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# APEC Economic Policy Report

APEC Economic Committee

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Advancing Free Trade for Asia-Pacific Prosperity

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# Contents

Preface .....	v
<b>Chapter 1: A Regulatory Framework to Facilitate Structural Reform</b>	
Executive summary .....	1
Introduction .....	2
What is regulation? .....	3
The link between structural and regulatory reform .....	4
<i>Achieving political awareness and support for regulatory reform</i> .....	5
Designing regulatory reform policy .....	6
<i>Objectives of regulatory reform policy</i> .....	6
<i>Principles of good regulation</i> .....	8
<i>OECD principles for good regulation</i> .....	8
<i>APEC–OECD integrated checklist on regulatory reform</i> .....	9
<i>Good practice guide on regulatory reform</i> .....	11
Mechanisms and institutions to oversee regulatory reform .....	11
<i>Central oversight bodies</i> .....	11
<i>Other supporting institutions</i> .....	13
<i>Executive or key policy decision making body (for example, Cabinet)</i> .....	13
<i>Legislative</i> .....	13
<i>Independent regulators</i> .....	13
<i>Independent, external advisory bodies</i> .....	13
Regulatory tools, systems and processes for improving the quality of new regulations (Flow) ..	15
<i>Regulatory Impact Analysis (RIA)</i> .....	15
<i>Integrating Regulatory Impact Analysis (RIA) with Processes for Policymaking</i> .....	16
<i>Regulatory Impact Analysis (RIA) Methodology</i> .....	16
<i>When to carry out Regulatory Impact Analysis (RIA)</i> .....	18
<i>Consultation</i> .....	21
<i>Oversight and quality control</i> .....	22
Systems and processes for improving the quality of existing regulations (Stock) .....	24
<i>Mechanisms for ex post evaluation of regulation</i> .....	24
<i>Ad hoc or sector specific reviews</i> .....	24
<i>Automatic mechanisms for review</i> .....	25
<i>Administrative burden targets</i> .....	25
<i>Other incentive based mechanisms</i> .....	26
Conclusion .....	26
<b>Chapter 2: Measuring Regulatory Reform to Improve the Business Environment in APEC</b>	
Executive Summary .....	27
1. Introduction .....	29
2. Driving regulatory reforms to achieve outcomes .....	30

2.1	<i>Building the impetus for regulatory reforms</i> .....	30
2.2	<i>Identifying priority regulatory reforms in APEC to spark reforms</i> .....	31
3.	Measuring regulatory reform outcomes to maintain momentum for reform.....	32
3.1	<i>The World Bank's Ease of Doing Business indicators</i> .....	33
3.2	<i>Impact of regulatory reforms on economic outcomes from EC-World Bank study</i> ..	33
3.3	<i>Alternative indicators for measuring regulatory reform</i> .....	34
3.4	<i>Comparing the three sets of indicators</i> .....	36
3.5	<i>Analysing alternative regulatory indicators</i> .....	37
4.	Implementation and enforcement and comprehensive improvements in the broader regulatory environment.....	38
5.	Conclusion.....	40
	References .....	41
	Annex 2-1: WCY and GCR indicators and corresponding EoDB regulatory areas .....	43
	Annex 2-2: World Bank's EoDB indicators.....	44
	Annex 2-3: World Bank/ World Economic Forum- EoDB Indicators and Global Competitiveness Report (GCR) Indicators .....	46
	Annex 2-4: IMD- World Competitiveness Yearbook (WCY) indicators.....	48
	Annex 2-5: Improvement in each EoDB Indicator in APEC .....	49
	Annex 2-6: ACI Study- spearman rank correlation coefficients 2008 .....	50

### **Chapter 3: Overview – Regulatory Reforms in APEC Economies**

1.	Introduction.....	53
2.	Key features of regulatory reforms.....	53
2.1	<i>Legislation, policy and principles</i> .....	53
2.2	<i>Objectives of regulatory reform policy</i> .....	53
3.	Mechanisms and institutions to oversee regulatory reform.....	54
3.1	<i>Institutions</i> .....	54
3.2	<i>Awareness and support</i> .....	54
3.3	<i>Transparency and predictability</i> .....	55
4.	Improving the Quality of regulation .....	55
4.1	<i>Regulatory tools, systems and processes for improving the quality of new regulations (Flow)</i> .....	55
4.2	<i>Regulatory tools, systems and processes for improving the quality of new regulations (Stock)</i> .....	55
5.	Future challenges and lessons learned in implementing effective regulatory reform policies .....	56
5.1	<i>Lessons learned in promoting regulatory reform</i> .....	56
5.2	<i>Future challenges in implementing effective regulatory reform policies</i> .....	56
6.	Concluding remarks .....	57

Annex 3-1: Individual economy reports on regulatory reform framework .....	59
• Australia .....	61
• Brunei Darussalam .....	65
• Canada .....	69
• Chile .....	73
• People’s Republic of China .....	77
• Hong Kong, China .....	81
• Japan .....	87
• Republic of Korea .....	91
• Malaysia .....	95
• Mexico .....	101
• New Zealand .....	107
• Philippines .....	111
• Singapore .....	115
• Chinese Taipei .....	121
• Thailand .....	125
• United States .....	129
• Viet Nam .....	133
<b>Abbreviations and acronym .....</b>	<b>137</b>

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## **Preface**

Regulatory reform is acknowledged by APEC as a key element of structural reform, and is one of the five priority work streams identified in the 2004 APEC Leaders' Agenda to Implement Structural Reform Towards 2010 (LAISR). Regulatory reforms to improve the business environment are also among the priorities for the Singapore APEC year in 2009.

Regulation is an important government tool and is an integral part of a well functioning economy. Regulatory reforms remove unnecessary obstacles to competition, innovation and growth, and ensure that regulations efficiently serve important social objectives.

By creating and maintaining appropriate regulatory reform frameworks, APEC economies can facilitate well functioning markets, and allow the economy to operate more efficiently to the benefit of its citizens. A regulatory reform framework can also improve the process of formulating and reviewing regulation, and can help governments strike a balance between the needs and benefits of regulation and the cost imposed on the various stakeholders.

This is why we decided that this years' APEC Economic Policy Report (AEPR) should focus on regulatory reform. Following the tradition of previous years' AEPRs, this report contains three chapters. The first chapter outlines the link between structural and regulatory reform, the key elements of a good regulatory reform framework, and introduces the use of regulatory impact analysis. The second chapter measures the relationship between regulatory reform efforts, proxied upon the World Bank's Ease of Doing Business indicators and other international benchmarking indicators, and improvements in the domestic business environment, and concludes that the enforcement of regulatory reforms is as important as the regulations themselves. The third chapter reviews individual economies' experiences with implementing regulatory reforms, with the purpose of identifying and sharing good practices.

The APEC Economic Policy Report is made possible through the collaborative effort of all member economies, including interactive discussion among their delegates to the APEC Economic Committee, the APEC Secretariat and the Economic Committee Chair's Office. I would like to extend a special thanks to Australia for contributing the first chapter, Singapore for drafting the second and third chapters, and member economies for submitting individual reports on their experience on regulatory reforms.



