



Asia-Pacific
Economic Cooperation

Advancing Free Trade
for Asia-Pacific Prosperity

2014 APEC Economic Policy Report on Good Regulatory Practices

Executive Summary

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35 Heng Mui Keng Terrace, Singapore 119616

Tel: (65) 6891 9600 Fax: (65) 6891 9690 Email: info@apec.org

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For nearly two decades, APEC has been at the forefront of international efforts to develop, document, and implement principles and practices for regulatory environments that promote economic growth and enable prosperity across the region. The promotion of good regulatory practices (GRPs) is key to building high-quality regulatory environments in APEC economies, which constitute an important component of APEC's work to promote free and open trade and investment in the region. In 2011, APEC Leaders agreed to take steps to strengthen the implementation of GRPs across APEC economies. APEC economies have made impressive progress to date in reaching their GRP goals. This 2014 AEPR highlights the challenges of APEC economies in implementing GRPs and suggests further steps in promoting the use of GRPs.

Rationale of Good Regulatory Practices

Building high quality regulatory environments in APEC economies is a key component of APEC's work to promote free and open trade and investment in the region. Since its inception, APEC has promoted the use of GRPs and worked to reduce the negative impact of regulatory divergences on trade and investment. GRPs promote predictability, quality, and accountability in governance. GRPs and the benefits they produce support robust macroeconomic performance, investment, and trade, while ensuring public engagement.

1. Macroeconomic performance

Governments regulate to correct market failures such as negative health, safety, or environmental externalities, or a need for greater disclosure of information. Accordingly, it is essential that such regulation is appropriately tailored in means and scope. GRPs such as regulatory impact assessment (RIA) ensure that regulators rigorously assess the costs, benefits, effects, and alternatives of a given regulatory proposal to help ensure sustained and improved economic performance post-regulation. GRPs such as transparency and public consultation are also essential to this end, providing opportunities for industry and consumers to understand and have a voice in the design of regulations. Without analysis or transparency, uncertainty will plague a marketplace, increasing investment risk and costs of doing business. Adherence to GRPs promotes effective and transparent regulation, which in turn lowers transaction costs and strengthens markets in APEC economies.

2. Trade and investment

APEC has for years worked to raise awareness of the importance of GRP for stable trade and investment. Regulation is an integral part of a well-functioning economy. But economies do not need to have line-by-line coherence in regulatory text to harmonize economic relationships; as long as economies practice common GRPs, partners can be confident that the quality and compatibility of regulation will create deeper opportunities for trade and investment. Institutionalizing shared GRPs creates market openness that can mitigate disputes in international trade discussions. Opaque, inconsistent regulatory environments can drive trading partners elsewhere. The transparency, accountability, and certainty provided by GRPs such as public consultation and regulatory impact assessment sends positive signals to the international community, inviting foreign investment and expanding trade opportunities.

3. Public engagement

Essential to creating the trade, investment and economic value through regulation mentioned above is engagement of stakeholders and the general public throughout the lifecycle of a regulation. APEC recognizes GRPs such as transparency and public consultation as critical ways to normalize essential processes and opportunities such as petitioning, written and in-person comment, and open data tracking. Not only do these practices present opportunities to receive critical information about the need for regulation or effects of regulatory proposals, but promote transparency and accountability, improve awareness and understanding of the policy area, and encourage public ownership and compliance. Strong synergy between economic and social needs is central to sustainable economic development. Through commitment to GRPs, APEC economies can achieve both economic and social growth.

Accomplishments to date

APEC published its first regulatory reform guidelines in its 1999 APEC Principles to Enhance Competition and Regulatory Reform and has made substantial and measureable progress ever since. APEC continued its work on GRPs with the 2005 APEC-OECD Integrated Checklist on Regulatory Reform. In 2008, the APEC Economic Committee produced a Good Practice Guide on Regulatory Reform. In 2011, APEC Leaders agreed to take steps to strengthen the implementation of GRPs across APEC economies with the APEC 2011 Leaders' Commitment on Good Regulatory Practices, which called for strengthening the implementation of GRPs across APEC economies through the following:

- Develop, use, or strengthen processes, mechanisms, or bodies to enable a whole of government approach in the development of regulations, including coordination across regulatory, standards, and trade agencies.
- Develop, use, or strengthen mechanisms for assessing the impact of regulations, which involves effective and consistent use of the tools and best practices for developing new regulations and reviewing existing regulations.
- Implement the principles related to public consultation of the 2005 APEC/OECD Integrated Checklist on Regulatory Reform section on regulatory policy and the 2004 Leaders' Statement to Implement the APEC Transparency Standards.

