr>
<td>Never</td>
<td>8.54%</td>
</tr>
</tbody>
</table>
Regulatory transparency and public consultation: Changes from 2011-2016

By 2016, progress was positive, but overall performance is still weak

- Solid progress seen in several specific areas:
  - “Publication required for all draft legal documents” increased from 8 to 12 economies. Still, application of this GRP is weak overall.
  - Where consultation occurs, publication of consultation documents on the Internet has reached the strong category: 17 economies in 2016 versus 13 in 2011.
  - There has been rapid update of central web portals to improve the user-friendliness and efficiency of consultation. 14 APEC economies now use central web portals for regulatory consultation (compared to 8 in 2011, and 2 more economies are developing central portals.
  - About 2/3 of APEC members offer online, central, comprehensive registries of rules.

<table>
<thead>
<tr>
<th>GRP</th>
<th>% change 2011-2016</th>
<th>% of APEC economies adopting this GRP in 2011</th>
<th>% of APEC economies adopting this GRP in 2016</th>
</tr>
</thead>
<tbody>
<tr>
<td>Are draft legal documents and RSAs published for comment before adoption?</td>
<td>50%</td>
<td>30%</td>
<td>67%</td>
</tr>
<tr>
<td>Publication is done on a central web portal rather than on individual ministry websites</td>
<td>75%</td>
<td>30%</td>
<td>67%</td>
</tr>
<tr>
<td>Does the government use social media tools to notify stakeholders of regulatory activities or to consult?</td>
<td>NA*</td>
<td>NA*</td>
<td>43%</td>
</tr>
<tr>
<td>Is feedback given to stakeholders after consultation is completed?</td>
<td>20%</td>
<td>46%</td>
<td>67%</td>
</tr>
<tr>
<td>Is there a single online location for regulatory information across the whole of government, such as a legal code or online registry of regulations?</td>
<td>NA*</td>
<td>NA*</td>
<td>62%</td>
</tr>
</tbody>
</table>

*This question was not included in the 2011 surveys.*
Time given to respond to consultations still too short

- International practice for the time needed to respond to consultation requests is at least 30 days, and many economies have increased that to 45 or 60 days.
- Businesses in the 2015 survey report that, in the majority of consultations, they have less than 30 days to respond, and in 1/4th of consultations they have less than 15 days.
- By 2016, 8 economies reported that they require a minimum of 60 days for consultation periods, and 4 require at least 30 days (with flexibility to give less time for unimportant rules).
- Still, many economies have no minimum requirement at all, leaving it to regulators to decide how much time is needed in each case.

Use of Internet tools for regulatory transparency offers promise for APEC

- APEC economies are exploiting Internet tools to improve regulatory transparency. Internet publication and consultations are used through the entire lifecycle of regulation:
  - Building centralized web portals for public consultations on proposed regulations
  - Publishing early notice of proposed regulations on the centralized web portal, such as through forward-looking regulatory planning mechanisms and regulatory agendas;
  - Providing a consistent comment period, such as between 30 and 60 days, on all proposed regulations to give stakeholders ample time to review and become acquainted with them and to provide greater certainty for how public consultations will proceed;
  - Receiving public comments from stakeholders, regardless of geographic location, on proposed regulations;
  - Better feedback such as explaining publicly how public comments on proposed regulations were taken into account.
Central web portals improve certainty of consultation for businesses

- Consultation seems to be much more predictable when economies use central web portals (2015 business survey)

<table>
<thead>
<tr>
<th>In the process of developing new regulations that affect your business, are businesses usually consulted or provided an opportunity to provide comments?</th>
<th>Consultation is through central web portal</th>
<th>Consultation is through ministry websites or other means</th>
</tr>
</thead>
<tbody>
<tr>
<td>Always</td>
<td>22.95%</td>
<td>9.52%</td>
</tr>
<tr>
<td>Mostly</td>
<td>20.49%</td>
<td>16.67%</td>
</tr>
<tr>
<td>Some of the time</td>
<td>32.79%</td>
<td>42.86%</td>
</tr>
<tr>
<td>Rarely</td>
<td>13.93%</td>
<td>26.19%</td>
</tr>
<tr>
<td>Never</td>
<td>9.84%</td>
<td>4.76%</td>
</tr>
</tbody>
</table>