**Takashi Omori**  
**Chair, APEC Economic Committee**

# Chapter 1

## A Regulatory Framework to Facilitate Structural Reform

### EXECUTIVE SUMMARY

- Regulation is a fundamental tool of government and an integral part of a well functioning economy. It can be used to influence the behaviour of firms and individuals in order to achieve important economic, social and environmental objectives.
- However, badly designed, inappropriate or unnecessary regulation can be a barrier to competitive and well functioning markets. For example, particular regulations may inadvertently affect market entry, exit or operation (including by changing prices or outputs or imposing costs or benefits on market participants). The cost of complying with an increased regulatory burden may diminish the viability of some businesses, divert resources from core and innovative activities, and/or be passed on to consumers through higher prices. Each of these effects distorts the efficiency of resource allocation, and signals excessive government interference in the competitive operation of the market.
- Creating and maintaining appropriate regulatory architecture within an economy facilitates well functioning markets and the operation of the economy more generally. Good regulatory reform policies provide a framework or system for good quality regulation. Regulatory reform can help address systemic problems by providing a better process for making and reviewing regulation and helping governments strike a balance between the need for regulation and the cost being imposed.
- Regulatory reform relies on the following broad principles of good regulation:
  - clearly define the problem — the problem and why it has arisen should be precisely stated;
  - justify government action — government intervention should be based on explicit evidence that government action is justified given the nature of the problem;
  - consider a range of policy options — regulation makers should consider a range of regulatory and non-regulatory policy instruments;
  - weigh costs and benefits of regulation — regulation makers should consider the total expected costs and benefits of each regulatory proposal and of feasible alternatives;
  - consult with interested parties — regulations should be developed in an open and transparent fashion with appropriate procedures for effective and timely input from interested parties;
  - consider enforcement and incentives for compliance — regulation makers should design responsive implementation strategies; and
  - review regulation — regulations should be reviewed to ensure regulation remains relevant and effective over time.



## INTRODUCTION

1. In most economies, the volume of regulation has expanded rapidly over recent years.
2. This partly reflects an increasing pursuit of legitimate economic, social and environmental objectives as economies grow more sophisticated with the advent of new and expanded business operations and services. It also reflects a global community that is becoming more risk averse. When an adverse event occurs, especially where it involves loss of life, possessions, or reduction in quality of life, government is pressured to respond with a regulatory solution. This pressure is often compounded by media attention. The regulatory response may be disproportionate to the risk of potential damage. The significant growth in regulation has caused concerns about unnecessary and cumulative compliance burdens for business and the community, anticompetitive impacts on the functioning of the market, and administrative costs for government.
3. The costs of regulation may be direct and/or indirect.
  - Direct costs of regulation may include the cost of system changes, operations such as staff training, the provision of information to customers, and monitoring compliance or reporting to regulatory authorities. These costs are ultimately passed on to consumers or shareholders.
  - Indirect costs involve either:
    - distortion of price signals, thereby affecting the efficiency of resource allocation and lowering the productivity, competitiveness and growth of the economy; or
    - a reduced capacity to innovate and adapt.
4. Regulatory reform can help address such systemic problems by providing a better process for making and reviewing regulation. Regulation reform assists governments, regulation makers, experts and stakeholders to engage in debate and understand the consequences of regulatory decisions, allowing them to strike a balance between the need for regulation (based on the risk being addressed) and the cost being imposed. Regulatory action should be based on a period of reflection and clearly justified, and should incorporate options and design principles to lessen compliance costs, anti-competitive impacts and other side effects.
5. This paper discusses the benefits, challenges and various elements of regulatory reform, including:
  - the importance of building political awareness and support for regulatory reform;
  - the objectives and content of a regulatory reform policy, including principles of good regulation and supporting institutions;
  - types of regulatory reform tools, including Regulatory Impact Analysis (RIA), and the integration of such tools within any economy's existing systems and processes, to ensure that the impacts of regulation are identified, analysed and communicated to policymakers; and
  - the application of these regulatory tools to enhance the efficiency and effectiveness of both the flow of new regulation and the stock of existing regulation.

## WHAT IS REGULATION?

6. The *2006 APEC Economic Policy Report* stated that,

“Regulation is one of the primary tools that can be used to implement government policy. Regulation helps to define the ‘rules of the game’. These rules partially define the interface between society, the state and the wider economy. Regulation is most useful when the presence of market failure would allow an unfettered market to produce undesirable outcomes”.

7. Regulation is a fundamental tool of government and an integral part of a well functioning economy. It can be used to influence the behaviour of firms and individuals in order to achieve important economic, social and environmental objectives.
8. Regulation can include primary legislation introduced by the government, subordinate legislation, treaties and quasi-regulation. Quasi-regulation refers to a wide range of rules or arrangements which do not form part of explicit government regulation but place additional requirements on individuals or groups.
9. No modern society can function effectively without regulation. Some laws are necessary simply to uphold public order, facilitate everyday transactions. Further, the way some markets work can have perverse economic, social or environmental side effects. Sensible regulation can help to address or mitigate some of these problems or market failures.
10. However, poor regulation also affects the behaviour of firms and individuals and can have a negative effect on the working of the economy. Sometimes regulatory interventions have economic impacts that go beyond the specific market failures that they were designed to address. Even where government regulation is individually well managed and appropriate, the aggregation of interventions across an economy may have unintended consequences and lead to economy wide rigidities which slow adjustment processes and reduce competitiveness. Accordingly, it is extremely important that governments review their regulation, taking into account the market failures they were designed to address, and engage in appropriate structural reforms of regulation.
11. A major challenge for governments and regulation makers in weighing up the impacts of regulation is that the benefits are usually more visible than the costs, and these costs are often widespread and difficult to quantify.

## THE LINK BETWEEN STRUCTURAL AND REGULATORY REFORM

12. APEC has recognised that regulatory reform policy is one element of structural reform, providing a framework to improve regulation and the operation of the economy more generally. In 2004, APEC Leaders highlighted the importance of “behind-the-border” impediments to economic growth, investment and trade by adopting the Leaders’ Agenda to Implement Structural Reform (LAISR). LAISR sets out a whole-of-APEC approach to co-ordinating structural reform activities and has five work priority areas, including regulatory reform.

13. The *2006 APEC Economic Policy Report* stated that,

“The full potential for improved economic and social well-being was reliant on how competitive the region was within international markets and that competitiveness is influenced not only by an openness to trade and competition, but also by the region’s regulatory and structural architecture.”<sup>1</sup>

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<sup>1</sup> APEC (2006) *APEC Economic Policy Report*

14. Regulatory reform refers to changes that improve regulatory quality to enhance the economic performance, cost effectiveness or legal quality of regulations, and reinforce competition in the marketplace. Reform can mean the revision of a single regulation, the scrapping and rebuilding of an entire regulatory regime and its institutions, or improvement of processes for making regulations and managing reform.
15. The terms structural reform and regulatory reform are sometimes used interchangeably. In some instances, a government initiated change may be both a regulatory reform and a structural reform; for example, regulation that applies competitive principles to government service providers competing with private sector providers in industries like transport, energy or telecommunications. However, other reforms to regulation may not equal structural reform (such as a change to government regulation concerning taxation).
16. Regulatory reform policy creates a framework through which the potential, or actual, impact of new and existing regulation can be systematically identified, measured and considered by decision makers.
  - The impact of proposed and amended regulation (often referred to as the “flow” of regulation) is analysed using processes such as RIA. The goal of this framework is to ensure that regulation is introduced only where there is a need for government action and where the superiority of the preferred option has been transparently demonstrated.
  - The effectiveness and efficiency of existing regulation (often referred to as the “stock” of regulation) is addressed through ongoing scrutiny and review processes, such as through the use of sunset clauses. An ongoing programme of review of regulation assists in:
    - identifying specific areas of regulation which are unnecessarily burdensome, complex, redundant or duplicative;
    - indicating those areas in which regulation should be removed or significantly reduced as a matter of priority;
    - examining non-regulatory options (including self regulation) for achieving desired outcomes and how best to reduce duplication and increase harmonisation within existing regulatory frameworks; and
    - providing options to improve the effectiveness and efficiency of regulation.
17. Regulatory reform does not aim to remove all of the costs of regulation—rather, it seeks to maximise net benefits by, for example, addressing unnecessary costs arising as a result of:
  - poor quality regulation (i.e., regulation that exacerbates the problem it is attempting to correct, and may create new and more serious problems that did not exist before); and
  - excessive regulation (i.e., regulation which achieves the intended policy goal, but not necessarily through the lowest cost method).
18. This will ensure that stakeholders can effectively manage risk and operate in a pro-competitive environment, prompting businesses to allocate resources to their most valued use, promote innovation and enable investment into more efficient techniques over time. This boosts productivity, underpinning stronger, more sustainable economic growth and enhancing living standards and wellbeing.