That same year, the APEC Sub-Committee on Standards and Conformance (SCSC)'s 2011 Baseline Study on Good Regulatory Practices took stock of APEC's progress in implementing GRPs. The baseline study showed that there is laudable dynamism in GRPs across the APEC economies. Each of the 21 economies has made visible progress in recent years in applying GRPs in domestic regulatory activities. The report concluded that APEC economies' use of these GRPs is widespread enough to provide a basis for collective action to further enshrine GRPs in individual APEC economies and meet APEC's shared goals and objectives. The good news continued with the most recent survey of the use of selected GRPs, with the 2013 update to the 2011 Baseline Report finding that APEC economies continue to invest substantial political and financial resources in improving the quality of their domestic regulatory regimes. The report noted not only a continuation but an acceleration in the adoption and use of GRPs, resulting in meaningful positive outcomes from improvements in regulatory practices and their application.

Principles of Good Regulatory Practices

Chapter 1 sets out three principles around good regulatory practices. These are: transparency and public consultation, internal coordination of rulemaking activity, and regulatory impact assessment (RIA).

Elements of Good Regulatory Practices

Chapter 2 expands the three principles of good regulatory practices into elements which provide mechanisms on how to implement these principles.

Strengthening implementation of GRPs is at the heart of successful economic policy and is achievable by all economies. In promoting the application of GRPs, five elements attributed to GRPs should be improved and strengthened: 1) transparency and public consultation mechanism; 2) institutional design of rulemaking activity; 3) regulatory impact assessment (RIA); 4) international regulatory cooperation (IRC); and 5) extended policy options of GRPs.

1. Transparency and public consultation mechanism

Regulations and governance in general are considered transparent when extensive information on an economy's activities, processes, and policies is publicly accessible. Regulatory transparency produces benefits such as greater accountability, engagement of public in the decision-making process, and higher efficiency. Therefore, transparency is a key element of effective regulation. It involves a range of actions including standardized procedures for making and changing regulations, consultation with stakeholders, effective communication and publication of regulations and plain language drafting, codification, controls on administrative discretion, and effective appeals processes.

- *Institutional framework:* Public consultation is one of the key regulatory tools employed to improve transparency, efficiency and effectiveness of regulation besides other tools. Other forms of interaction with interested groups are often mingled with public consultation programs, complementing and overlapping each other.

- *Mechanism and use of technology:* Generally, governments carry out consultation through online or written communications, advisory committees, expert groups, workshops and fora, ad hoc meetings and open hearings. The use of single government internet web portals is one option of supporting better consultation which allows any member of the public to review the proposed text of any regulation under development; an explanation of the regulation, including its purpose and rationale; and any underlying information, as well as any data and analyses considered by the authority in developing the regulation, including, as available, a regulatory impact assessment.
- *Effectiveness in ensuring wide accessibility and high quality consultation:* To ensure wide accessibility and high quality consultation, the consultation performance should be promoted by engaging stakeholders in the consultative process and by integrating the results of consultation into the regulatory process. Consultation may help to improve regulatory quality by bringing into the discussion the expertise, perspectives, and ideas for alternative actions of those directly affected. This helps regulators balance opposing interests and identify unintended effects and practical problems.

2. Institutional design of rulemaking activity

Internal coordination of rulemaking activity, particularly the ability to manage interagency review and coordinate with trade and competition officials, is an essential element of GRP. Successful internal coordination occurs both before an agency publishes a regulation for public comment during the drafting of a final regulation, as well as after its adoption. Well-designed regulatory rulemaking activity should be capable of building political consensus and support for regulatory reform. Regulatory institutions must be designed in the context of the political, economic and social environment in which they are to operate. They may take a variety of forms and each economy may have a number of institutions with each performing a niche role.

