

**SECOND WORKSHOP OF  
THE APEC-OECD CO-OPERATIVE INITIATIVE  
ON  
REGULATORY REFORM**

**MERIDA, MEXICO**

**APRIL 24-25, 2002**



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## I. PROCEEDINGS OF THE SECOND WORKSHOP OF THE APEC-OECD CO-OPERATIVE INITIATIVE ON REGULATORY REFORM

24–25 April 2002, Merida, Mexico

The APEC-OECD Co-operative Initiative on Regulatory Reform provides a forum for exchange of experiences of good regulatory concepts, policies and practices. The common agenda is driven by the APEC 1999 declaration of *Principles to Enhance Competition and Regulatory Reform* and the OECD principles on regulatory reform embodied in the *1997 Report to Ministers on Regulatory Reform*. The Agreement between the two organisations sets out the structure and organisation of the co-operative framework, with the aim to support the implementation of a similar set of principles on regulatory reform in the respective economies.

At the launching conference, held in *Singapore on 22–23 February 2001*, a series of three workshops were agreed upon and the governments of China, Mexico and Korea offered each to host one of them. An important decision of the conference was to ensure wide dissemination of the results of the Co-operative Initiative through publishing the proceedings of the workshops and establishing an information network via a special webpage.

The Merida workshop was opened by Mr. Luis Ernesto Derbez Bautista, Minister of Economy of Mexico, Ms. Margarita Trillo, Convenor of the APEC Competition Policy and Deregulation Group and Mrs. Odile Sallard, Director of the OECD Public Management Service. It brought together more than 20 countries as well as representatives from business, labour and several international organisations, including the EC and the World Bank. In addition, the Mexican federal government invited representatives from the Mexican States to participate in the two-day meeting.

In Merida, delegates discussed the design and practical operation of RIA (Regulatory Impact Analysis) as a necessary tool for sustaining regulatory reform, and the integration of market openness into the regulatory systems as an important component of regulatory reform. These topics complemented and deepened the two key issues discussed at the first workshop in Beijing: the design and operation of a broad and sustainable regulatory reform programme that produces concrete results for consumers and businesses, and the importance of building competition principles into regulatory regimes.

The first session on *how to build effective RIA systems*, was based on a comparison of the existing RIA systems of Australia, Canada, Mexico, the Netherlands, the UK, and the US. Participants exchanged views and experiences on several key issues including the scope of a RIA system, consultations during the process of RIA, independence and credibility of a RIA oversight unit and the compliance and enforcement mechanisms needed for an effective RIA application by regulators. Some of the important messages of the session as presented by Mr. Luigi Carbone, Chairman of OECD Working Party on Regulatory Reform and rapporteur of this session (see his report p.10-14), included:

- RIA systems require adaptability and flexibility to the administrative and legal cultures;
- RIA systems need to be balanced between decentralisation of the drafting of RIAs and centralisation of quality controls of RIAs;

- The combination of regulatory consultation and RIAs – two key regulatory management mechanisms – provide synergies and thus gains in terms of efficiency, transparency and accountability;
- To maximise compliance with RIA procedures, the system should establish negative (i.e. sanctions, peer pressure) and positive incentives (i.e. public recognition) for rule makers.
- A successful introduction of RIA can start in a modest way (for instance with a simple checklist on regulatory proposals) but scale up rapidly as capacities in ministries and in the quality control functions increase.

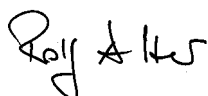
Discussions during the second day focused on the relationship between **regulatory reform and trade facilitation**, and especially on simplification of customs procedures and harmonisation of standards. It proved to be a most effective and in-depth dialogue between OECD and APEC economies on their respective work in the field of market openness.