## ACHIEVING POLITICAL AWARENESS AND SUPPORT FOR REGULATORY REFORM

19. It is essential that regulatory reform has the support of government at the highest political level, recognising that the key elements of regulatory reform—policies, tools, institutions—should be considered as a whole and applied at all levels of government. OECD experience has shown that every OECD economy with an organised and long-standing programme of regulatory reform has found it necessary to establish an explicit policy statement on reform at the highest level of government, both to communicate the reasons for reform and to build support for change.
20. Demonstrated high-level political support for regulation reform—through legislation, government decrees or statements—serves several important purposes in implementing, sustaining and deepening regulatory quality reforms, including:
  - signalling the government's commitment to reform the regulatory environment across the whole of government. This will lend authority to the institutions through which regulatory reform is possible and provide incentives to achieve regulatory objectives and goals, which should help to overcome opposition and bureaucratic and political inertia;
  - establishing clear policy objectives and the means for meeting them, which can assist in developing a systematic and permanent process. It establishes accountability for government officials' use of regulatory powers. It also increases the centre of government's powers to implement the policy, and reduces the ability of vested interests to block reform;
  - enhancing the effectiveness of coordination and cooperation efforts by establishing a general framework. This helps to ensure coherence and comprehensiveness in reforming the regulatory environment across policy areas;
  - authorising and mobilising action in the administration. This will assist in overcoming civil servants' hesitation in pursuing reform against vocal interest groups;
  - enhancing the credibility and transparency of reform, by clarifying the relevance of regulatory reform in the public domain to larger social and economic goals; and
  - making transparent the government's objectives and the strategies of its reform programme, and therefore, creating accountability for outcomes—both between government and citizens, and regulators and government.

**Box 1-1: Support for regulatory reform in Korea**

Korea initiated its regulatory reform programme in 1998. There was a high level of political support and commitment to this reform process, largely because it was intended to enhance the operation of the market economy and help overcome the financial crisis Korea was facing.

During the financial crisis, regulatory reform was strongly advocated by President Kim Dae-jung and high-ranking public officials. Businesses, non-government organisations and citizens were all constituencies of the reform. The Government enacted the Basic Act on Administrative Regulations (BAAR), which provided for principles of transparency and competition.

The Regulatory Reform Committee (RRC) was also established. It introduced procedures for reviewing regulatory proposals (such as RIAs), and set a goal of “creating a business-friendly and life-enriching environment”. Due to this high level of awareness and support, Korea rapidly advanced its regulatory reform programme in this period, greatly reducing the number of regulations across government. The RRC also reviewed new regulations. In 2006, it reviewed a total of 1,076 cases of new or reinforced regulations and recommended repeal or improvement on 245 cases, thus minimising the creation of unreasonable regulations.

President Kim’s successor, President Roh Moo-hyun, was also strongly committed to regulatory reform, stating that “we will put all resources to reform regulations lagging behind market changes”. All ministries undertook a comprehensive review of regulations in 2006, identifying amendments that were necessary as a result of technological developments and other factors. Amendments were made to 18 per cent of existing regulations.

The current Lee Myung-bak Administration, believing that regulatory reform can be one of the most effective means to improve the business environment and economic growth potential at little cost, embarked on massive and unprecedented regulatory reform. To strengthen the structure of driving regulatory reform, the government established the Presidential Council for National Competitiveness in March 2008 and has decisively undertaken bold reform initiatives targeting those regulations to which the business community had objected.

**DESIGNING REGULATORY REFORM POLICY**

21. The fundamental aspects of regulatory reform policy are:

- clear objectives;
- endorsement of the principles of “good regulation” to guide reform; and
- establishment of effective and credible mechanisms and institutions to manage and coordinate regulation and its reform.

**Objectives of regulatory reform policy**

22. The regulatory reform policy adopted by government should have clear objectives. The content and emphases of those objectives will vary, reflecting differences in national needs and priorities. The varied objectives underlying regulatory reform policy may include:

- increasing social welfare by better balancing and more effectively delivering government policies over time;

- boosting economic development and consumer welfare by encouraging market entry, transparency, innovation and competition and thereby promoting competitiveness;
  - maximising net benefits and improving productive efficiency by reducing unnecessary regulatory costs (in particular for small- and medium-sized businesses);
  - improving public sector efficiency, responsiveness and effectiveness through public management reforms;
  - rationalising and simplifying the law; and/or
  - improving the rule of law and democracy through legal reform, including improved access to regulation and reduction of excessive discretion of regulators and enforcers (which is a source of corruption).
23. The diversity of policy approaches is in large part explained by the specific problems facing the individual economy, and the nature of the political opportunity for progress on reform. For example, in Japan and Korea, where there was a widely held view that the major regulatory problem was one of over-regulation and state interference in the economy, the focus has been on reducing the economic role of the state through deregulation. In the United States, where there are relatively few barriers to entry in most sectors but a robust Federal regulatory structure in social policy areas, the focus has been on improving regulatory quality through rigorous application of the cost benefit principles. In Mexico, which has been integrating its regulatory frameworks into the North America free trade zone, a priority has been to eliminate inconsistent and overlapping regulation and improve credibility and enforceability of the law. The Australian approach is focused on better regulation, which reduces unnecessary costs to business and the broader economy, to enhance Australia's productivity and international competitiveness.
24. Regulatory reform policy programmes typically begin with a focus on one or a few of the above objectives and broaden their concerns over time as experience accumulates, to the broadest possible objective (i.e., that of enhancing net social welfare).

### Box 1-2: Objectives of regulatory reform policy in New Zealand

In the early 1980s and 1990s, New Zealand both significantly deregulated its economy, and adopted new regulatory approaches that were intended to facilitate the efficient functioning of markets while at the same time providing adequate levels of protection in areas such as health, safety, the environment, consumer protection and financial stability. In the following decade there have been a number of developments, including:

- The introduction of a Regulatory Impact Analysis (RIA) regime.
- A range of initiatives to reduce regulatory costs and streamline the interface between business and government.

There is now a renewed focus on regulatory reform with an overall goal of improving New Zealand's productivity performance. The government sees Australia as a benchmark, and has established a goal of closing the income gap with Australia by 2025.

The reform agenda includes initiatives to reduce red tape and regulation that is impacting negatively on investment and employment. In 2009, 10 reviews will commence into key regulatory areas, and an ongoing review programme will be established. Further opportunities to improve the quality of new regulations and to systematically review existing regulations are being explored.

The government has established an annual Regulatory Reform Bill, which will provide a regular opportunity to reduce red tape and make positive changes to regulations. Consideration is also being given to a Regulatory Responsibility Bill, which would create principles of responsible regulatory management in statute.

### Principles of good regulation

25. The regulatory reform policy adopted by government should establish principles of regulatory decision-making, which are applicable when making, or reviewing, regulation (i.e., applied to both the stock and flow of regulation).

### OECD principles for good regulation

26. The following OECD principles for "good regulation" have been widely accepted as best practice. These principles are intended to be broad and easily applicable to any economy and any policy issue.
  - 26.1. *Clearly define the problem.* The problem should be precisely stated, giving evidence of its nature and magnitude, and explaining why it has arisen.
  - 26.2. *Justify government action.* Government intervention should be based on explicit evidence that government action is justified, given the nature of the problem, the likely benefits and costs of action (based on a realistic assessment of government effectiveness), and alternative mechanisms for addressing the problem. There are two conventional reasons for regulatory intervention:
    - that in important instances and left to its own devices, the market will fail to deliver an outcome which benefits the community as a whole (market failure). For example, taxes levied on producers to correct for pollution externalities, regulation of oligopolies/cartel behaviour, direct provision of public goods such as defence, and policies to introduce competition into markets; and
    - that social concerns, such as equity or health and safety, require action by governments to protect groups in the community. For example, reducing inequality of

income and wealth distribution through regulation of the tax system and specific policies such as the minimum wage.