- *Legal and regulatory bodies:* The key institution is the regulatory oversight body, often located at the center of the government administration, with a broad mandate to build consensus on regulatory policy, assist regulators in implementation, undertake quality control and report on overall performance in achieving regulatory policy objectives. In addition to central oversight bodies, various other institutions, including the executive and legislative rulemaking bodies, local governments, regulators and advisory bodies form part of the institutional arrangements for regulation.
- *Implementation mechanisms:* High quality regulation management systems include the compliance and implementation dimensions. It is important for regulators to develop strategies to ensure that regulations are effectively administered to meet their aims, at least cost to business and citizens and with the regulator's limited resources deployed in the most efficient way.
- *Management of regulatory reform:* The quality control of the flow and stock of regulations is important because it allows economies to eliminate barriers or restrictions to trade, innovation, investment and economic efficiency. Rigorous evaluation systems can identify the aspects of the regulation-making processes that need to be amended.

3. Regulatory impact assessment (RIA)

Greater use of a range of analytic tools during the rulemaking process, including cost-benefit analysis and cost-effectiveness analysis could improve the quality and effectiveness of rules and minimize burden. A Regulatory Impact Assessment (RIA) is a process to be undertaken before a new regulation is introduced. RIA includes an assessment and, to the extent feasible, a quantification of costs and benefits anticipated to result from the proposed regulation and its possible alternatives – including an absence of regulation. RIA may examine impacts on competition, welfare, environment, and administrative burdens, or any other impact that is of relevance to the regulation or its alternatives. Its assessment objects include both the “flow” of regulation (new regulation and amendments to regulation) and the “stock” of regulation (existing regulation).

- *Objective:* The ultimate purpose of RIA is to improve the cost-effectiveness of regulatory decisions and reduce the number of low-quality and unnecessary regulations. Also, RIA can improve the transparency of regulatory decisions and enhance consultation and the participation of the affected groups.
- *Design of assessment framework:* A complete RIA includes the following: definition of the problem and assessment on its magnitude, definition of the objectives, identification of the full range of feasible options, analysis on the costs, benefits and other impacts for each option, consultation, conclusions and recommendations, and implementation.
- *Effectiveness of RIA:* There are several challenges common to most economies when starting to implement RIA. They include i) insufficient institutional support and staff with appropriate skills to conduct RIA, ii) limited knowledge and acceptance of RIA within public institutions and civil society, iii) lack of reliable data necessary to ground RIA, and iv) lack of a coherent, evidence-based and participatory policy process.

4. International regulatory cooperation (IRC)

Regulators need to cooperate with their overseas counterparts to reduce cross-border barriers and enhance regulatory capacity and effectiveness. There are various forms of IRC that regulators can undertake.

5. Extended policy options of GRPs

This includes single online locations for regulatory information, prospective regulatory planning, and retrospective reviews of existing regulations. These options are explained below in the next steps in promoting the use of GRPs.

Next steps in promoting the use of GRPs in APEC

In 2013, Leaders and Ministers encouraged economies to explore the possibility of using additional tools to strengthen economies' implementation of GRPs, including single on-line locations for regulatory information, prospective regulatory planning (including forward-looking regulatory agendas), and retrospective reviews of existing regulations.

- *Single on-line locations for regulatory information to provide access to information and opportunities for public comments on regulatory proposals (one stop shops by internet):* With the development of information and communication technology (ICT), one stop shops by internet are one way of carrying out public consultation, and can also be used to implement and improve “notice and comment” procedures of regulatory proposals.

- *Prospective regulatory planning (including forward-looking regulatory agendas)*: The objective of prospective regulatory planning is to ensure that the regulatory lever works effectively--minimizing duplication and conflict between regulations so that regulations and regulatory frameworks are in the public interest and maximize social welfare.
- *Retrospective reviews of existing regulations (Ex post evaluation)*: Ex post evaluation of regulatory tools and institutions could be conducted in several ways including: formal compliance with the individual elements of the regulatory process or policies, performance of the regulatory tool or institution, and actual effects of the regulatory tool or institution on the quality of the regulatory outcome.

In addition, demand is growing in the APEC region for more concrete and operational solutions for challenges in instituting and applying GRPs. The following list indicates possible areas in which APEC economies may focus their continued efforts to improve regulatory practices.