Ms. Joanna Shelton, Director of the Mansfield Center and Former Deputy Secretary General of OECD and rapporteur of this session (see her report p. 15-18) identified as one of the major themes of the discussion the importance of the principles of transparency including consultation, non-discrimination and competition. Important lessons of the session concerned the interlinkage of reform of customs procedures and harmonisation of standards on the one hand and market openness on the other; and the interlinkage of regulatory reform and trade liberalisation with domestic economic performance more broadly.

The session provided also an important opportunity to discuss some aspects of the Doha Development Agenda, such as institutional capacities building, in the area of trade facilitation. It was also an occasion to explore some country experiences in terms of using regulatory reform as an instrument of integration into the multilateral trade and investment flows. In this regard the presentations by Chinese officials provided a comprehensive overview on current policies and tools of reforming regulations as part of the country's market openness policies (i.e. acceding WTO) and creating world class export/import facilities.

During the closing session, the OECD and APEC Secretariat announced the upcoming **Third Workshop**, which will be held in **Cheju Island in Korea** on **17 –18 October 2002**. The event will concentrate on (1) the importance of transparency in the regulatory framework and (2) on a first stocktaking exercise on regulatory reform in key economic sectors. The workshop will be held back to back with an High Level Conference on 18 October 2002 hosted by the Korean Government, to assess the results of the APEC-OECD Co-operative Initiative and to discuss the launching of a second stage of co-operation.

The proceedings will be made available to the participants of the meeting, to interested experts and to the public at large in order to raise awareness for the Regulatory Reform agenda globally.



Rolf Alter  
Deputy Director, Public Management Service  
Head of Programme on Regulatory Reform OECD



Margarita Trillo  
Technical Secretary of the Dumping and Subsidies  
Commission  
Convenor of the APEC Competition Policy and  
Deregulation Group

## II. AGENDA OF THE MERIDA WORKSHOP

**Wednesday 24 April 2002**

8:45 - 9:30

Registration

9:30 – 10:30

Welcome and opening remarks

- **Luis Ernesto Derbez Bautista**, Minister of Economy, Mexico
- Patricio Patron Laviada, Governor of Yucatan
- **Odile Sallard**, Director of the Public Management Service, Organisation for Economic Co-operation and Development (OECD)
- **Margarita Trillo**, Convenor of the Competition Policy and Deregulation Group, APEC and Technical Secretary of the Dumping and Subsidies Commission, INDECOPI (National Institute for the Defence of Competition and Protection of Intellectual Property), Peru. Ms. Trillo will review some of the important messages from the opening conference in Singapore in February 2001 and the First Workshop in Beijing, China in September 2001.

10:30 – 18:00

### **Session 1: Regulatory Impact Analysis Systems**

- **Chair: Rolf Alter**, Head of Programme on Regulatory Reform OECD.
- **Rapporteur: Luigi Carbone**, Chair of the OECD Working Party on Regulatory Management and Reform, and, for the Italian government, Counsellor of State and Deputy Director of the Regulatory Simplification Unit.

In an era of competitive global markets and rapid technological change, governments need to improve their understanding of the costs and benefits of regulation. Regulatory Impact Analysis (RIA) — the systematic assessment of positive and negative impacts of regulation and alternatives— has helped many economies to reduce regulatory costs on businesses, while maximising the effectiveness of government action in protecting public interests. RIA has also been instrumental in improving transparency and communication with concerned interests. This session will be divided into three panels that will examine how economies have addressed basic issues of setting up and enforcing a RIA system:

- • Setting up the institutional framework for a successful RIA system
- • Analytical tools and methods in RIA systems
- • RIA as a consultation and communication tool

10:30 – 12:30

**Panel 1: Setting up the institutional framework for a successful RIA system**

RIA, as the basic regulation for regulators, needs the adequate institutional framework to provide the right incentives for rule makers to produce high quality regulation. First and foremost, a successful RIA systems needs political backing to set up the system but years if not decades of maintenance and improvement are required to show an improved regulatory environment. The political decision also needs be translated into an adequate institutional setting. Experiences in many countries show no exception to the rule that RIA will fail if left entirely to regulators, but it will also fail if it is too centralised. To ensure ownership by the regulator and at the same time quality control and consistency, responsibilities should be shared between regulators and a central control unit. The panel will discuss the governmental policies and the legal framework for operating a RIA; the scope of RIA and its exemptions; the administrative procedures and their enforcement, and the human and financial capacities needed by the central units in charge of overseeing the process as well as of the regulators (i.e. proponent ministries) in charge of preparing RIAs.