- 26.3. *Consider a range of policy options (including alternatives to regulation).* Regulation makers should carry out an informed comparison of a variety of regulatory and non-regulatory policy instruments to address the problem, considering relevant issues such as costs, benefits, distributional effects and administrative arrangements.
- 26.4. *Identify a legal basis for regulation.* Regulatory processes should be structured so that all regulatory decisions rigorously respect the “rule of law”. That is, responsibility should be explicit for ensuring that all regulations are authorised by higher level regulations and consistent with treaty obligations, and comply with relevant legal principles such as certainty, proportionality and applicable procedural requirements.
- 26.5. *Determine the appropriate level (or levels) of government for this action.* Regulation makers should choose the appropriate level of government, or if multiple levels are involved, should ensure effective co-ordination between levels of government.
- 26.6. *Weigh the benefits and costs of the regulation.* Regulation makers should estimate the total expected costs and benefits of each regulatory proposal and of feasible alternatives, and should make the estimates available in an accessible format to decision makers. The costs of government action should be justified by the benefits before action is taken.
- 26.7. *Consider distributional effects.* To the extent that distributive and equity values are affected by government intervention, regulation makers should make transparent the distribution of regulatory costs and benefits across social groups.
- 26.8. *Assess whether the regulation is clear, consistent, comprehensible and accessible to users.* Regulation makers should assess whether rules will be understood by likely users, and to that end, should take steps to ensure that the text and structure of rules are as clear as possible.
- 26.9. *Consult with interested parties.* Regulations should be developed in an open and transparent fashion, with appropriate procedures for effective and timely input from interested parties such as affected businesses and trade unions, other interest groups, or other levels of government.
- 26.10. *Consider enforcement and incentives for compliance.* Regulation makers should assess the incentives and institutions through which the regulation will take effect, and should design responsive implementation strategies that make the best use of them.

### **APEC–OECD integrated checklist on regulatory reform**

27. The APEC-OECD Integrated Checklist on Regulatory Reform (the Integrated Checklist) also sets out common principles or elements of regulatory reform, as identified by member economies, acknowledging that no one size fits all. The Integrated Checklist recognises the importance of regulatory reform as a key element of structural reform, and outlines principles such as the importance of regulatory quality, competition and the avoidance of unnecessary economic distortions. The Integrated Checklist also promotes core values such as transparency, non-discrimination and accountability.
28. The Integrated Checklist is intended to be a voluntary tool that member economies can use to evaluate their regulatory reform efforts. It sets out a framework for self assessment on regulatory, competition and market openness policies.



### **Box 1-3: The APEC-OECD Integrated Checklist**

The APEC-OECD Integrated Checklist (the Integrated Checklist) sets out the key concepts to guide regulation makers through the design and implementation of effective regulatory reform.

The Integrated Checklist is comprised of four sections and questionnaires addressing regulatory reform, regulatory policies, competition policies and market openness policies. It has 39 normative, open-ended questions that national authorities should answer when considering the adoption or revision of regulatory, competition or market openness policies.

#### *Regulatory Reform*

The first section is a horizontal questionnaire on regulatory reform across levels of government that invites reflection on the degree of integration of regulatory, competition and market openness policies across levels of government, and on the accountability and transparency mechanisms needed to ensure their success.

The other three sections of the questionnaires focus on individual policy areas, and the factors that may be considered to improve their specific design and implementation.

#### *Regulatory Policies*

Regulatory policies refer to those policies designed to maximise the efficiency, transparency and accountability of regulations based on an integrated rule-making approach and the application of regulatory tools and institutions.

#### *Competition Policies*

Competition policies refer to those policies that promote economic growth and efficiency by eliminating or minimising the distorting impact of laws, regulations and administrative policies, practices and procedures on competition; and by preventing and deterring private anti-competitive practices through effective enforcement of competition laws.

#### *Market Openness Policies*

Market openness policies refer to those policies that aim to ensure that a country can reap the benefits of globalisation and international competition by eliminating or minimising the distorting effects of border as well as behind-the-border regulations and practices. These policies influence the range of opportunities open to foreign suppliers of goods and services to compete with domestic counterparts in a particular national market (for example through trade and investment).

#### **Economies' Self-Assessments**

The Integrated Checklist was approved by the Executive Boards of APEC and the OECD in 2005. Since then, the following economies have conducted self-assessments: in 2006, Hong Kong, China; Chinese Taipei; and the United States, and in 2007, Australia and Korea.

### Good practice guide on regulatory reform

29. A Good Practice Guide on Regulatory Reform (the Good Practice Guide) drawing on the principles in the Integrated Checklist and the experiences of APEC economies and OECD member economies has been developed by the “Friends of the Chair” regulatory reform group of the Economic Committee, consisting of Australia, Chinese Taipei, Hong Kong, China, Japan, Mexico, Papua New Guinea, Peru, Philippines, Singapore and Thailand. New Zealand also contributed to the Good Practice Guide.
30. The Handbook covers six topics:
- Designing regulation making and review systems and processes;
  - Role of regulatory institutions in best practice regulatory reform;
  - Regulation Impact Assessment;
  - Consultation mechanism;
  - Enforcement and administration of regulation; and
  - Alternatives to regulation.
31. Each chapter provides an introduction to the topic; information about best practice guidance principles and practice; practical steps and tips to implement best practice; examples from APEC economies’ experiences; and references and further information.

### MECHANISMS AND INSTITUTIONS TO OVERSEE REGULATORY REFORM

32. Effective and credible mechanisms inside government are needed to manage and coordinate regulation and its reform. Regulatory reform policy needs to find its place in an economy’s legal and institutional architecture: this is a major challenge for governments. Because the context in which governments work to improve regulatory quality is complex and remains fragmented, some form of central mechanism is needed that goes beyond the simple coordination of existing bodies scattered across government areas.
33. A common characteristic of economies that have implemented regulatory reform policy is that the ministry or regulation makers have the primary responsibility for creating quality regulation and reform. That is where the expertise lies, and where policies are formulated. Yet it is often difficult for regulation makers to reform themselves or to integrate new quality disciplines, given countervailing pressures. As a result, most governments have established central regulatory co-ordination and management capacities headed by ministers with whole-of-government responsibility for regulatory reform policy.

#### Central oversight bodies

34. A central oversight body may be created to perform some, or all, of the following key roles.
- The *advisory role* involves providing advice and support to regulation makers to assist them in complying with government policies aimed at regulatory quality assurance. This can involve the publication and dissemination of written guidance and the provision of training on topics such as aspects of the RIA processes and techniques. It may also involve a more specific, “hands on” approach, whereby the central unit provides advice to regulators in the context of their development of particular regulations.

- The *gatekeeper role* involves challenging and controlling the quality of draft regulations. This function centres on the ability of the oversight body to question the technical quality of RIA and of the underlying regulatory proposals and is likely to be based on compliance with a “checklist”. The gatekeeper function may also involve checking and enforcing compliance with procedural requirements, such as aspects of the consultation process.
  - The *advocacy role* involves the promotion of long-term regulatory reform policy goals, including policy change, the development of new and improved tools and institutional change. This role sees the oversight body as an active player in the policy formulation process. Sometimes this advocacy role is undertaken by an external body appointed by government, such as the Council for the Promotion of Regulatory Reform in Japan.
35. Institutions responsible for central regulatory oversight vary widely in function and design. However, the location of the institution needed to oversee compliance with regulatory reform policies has now been well established: the oversight body is most effective when associated with the centre of government, where authorities for inter-ministerial oversight are already well-established. In some economies, a specialist body has been established with responsibility for overseeing RIA programs. Other economies have located an oversight unit within the industry, commerce or economics bodies, budget and general public sector management bodies, or at the centre of government (i.e., cabinet offices).

#### **Box 1-4: Mexico’s federal commission on regulatory improvement**

Mexico’s policy of regulatory reform is set out in amendments that were made to the Federal Law of Administrative Procedure in 2000. This policy established processes for making new and amended regulation, and reviewing existing regulation, and created the Federal Commission on Regulatory Improvement (COFEMER).