- *International Regulatory Cooperation (IRC)*: Regulatory regimes are more likely to pose barriers to trade and investment flows across the region, compared to at-the-border barriers such as tariffs. IRC can be useful in reducing regulatory differences, but it is also useful to enhance regulatory effectiveness across borders or improve regulatory capacity and sharing of scarce resources. Due to the increasingly global nature of the regulatory playing field, economies are encouraged to consider the range of different IRC mechanisms.
- *Inclusion of trade and competition*: While it may be difficult to estimate a regulation's potential implications for trade, greater inclusion of Ministries of Trade, for example, in the regulatory policymaking process could greatly improve the inclusion of trade concerns.
- *Public consultation*: There is also room for improvement in the area of public consultation. The options include the establishment of minimum standards for public consultation, a clear scope for consultation including legislation, and timely online access.
- *Web-based technologies*: There is an opportunity for APEC economies to explore further use of web-based technologies, for example, through preparation and publication of an annual regulatory and legislative plan.
- *Closer collaboration*: Sufficient advanced planning could help relevant agencies and ministries better prepare and participate in the process.
- *Improved regulatory review mechanisms*: An improved regulatory review process to examine and reform regulations inhibiting trade and investment could serve to improve economic performance.

Summary of Individual Economy Reports

Individual Economy reports (IERs) submitted by APEC member economies indicate the achievements concerning the use of good regulatory practices (GRPs) in individual economies, the challenges that APEC economies currently face, and the priorities for future reforms.

1. Overview of the institutional framework to oversee good regulatory practices

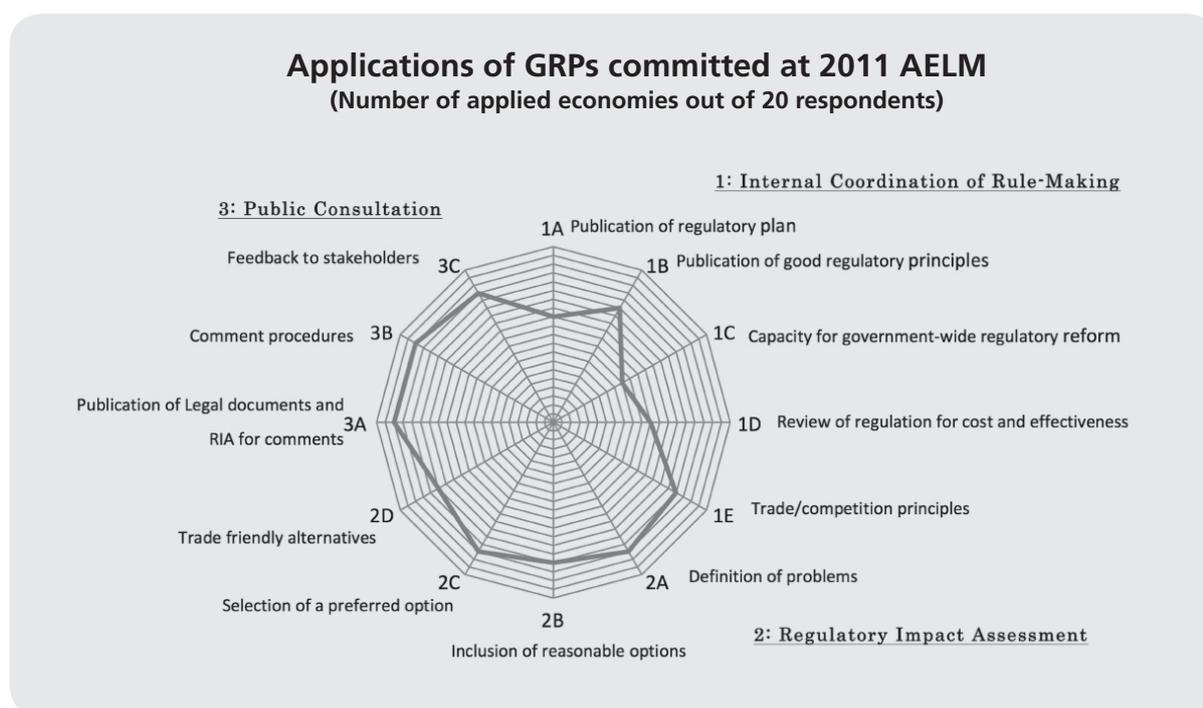
Nearly half of the APEC economies that submitted IERs have established a central body to oversee regulatory policy at the center of the government administration. In some economies including the US and Australia, central regulatory oversight bodies are established in President’s Executive Office or the Prime Minister’s Office. Ministries in charge of public finance, economy or trade traditionally play a large role in coordinating rule-making activity in many economies. Advisory bodies or experts’ panel play a substantial role in some economies including Japan and Korea. While design and function of institutions for regulatory oversight differs by economies, these central oversight bodies guide whole-of-government policy for regulatory reform and coordinate rulemaking activity. Central oversight bodies also tend to oversee regulatory impact assessment (RIA), public consultation mechanisms, and training/capacity building program for rule makers and regulators. Some economies, which have more decentralized administration systems, develop mechanisms for coordination between central and local level of governments through ensuring participation of local governments in the rulemaking process and information sharing between different levels of government.