TBT and SPS Requirements: Implementation in 2016

<table>
<thead>
<tr>
<th>Web components of ORP</th>
<th>% change 2011-2016</th>
<th>% of APEC economies who use this ORP in 2011</th>
<th>% of APEC economies who use this ORP in 2016</th>
</tr>
</thead>
<tbody>
<tr>
<td>Are proposed regulations notified to the WTO, as required under relevant WTO Agreements: including an electronic copy of the proposals in the notifications?</td>
<td>NA</td>
<td>NA</td>
<td>62%</td>
</tr>
<tr>
<td>Are public comments submitted to the web portal from foreign stakeholders on proposed regulations linked to domestic TBT and SPS Inquiry Point Services?</td>
<td>NA</td>
<td>NA</td>
<td>43%</td>
</tr>
</tbody>
</table>
An agenda for future action on GRPs: Moving from principles to application

- Effective implementation of the GRPs recommended in the 2005 APEC-OECD Checklist is now the focus
- Growing demand in APEC region for more concrete and operational information on GRPs, tailored to the economic environment and trade/investment agreements in the region
- Focus now is on getting real results on the ground in 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.
- APEC economies have agreed to enhance the effective application of GRPs by promoting learning across the region.
- The set of GRP principles in the Checklist should be supplemented by a growing body of good operational practices (GOPs) implemented in the APEC region

Agenda for future action on GRPs: Exchange of good operational practices (GOPs)

- Continued technical information exchange on good practices would speed up effective implementation
- Such exchanges include:
  1. High level agreement on convergence in key GRPs to drive action at the technical level
  2. Detailed case studies on successful reforms in economies
  3. Technical reports on options for designing effective reforms in the key areas of transparency, regulatory review, capacity to manage domestic reforms, and performance monitoring and measurement
  4. Synthesis reports on elements of good practices across the region would assemble this information for more systematic access
  5. Continued surveillance of general trends through reports like this one every two years to follow trends and practices
  6. Targeted training in areas where the technical information is sufficient to support GRPs. The demand for more specific and operational information is increasing,
Regulatory consultation across APEC should be a high priority

- APEC members could work toward convergence on minimum practices of consultation, such as:
  - Development of central Web portals for one stop shop consultation. Businesses react positively to the improved access and transparency of central web portals. The APEC region offers many different examples of successful web portals;
  - Routine publication of consultation materials for at least 30 or 60 days;
  - Requirements for written feedback after consultation is completed;
  - Forward planning and publication of annual agendas to improve regulatory predictability and consultation opportunities
  - Improvement of information provided through WTO, TBT and SPS notification and inquiry points.

Other high priority APEC activities

- Launching more and more effective regulatory review mechanisms would significantly boost growth in developing and transition economies. But many reviews do not produce much.
  - Development of options and guidelines for effective reviews of regulation would be useful to governments.

- Building performance measurement and monitoring systems into regulatory reforms, particularly for the use of central government agencies which are managing complex reforms could greatly boost the transparency and effectiveness of regulatory reform initiatives at low cost.
  - There are many approaches and examples in APEC economies, and a survey of these methods could be useful in clarifying choices for governments.
Other high priority APEC activities

• Training on RIA has been supported by APEC and members, and should continue. Skills for RIA are a major barrier to its application.

• Improving the quality of RIA through clearer and more accurate cost assessment methods and structured frameworks for analysis would be extremely useful in improving RIA outcomes. APEC could further develop core recommendations on RIA methods.

Continued surveillance of GRP application across APEC would support progress

• 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.

• This 2011-2016 surveillance of progress for key GRPs demonstrates 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.
Thank you!

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