COFEMER has been created as a technically and administratively autonomous body of the Ministry of Economy, responsible for the implementation of Mexico’s regulatory reform policy, ensuring transparency in the formulation of Federal regulations as well as promoting the development of cost-effective regulations that generate the highest net benefit to society. In this regard, COFEMER plays the advisory, gatekeeper and advocacy roles as an oversight body on regulatory matters. Its main activities consist of:

- Coordinating and supervising Mexico’s regulatory reform programme;
- providing training on processes to state and local public officials;
- scrutinising new policy proposals—no regulatory instrument can enter into effect without scrutiny by COFEMER;
- working with government bodies to reduce existing regulatory burdens affecting business;
- reviewing and proposing reforms to existing laws and regulations; and
- driving forward the regulatory reform agenda in states and municipalities.

COFEMER was also established in order to facilitate consultation and dialogue with the public, private and social sectors.

Mexico attributes much of COFEMER’s effectiveness to its location at the centre of government and its mandate provided by law.

### Other supporting institutions

36. In addition to the central oversight body, various other institutions may play an important role in promoting and implementing regulatory reform policies, processes and systems.

### Executive or key policy decision-making body (for example, Cabinet)

37. The Executive body is a key source of regulation in two ways: in terms of proposing new laws to Parliament, and in terms of establishing secondary rules to give effect to primary legislation. Consequently, the Executive body's endorsement of regulatory reform policies and acknowledgement of the value of RIA in developing policy is essential.

### Legislative

38. Parliaments have formal responsibility for reviewing and enacting primary legislation, which is why it is important they are closely integrated into regulatory quality systems and processes. Parliament's ability to scrutinise legislation should be clearly aligned with the regulatory quality procedures adopted in the Executive—they should be mutually reinforcing. The information obtained through RIA must be taken into account. As Parliaments realise the importance of RIA, they can provide invaluable support for its use.

### Independent regulators

39. Independent regulators are public bodies charged with regulating specific aspects of an industry. The role of independent regulators tends to be concerned with enforcing rules and dispensing penalties for non-compliance, or authorising the issue of licences and permits. Independent regulators contribute to improving regulatory quality, transparency, stability and expertise. When such regulators are responsible for making rules or interpreting them, they should operate under the same disciplines as other rule makers, including requirements for RIA.

### Independent, external advisory bodies

40. Independent entities external to government may be established with power to provide official and expert advice to government on specific regulations and aspects of an industry. This may include external committees, advisory bodies, think tanks or research bodies made up of majority of non-governmental representatives such as academia and business organisations. Such bodies may be established on an *ad hoc* basis to respond, preferably through a public and open discourse, to specific regulatory issues, or alternately, may have an ongoing role in identifying priorities and proposing reforms.
41. For example, the External Advisory Committee on Smart Regulation was a committee of private sector representatives convened for 15 months to provide advice to the Canadian government. The committee proposed improvements to the regulatory process with the aim of ensuring that regulations achieve social, environmental and economic objectives, which were broadly accepted and adopted by the Canadian government. Australia has established a permanent independent advisory body, the Productivity Commission, to provide advice to government on aspects of microeconomic policy. The Productivity Commission, through making recommendations to government and publishing its advice, has been influential in creating impetus for structural reform in Australia.

**Box 1-5: Drivers of regulatory reform in Australia**

The Australian government agenda is to ensure that well-designed and targeted regulation reduces costs and complexity for business, individuals and the not-for-profit sector and that better regulation enhances Australia's productivity and international competitiveness. The Prime Minister of Australia committed the government to maintain rigorous regulatory impact analysis to protect business from new, unnecessary regulation. The Prime Minister also committed to a national objective in partnership with the State and Territories to harmonise key regulations imposed on business operating across jurisdictions.

Australia has increased the advocacy for better regulation by creating the first-ever Commonwealth Minister for Finance and Deregulation and giving it Cabinet-level status in 2007.

Responsibility for deregulation and regulatory reform lies with the newly created Deregulation Group within the Department of Finance and Deregulation, a central agency of the Australian government and one which has a limited regulatory role itself, minimising any conflicts the Department and its ministers may have in providing robust criticism of regulatory proposals.

Deregulation Group advises government on how regulatory costs can be measured and minimised. It also challenges the quality of new regulatory proposals and the relevance of current regulation. In addition to these new functions, Deregulation Group includes the Office of Best Practice Regulation (OBPR) which continues its existing function of advising agencies on meeting the best practice regulatory impact analysis requirements and reporting on their compliance.

At the Commonwealth level, the Minister for Finance and Deregulation is partnering with ministerial colleagues to enhance the quality of existing regulation. For example, a partnership with the Minister for Financial Services, Superannuation and Corporate Law to develop streamlined, accessible financial services product disclosure statements (PDS) to replace the current lengthy and unduly complex documents is well advanced.

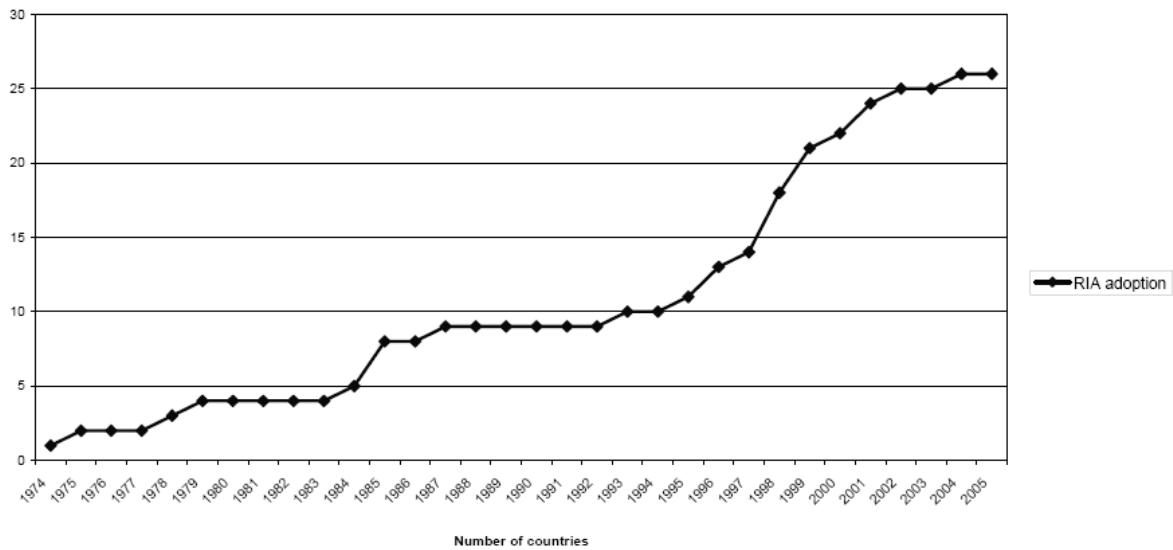
At the inter-jurisdictional level, the Council of Australian Governments (COAG) agreed on 29 November 2008, to a National Partnership Agreement to Deliver a Seamless National Economy (the Agreement) to progress national regulatory reform in 27 priority areas, eight areas of competition and in regulatory processes. The Agreement was signed by all jurisdictions in February 2009.

The COAG Business Regulation and Competition Working Group (BRCWG), which is co-chaired by the Minister for Finance and Deregulation and the Minister Assisting the Minister for Finance on Deregulation, is taking forward these reforms. Substantial progress is continuing on a number of fronts. For example, reforms to the regulation of consumer credit will collapse the eight separate regimes run by the States and Territories into a single uniform national system overseen by the Commonwealth.