Some APEC economies have adopted an integrated strategy or program that specifies the goals and principles of regulatory policy. However, the form of those strategies varies in their scope. Some provide general principles of rulemaking and regulatory reform, while others are focused on more specific purposes such as reducing red tape and streamlining particular administrative procedures.

2. Application of good regulatory practices in APEC Economies

2.1 Progress in applications of GRPs in the areas committed at the 2011 AELM¹

In 2011, APEC Leaders committed themselves to strengthening the implementation of GRPs across APEC economies by (1) ensuring internal coordination of rulemaking, (2) assessing the impact of regulations, and (3) conducting public consultations.

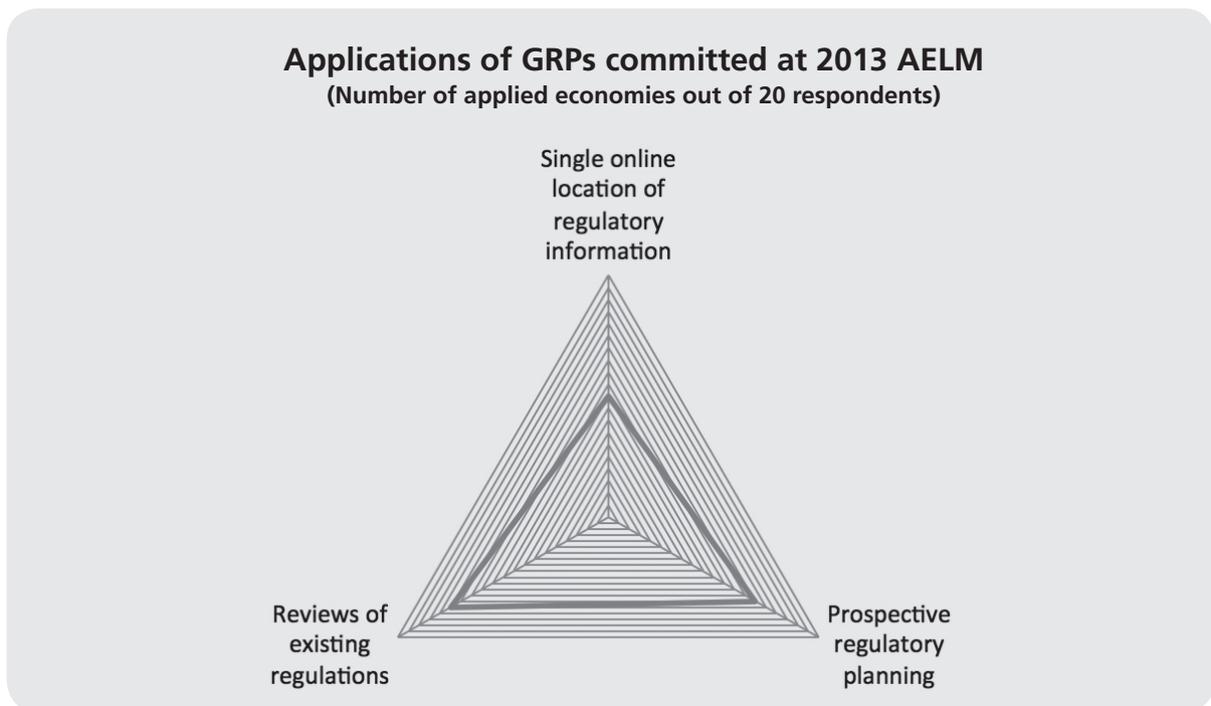


¹ APEC Economic Leaders’ Meeting (AELM)

IERs confirm that APEC Economies have made good progress in various GRP measures. In particular, Regulatory Impact Assessment (RIA) seems to have become a norm of regulatory policy in many APEC economies. Significant efforts are devoted to improving the process of RIA by adopting the requirement for identification of problems to be solved and a range of feasible options for solving the problem. On the other hand, the performance of APEC economies in ensuring internal coordination of rule-making is moderate. There is room for improving some elements such as capacity to manage a government-wide program of regulatory reform and publication of annual regulatory/legislative plan. Some caution is also required in interpreting the performance of conducting public consultation as some of the measures are not mandatory, depending on the discretion of regulators.

2.2 Implementation of GRPs in the areas extended at the 2013 AELM

In 2013, Leaders and Ministers encouraged economies to explore the possibility of using additional tools to strengthen economy's implementation of GRPs, including single online locations for regulatory information, prospective regulatory planning (including forward-looking regulatory agendas), and retrospective reviews of existing regulations.



According to the IERs, slightly more than half of APEC economies have established single online locations for regulatory information. In many cases, the regulatory websites are managed by central government agencies, though some economies such as Korea integrate the regulatory information of the central and local governments. A majority of APEC economies have adopted processes, mechanisms, or bodies to publish forward-looking regulatory agendas and to implement reviews of existing regulations.

3. Challenges and priorities for future reform

Priority for future reform to improve quality of regulations and to adopt GRPs differs significantly by economy, depending on the development of each regulatory system. However, some aspects of GRPs are identified by many APEC economies as priority areas for future reform.

- Objectives: In pursuing further regulatory reform, many APEC economies suggest that reducing regulatory burdens and improving the business environment to promote economic growth remains a top priority goal. Some developing economies attach high priority to removing government's controls and following the principles of trade liberalization and fair competition.
- Improving internal coordination: Improving internal coordination is suggested as an important future agenda in many developing APEC economies. Key challenges in this area include the establishment of a central regulatory oversight body and the introduction of regulatory guidelines applied to all government agencies. In addition, promoting regulatory reform at the local level is also recognized as a priority in some economies.
- Review and assessment of regulations: Strengthening the cooperation and coordination among ministries and agencies in an effort to integrate RIA with the policymaking process is an urgent task for some economies. As for the retrospective review of regulations, some economies plan to further institutionalize retrospective review as an essential component of the regulatory policy.
- Public consultation: Many APEC economies put a priority on improving public consultation processes. Measures currently planned or in implementation include: the requirement of feedback from rule-makers; the introduction of a consistent, standardized guideline for all public consultation within an economy; and the establishment of a single online location for regulatory information.
- Strengthening capacity building: Many developing APEC member economies attach high priority to strengthening capacity building, in particular, concerning the implementation of RIA.

4. Conclusion

The submitted IERs contain rich information on how APEC economies have implemented reform to adopt GRPs and how they have faced related challenges. The IERs confirm that APEC economies have made good progress in adopting various GRP measures for strengthening institutional and procedural frameworks to oversee good regulatory practices and to ensure internal coordination of rule-making, assessing the impact of regulations and conducting public consultation. In particular, a wider adoption of regulatory impact assessment is one of the major achievements. With regard to the new GRP agenda such as single online locations for regulatory information, prospective regulatory planning and reviews of existing regulations, many APEC economies correctly recognize the necessity to strengthen GRPs in those areas and attach high priority to those measures. These findings underscore the importance of APEC's GRPs initiatives to support member economies through the dissemination of best practices and the provision of capacity building programs.

APEC economies have continued to learn and grow in their application of GRPs. Having set ambitious goals, they have by and large, devoted equally significant resources and effort to improving regulatory practices. With this sustained level of commitment and continued engagement with one another, APEC economies can continue to build on their successes and their momentum toward sound and harmonized regulatory practices.



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