## REGULATORY TOOLS, SYSTEMS AND PROCESSES FOR IMPROVING THE QUALITY OF NEW REGULATIONS (FLOW)

### Regulatory Impact Analysis (RIA)

42. Regulatory Impact Analysis (RIA) is a term used to describe the process of systematically analysing and communicating the impacts of new and existing regulations. The essential characteristic of RIA is the process through which regulatory interventions are systematically and coherently assessed in order to improve regulatory outputs and decision-making, starting as early in the policymaking process as possible. RIA can be used to assess the impacts of new regulation and amended (flow) as well as existing regulation (stock).
43. RIA is not a stand-alone process—it can only be effective when embedded within an economy's broader policymaking framework. The policy decision-making methods used in each economy will differ according to national culture, political traditions, administrative style and the issue at hand, but can be simplified into the following five categories.
- *Expert*: decision is reached by a trusted expert, either a regulation maker or an outside expert, who uses professional judgement to decide what should be done.
  - *Consensus*: the decision is reached by a group of stakeholders who reach a common position that balances their competing interests.
  - *Political*: decision is reached by political representative based on partisan issues of importance to the political process.
  - *Benchmarking*: decision is made through reliance on an outside model, such as international regulation.
  - *Empirical*: decision is based on fact-finding and analysis that defines the parameters of action according to established criteria.
44. In essence, RIA attempts to clarify the relevant factors for decision-making under each of these methods. It pushes regulators towards making balanced decisions that trade off possible solutions (including the decision to do nothing) to specific problems against wider economic and distributional goals. RIA's most important contribution to the quality of decisions is not the precision of the calculations used, but the action of analysing—questioning, understanding real world impacts, exploring assumptions.
45. The following graph shows the trend in the number of OECD economies which have a formal RIA requirement (which extends beyond a simple budget or fiscal impact). From this example it is clear that the uptake of RIA has been significant in recent years.

**Table 1: Trend in Regulatory Impact Analysis (RIA) adoption across OECD countries**

Source: Lonti, Z. and Woods, M (2008), 'Towards Government at a Glance: Identification of Core Data and Issues related to Public Sector Efficiency', *OECD Working Papers on Public Governance*, No. 7, OECD Publishing.

### Integrating Regulatory Impact Analysis (RIA) with processes for policymaking

46. There is no single system for the implementation of RIA that is desirable in all economies at all times. Institutional, social, cultural, legal and developmental differences between economies require different system designs. As regulation makers gain experience and expertise in RIA, these systems will evolve and continually improve. However, the following elements of best practice serve as starting points for the design of a system likely to maximise the benefits of RIA.

- 46.1. Commence RIA at the earliest feasible stage in the policy development process.
- 46.2. Provision should be made for screening regulatory proposals to determine which proposals require RIA and the type of assessment to be undertaken.
- 46.3. RIA should be documented (in a RIA report) and made available for public comment and review.
- 46.4. RIA report should be used in the regulation approval process.
- 46.5. RIA should inform monitoring, evaluation and post-auditing processes, to ensure regulation does not have unintended effects.

### Regulatory Impact Analysis (RIA) methodology

47. The methodology used to analyse the impact of proposed or existing regulation should be flexible and relevant to the particular circumstances of the individual economy. As a general principle, RIA should require the use of the benefit-cost principle for all regulatory decisions (i.e., that the benefits outweigh the costs), but the form of analysis employed should be based on practical judgements about feasibility and cost.

48. There are five main analytical methods used in RIA programmes.

- *Cost-benefit analysis*: quantifies and evaluates the costs and benefits of a regulatory intervention in terms of the public's *willingness to pay* for them (benefits) or willingness to

pay to avoid them (costs). Inputs are typically measured in terms of opportunity costs—the value in their best alternative use. The guiding principle is to list all of the parties affected by an intervention, and place a monetary value of the effect it has on their welfare *as it would be valued by them*.

- *Multi-Criteria Analysis (MCA)*: systematic comparison of the impact of different alternative policy responses in circumstances in which major impacts are identified, but not able to be quantified. MCA involves the identification of the objectives behind a policy proposal as well as criteria which would indicate the achievement of those objectives. The various policy options are then compared to determine which best meets the criteria identified and therefore, are most likely to achieve the overall objectives.
- *Cost-effectiveness analysis*: comparison of alternatives to find lowest cost solutions that produce specific outcomes. This method is limited, as it does not determine if the action is worth taking (that benefits outweigh costs) and does not resolve the choice of optimal level of benefits. But it can reduce the costs of problem solutions to their lowest level.
- *Partial analysis*: analyses particular types of costs (compliance costs, fiscal or budget costs, administrative costs, competition impacts, environmental impacts) or the particular impacts of regulation on specified groups (small business, families, consumers). This method recognises that different impacts have different weights, and the decision to weigh some impacts more heavily than others is mainly a political decision based on policy priorities and values. However, this method carries a high risk of incorrect policy conclusions because it does not provide the full, undistorted picture of the consequences of actions.
- *Risk assessment*: attempts to quantify the risks (involving consideration of the hazards and consequences) to enable rational judgement to be made as to whether government action is justified. This method is useful in answering the threshold question of whether to regulate, and contributes to policy choices about the desirable degree of risk reduction. Complications in its use derive from observed variation between real and perceived risk, or between society's acceptance of different kinds of risks.
- *Sensitivity or uncertainty analysis*: projects the likelihood of a range of possible outcomes due to estimation errors, to provide policymakers with a more accurate understanding of the likelihood of impacts. Sensitivity analysis should be used as a technique to refine the expected future benefits and costs.



**Box 1-6: Competition impacts and the OECD competition assessment toolkit**

Increased competition can improve an economy's productivity and growth, opening business opportunities to its citizens, increasing the variety of goods and services, reducing prices, and spurring innovation.

However, regulations can impact upon the level of competition, even when aimed at other policy objectives. Many regulations go further than necessary to achieve their policy objectives. For example, regulations may affect the entry or exit of business into particular markets, allow the restriction of prices or outputs, or impose costs or benefits on particular businesses in the market.

Governments can reduce unnecessary competition impacts by considering the use of the OECD's Competition Assessment Toolkit. The Toolkit provides a general methodology for identifying unnecessary restraints to competition and developing alternative, less restrictive policies that achieve government objectives.

One of the main elements of the Toolkit is a Competition Checklist that asks a series of questions to screen for regulations that unnecessarily restrict competition. These threshold questions address whether regulation:

- affects the number or range of suppliers,
- changes the ability of suppliers to compete, and
- alters the incentives of suppliers to compete.

This screening test focuses limited government resources by ensuring that further assessment and analysis is carried out where competition impacts exist or are likely. The Toolkit can be used to evaluate the impact of proposed regulations (for example, through an RIA) or to conduct an overall evaluation of existing regulation. (Note that additional information on the systems and mechanisms for improving the quality of existing regulation is provided below.) Competition impacts may be justified where the benefits to the community outweigh the costs, and the Government's objectives can only be achieved by restricting competition.

49. Cost-benefit analysis is the most comprehensive RIA method, enabling comparison of quantified costs and benefits over time, based on the underlying principle that any decision about government action should be justified by the benefits. However, there are practical difficulties associated with the implementation of strict cost-benefit analysis, in particular data availability.
50. MCA is a methodological approach that potentially can assist in better integrating quantitative and qualitative analyses and so enhance the ability of RIA to provide relevant and useful guidance to policymakers where the major variables have not been able to be expressed in monetary terms. The key advantages of MCA are that it allows distributional issues and trade-offs to be highlighted, by ensuring that key criteria used to assess regulatory proposals and alternatives are transparent.

**When to carry out Regulatory Impact Analysis (RIA)**

51. It is not cost effective or resource efficient to undertake an in-depth RIA for all regulation. RIA is potentially resource intensive and must be properly targeted to ensure scarce RIA resources are applied where they can do the most good. This implies three strategies.
  - *Wide application of RIA.* Wide application of RIA is desirable, with light-handed RIA applied to more regulatory proposals. However, it may be necessary to limit the scope of RIA application, particularly in the early stages of implementation, where it may be practical to proceed on a step-by-step basis, extending the scope of RIA provisions as assessment

experience and capacities expand. A number of criteria may be applied to limit the application of RIA, including:

- levels of administration (i.e., federal, regional, local government regulation);
  - level of regulation (i.e., primary and/or secondary instruments);
  - type of measure (i.e., rules, financial instruments, policies); and
  - type of impact (i.e., environmental, social, economic, competitive) or sectors to which the measures applies (business, small business).
- *Targeted application of RIA resources.* RIA thresholds, below which the impact of regulation is so small that the likely benefits of RIA are insufficient, enable RIA to be effectively targeted. Australia, New Zealand and the United States are using stricter and clearer targeting strategies, combined with higher analytical standards for important regulations. Most are using a monetary trigger to establish an objective threshold, in combination with subjective thresholds using triggers like “major” or “significant” applied to various kinds of impacts.
  - *Proportionate level of analysis.* Where RIA is undertaken, the level and depth of analysis should be proportionate to the impact of the regulation.

**Box 1-7: Targeted use of Regulatory Impact Analysis (RIAs) in Peru**

The use of RIAs in Peru is relatively new, having first been introduced in 2005. As the system is in implementation phase, policymakers are still developing the expertise and technical capacity to conduct RIA processes.

Therefore, Peru is currently targeting its use of RIAs so that they are completed for the most significant and important reforms, within a small number of ministries. The targeting of RIAs is being conducted with a view to eventually extending their use to all ministries once expertise and technical capacity has been further developed.

In particular, RIAs are currently completed for regulatory reform proposals that fall within the Ministry of Economy and Finance and which relate to the functioning of the market, or tariff and tax policies. For regulatory reform proposals that affect these policy areas, RIAs and consultation processes must be completed and incorporated into the Minister's decision-making process.

Further targeting occurs in the form of exemptions from the requirement to complete RIAs, including where the proposed regulatory reform:

- represents a small amendment and does not alter the legal framework or performance of the market;
- does not have a direct or indirect impact on free and fair competition;
- is related to government procurement operations;
- relates to the accounting and financial management of the government, including public investment decisions;
- is urgent, such as the prevention of economic crisis, and has the Minister's authorisation.

Peru is working to eventually extend the use of RIA by increasing awareness, recognition, support for the process, and developing the expertise and technical capacity to complete RIAs. Peru's strategy involves three main elements:

- disseminating regulatory reform policy amongst officials and policymakers through the use of pilot programmes;
- developing the capacities of officials and policymakers through the use of training programmes; and
- promoting citizens' participation on pilot programmes and the dissemination of the results of this participation.

**Consultation**

52. Public consultation is the means by which RIA fosters public debate. RIA has become the cornerstone of stakeholder consultation process on regulations. Encouraging stakeholder consultation early in the process is perhaps the most important feature of a RIA programme.
53. Public consultation linked to RIA has become simultaneously more multilayered, which allows it to become more open, and more targeted.
  - More open in the sense that RIA is pushing consultation to occur sooner, more systematically and more transparently.
  - More targeted in the sense that some forms of consultation are structured to link information needs with particular stakeholders, which allows more intensive dialogue and better information collection.
54. Consultation contributes to the quality of policy debate, by drawing more participants into the process and providing for more intensive and fruitful interactions between them. This process should contribute to a higher quality of analysis of proposed options and the data provided and thus contributes to better decision outcomes.

### **Box 1-8: Public consultation in Hong Kong, China**

Public consultation is an integral part of the regulatory reform process in Hong Kong, China. Hong Kong, China has a number of mechanisms in place to ensure that key affected stakeholders can easily and effectively communicate their views to government. Currently, the government administers almost 500 advisory, consultative and statutory bodies. Many of these bodies have cross-sector representations and form a key part of the government consultation forums to coordinate views and to engage the community in the policymaking process.

In Hong Kong, China, there is a General Circular setting out the policy and principles of public consultation and the importance of keeping the public informed of the results of consultation as general guidelines for all bureaux and departments. Bureaux and departments have flexibility in designing and implementing public consultations to best suit their situations and needs. The level of consultation required and the consultation format adopted depend upon the nature of each regulatory proposal and the stage of the policy development process.

Generally, consultation papers are made available on the websites of relevant bureaux, departments or regulatory authorities, and are usually accompanied by press releases to inform the public. Such information is accessible to all and is open to comments from both domestic and foreign stakeholders. Written comments can be submitted by facsimile, mail and email within a specified time period. To ensure a transparent process, summary reports on public comments and/or written submissions received during the consultation period are published on the websites of the responsible bureaux and departments. Further rounds of public consultation may be conducted as required.

To ensure adequate publicity is given to the consultation exercises (including their scope and the deadlines by which comments should be made), multiple communication channels are used in Hong Kong, China to bring the proposals into public arena through various means such as dedicated websites, discussion forums, exhibitions, leaflets, posters and radio/television advertisements. At times as circumstances warrant, public opinion surveys, discussions in less formal occasions such as luncheon speeches, media sessions and television panel discussions may also be used to further enhance the public consultation process.

In addition, to facilitate further consultation with the business community, Hong Kong, China, since September 2008, has rolled out a Business Consultation e-Platform under the GovHK Portal to provide an additional channel for the business community to access relevant business consultation information on new regulations, administrative measures and procedures, and provide comments on the proposals direct to the government bureaux/departments concerned.

Bureaux and departments in Hong Kong, China, are held accountable for the way in which they conduct public consultations and how they address public opinions. In cases where the opinions of certain sectors cannot be fully adopted, a clear explanation is required. Public opinion and public reaction to proposals are carefully considered during the entire policy formulation process.

In his 2007 Policy Address, the Chief Executive announced “Reaching Out to the Community” and “People-Based Governance” as key commitments of the government. A subtle evolution from public consultation to public engagement has taken place in recent years. Government officials have proactively solicited public views prior to the identification, formulation and introduction of new policies as well as designing and delivering important public services.

### **Oversight and quality control**

55. Quality control is necessary if RIA is to be carried out with a reliable level of consistency and quality. There are a number of strategies an economy may employ to increase oversight and quality control of RIA.

- *Strengthening the challenge function of a central RIA oversight body.* Locating the institution overseeing compliance with RIA policies at the centre of government should ensure the unit has the competency, standing and prestige to compete with ministers and regulation makers and effectively challenge RIA quality.
- *Involvement in RIA quality control and monitoring by other institutions.* The central quality control unit must be supported by a network of institutions, including political level bodies and inter-ministerial working groups close to government, or private sector groups and advisory bodies that can identify priorities and propose reforms.
- *Early timing and preparation of RIA to permit more discussion.* This could include the use of annual regulatory planning to provide early notice to the public about regulatory initiatives at a time when it is still possible to fundamentally influence the regulatory decision. The practice of requiring an early screening RIA is one that governments should consider to both support a policy for proportional analysis and to open the way for earlier and more meaningful public consultation on the alternatives and regulatory design.
- *Monitoring and reporting of RIA quality by central institutions followed by public reporting of performance (or “name and shame”).* The regular assessment and publication of performance data in relation to RIA compliance would not only increase confidence in the achievement of standards and therefore, RIA’s contribution to regulatory quality, it also would tend to encourage improved performance over time. A common and effective approach is to issue performance evaluations based on the quality of the RIA. For example, the Australian Office of Best Practice Regulation issues annual reports on RIA quality and compliance status.
- *Individual ministerial accountability.* Making ministers or high level civil servants personally accountable for the quality of RIA in their departments can make ministers more aware of RIA and the quality issues around RIA take a higher profile.
- *Expert scrutiny from peers.* The use of a transparent consultation process involving qualified and independent peer reviewers should improve the quality of, and promote public confidence in the integrity of, the government’s analysis.
- *Building expertise amongst the regulation makers.* The quality of RIA is dependent on the skills of the regulation makers. Building the skills needed for good RIA takes time and investment in training, accessible written guidance material and technical support (i.e., through a helpdesk function).

#### **Box 1-9: Canadian Centre of Regulatory Expertise**

The Canadian government has established the Centre of Regulatory Expertise (CORE), which provides expert advice and services to departments to help them build their internal capacity to implement Canada's regulatory policy.

The CORE provides expertise to departments in the areas of cost-benefit analysis, performance measurement and risk assessment and regulatory impact assessment generally. CORE allows departments to take advantage of expert capacity at a much lower cost than if they were each to seek additional funding to build short-term internal capacity. Development of a curriculum for regulators and the identification of best practices are also of central importance to the work CORE undertakes. In addition, CORE will cost-share the services of external experts in situations where CORE experts are not available or where a department prefers to hire their own experts.

## SYSTEMS AND PROCESSES FOR IMPROVING THE QUALITY OF EXISTING REGULATIONS (STOCK)

56. Even with good regulation-making processes, problems with regulation inevitably emerge over time. One problem is simply the growth in the stock of regulation and the cumulative burden it generates. The other problem relates to the ongoing relevance and effectiveness of particular regulations after they are implemented. Market, technological and environmental circumstances are subject to change, sometimes quite substantially and in relatively short intervals of time. This may make existing regulations redundant or require considerable modification to secure their ongoing effectiveness or address unintended consequences.
57. This creates a need for systematic and periodic review of regulation.
58. Developing acceptance among regulation-making institutions and at the political level of the value and importance of systematic *ex post* evaluation of regulation is a long-term challenge involving cultural change. A distinct, but related, part of the process is the need to develop broadly applicable procedures for the routine completion of *ex post* analyses of regulatory outcomes.
59. RIA is essential to add structure, rigour and transparency to regulatory review process. RIA should be used to assess benefits, costs and distributive impacts of regulations, and to develop alternative approaches and proposals for reform.

### Mechanisms for *Ex Post* Evaluation of Regulation

#### *Ad hoc* or sector-specific reviews

60. Most economies carry out some form of partial review of existing regulations on an *ad hoc* basis. However, very few do this systematically or periodically. To produce real change, comprehensive review and rebuilding of entire regulatory regimes is often necessary. This process is referred to as “scrap and build” in Japan and “reinventing regulation” in the United States.
61. Such reviews may examine the stock of regulation from a variety of perspectives, depending on the purpose of the review. However, using the RIA methodology in conducting the review will ensure comprehensive analysis of the issue.
  - Focus on a particular policy objective.
    - For example, the National Competition Policy arrangements in Australia established a process to ensure that legislation that restricts competition may be retained or introduced only where it is demonstrably in the public interest, requiring review at least every 10 years after its initial review or introduction.
  - Focus on the impact of regulation on a particular group.
 

Examples include the impact on regional areas, families, small- and medium-sized business.

    - Impact on business was targeted by an *ad hoc* taskforce appointed in Australia (the Taskforce for Reducing Regulatory Burdens on Business, known as the Banks Taskforce). The Taskforce was established to identify practical options for alleviating the compliance burden on business from government regulation and resulted in 178 recommendations on areas where regulatory reform can provide significant immediate gains to business.
  - Focus on a particular sector or industry.
    - The Productivity Commission in Australia has conducted many such reviews since its establishment in 1998. For example, in 2008, the Commission presented a report to government on regulatory burdens on the manufacturing and distributive trades sector.

The report identified a number of ways to reduce unnecessary burdens in these industries, with the Australian government accepting, or accepting in principle, 19 of the 23 Commission recommendations.

- In Australia, the Department of Health and Ageing is conducting a Review into health technology assessment processes. The Review will recommend options to improve efficiency and reduce the regulatory burden of health technology assessment processes to facilitate medical innovation, without comprising timely and affordable patient access to medical services and devices.
62. External, independent advisory bodies can play an important role in conducting *ad hoc* or sector-specific reviews. Such institutions provide expert analysis of particular sectors or areas of regulation, informed by extensive public consultation, and deliver credible advice and recommendations for reform that can be readily adopted by government.

#### **Box 1-10: The Australian legislation review programme**

In 2008, Australia initiated a redundant regulation cleanup exercise. Sixty unnecessary regulations have already been removed, with other identified unnecessary regulation expected to be removed in 2009.

Further, in the February 2009 *Updated Economic and Fiscal Outlook* the Australian government announced that it would undertake a review of Commonwealth subordinate legislation and other regulation, to document those regulations which impose net costs on business and identify scope to improve regulatory efficiency. Around 30,000 subordinate instruments will be reviewed to identify priorities. The exercise involves portfolio engagement, to enable review of those instruments which impose costs on business, in finer detail.

#### **Automatic mechanisms for review**

63. Review clauses, or sunset provisions, provide a more systematic approach to monitoring of regulatory performance. Review clauses are requirements contained within regulations themselves for reviews to be conducted within a certain period. They can act as a powerful adjunct to initial decision-making RIA by checking the performance of regulations against initial assumptions. In addition, they constitute a mechanism to contribute to the dynamic efficiency of regulatory structures, by ensuring that the continued appropriateness of regulations is measured against current circumstances and new regulatory (and non-regulatory) options. For example, Japan requires the inclusion in new regulations of a fixed schedule for future review. Much regulation has already incorporated requirements for *ex post* review after a fixed period of time (ranging from about three to 10 years after introduction).
64. The effectiveness of these mechanisms is enhanced where the central oversight body has a role in monitoring the operation of review clauses and compliance with the requirements.

#### **Administrative burden targets**

65. Many OECD economies, including Japan and the United States, have adopted administrative simplification initiatives as a means of undertaking *ex post* evaluation of regulation. This process involves measuring the administrative burden of all regulation in an economy and then setting a burden reduction target that must be achieved over a defined period (for example, a 25 per cent burden reduction over five years). The focus of the reduction target is on net burden, that is, the burden associated with any new regulation must be offset by a change in existing regulation.



66. This mechanism imposes a discipline on regulation makers to actively identify unnecessary administrative burdens and initiate action to meet the established targets. Oversight of this process by an effective central oversight body will ensure:
- quality control of methodology used to measure burdens;
  - independent adjudication of progress in meeting targets; and
  - communication of results to both politicians and the wider community.
67. One consideration to take into account with this approach is that it focuses attention solely on administrative burden because it is the only category of burden that can be consistently and effectively measured in OECD economies. However, economic burdens, such as restrictions on competition, can impose as significant costs on stakeholders as administrative burdens.

#### **Other Incentive-Based Mechanisms**

68. Annual government reports on the status of regulatory reform or on progress in particular programmes are used in many economies. Such annual reporting mechanisms are valuable in establishing an aggregate, or high-level, appraisal of progress and assessment of the challenges for regulatory reform on a regular basis. As a consequence, regulatory reform achieves a higher degree of prominence within government and the wider community than might otherwise be the case, which may, in turn, strengthen the policy over time.
69. For example, in Australia, the Productivity Commission has developed a framework to benchmark regulatory regimes across all levels of government (i.e., federal, state and local), commencing with a targeted three-year programme. Using a range of quantitative and qualitative indicators, the Commission is publishing a series of reports on *Benchmarking Business Regulation*. In 2008, the Commission published reports on *Quantity and Quality* and *Cost of Business Registration*, and in 2009 will report on *Occupational Health and Safety* and *Food Safety*.

#### **CONCLUSION**

70. Regulation is a very important tool of government and is an integral part of a well functioning economy. Although poorly designed regulation can be a barrier to competitive and well functioning markets, a regulatory reform framework is available to improve regulation and the operation of the economy more generally. The framework can assist by addressing systemic problems through providing a better process for making and reviewing regulation, and there a number of regulatory tools, systems and processes available for improving the quality of new and existing regulations. Regulatory reform helps governments to strike a balance between the need for regulation and the cost being imposed. The importance of regulation has been acknowledged by APEC, which recognises that regulatory reform is one element of structural reform. Regulatory reform is one of APEC's five work priority areas.