Among the invited speakers are:

- **Cesar Cordova-Novion**, Deputy head of the Regulatory Reform Programme, OECD Secretariat, “Formal Policies for RIA in OECD countries”
- **Steven Blake**, Regulatory Impact Unit, Cabinet Office United Kingdom, “Setting up a Regulatory Impact Unit- the UK experience”.
- **Ali Haddou**, Co-ordinator of Regulatory Impact Assessment, Federal Regulatory Improvement Commission – COFEMER, Ministry of Economy, Mexico, “Improving the Capacities and Enforcing RIAs among Regulators- Mexico’s experience”.

12:30 – 13:30

Lunch and visits to document tables

13:30 – 15:30

**Panel 2: Analytical tools and methods in RIA systems**

As for all processes, the quality of RIA is related to the quality standards selected for assessing regulations. Typical standard tests vary from business compliance costs to benefit-cost analysis. However the methodology selected needs to be flexible according to the cost of collecting and processing the data as well as to the administrative capacities and resources to prepare a RIA. A RIA system also needs to balance the need for simplicity and timeliness with precision and robustness. The panel will discuss the pros and cons of alternative methods to measure the impacts of regulation including cost and benefit analysis, risk analysis techniques for health, safety, and environment regulations, qualitative indicators, etc.

Among the invited speakers are:

- **Ge Linssen**, Head of Competition, Deregulation and Quality of Regulation Project, Ministry of Economic Affairs, The Netherlands, “Measuring the Impact of Regulation in the Netherlands”
- **Randall Lutter**, Ph.D. Fellow, AEI-Brookings Joint Center for Regulatory Studies, USA “Improving RIA quality-insight from the US”
- **Stephen Rimmer**, Assistant Commissioner, Office of Regulation Review, Australia, “Measuring the impact of regulations: an Australian Perspective”

15:30 – 16:00

Coffee and visit to document tables

16:00 – 17:45

**Panel 3: RIA as a consultation and communication tool**

A good regulatory policy approach should be based on the principle of no regulation without representation. Using RIA in consultation and communication approaches helps bring transparency into regulatory decision-making processes. It provides an opportunity to the regulated parties to offer their understanding of the rationale as well as their perspective of the future impacts of the regulation. Public involvement in RIA improves the quality of RIAs by providing an additional source of important data and by subjecting the resulting analysis to critical assessment, helping to identify poor assumptions, faulty reasoning and unanticipated effects. Moreover, this improves compliance with the regulation and thus decreases the enforcement costs. The panel will examine different strategies to use RIA as a consultation and communication device.

Among the invited speakers are:

- **George Redling**, Assistant Secretary to the Cabinet, Privy Council Office, Operations, Canada “Regulatory Impact Analysis in Canada-Benefits and Challenges”
- **Changfa Lo**, Professor of National Taiwan University and former Commissioner of the Fair Trade Commission, Chinese Taipei “RIA as a Tool from Chinese Taipei’s Perspective” (Absent)
- **Mike Waghorne**, Assistant General Secretary, Public Services International (PSI) “Motivating Public Sector Workers: Using regulatory impact assessment as a consultation and communication tool”

17:45– 18:00

- **Summary by the Rapporteur**

**THURSDAY 25 APRIL 2002**

9:30 – 17:00

***Session 2: Integrating Market Openness into Regulatory Systems***

***Chair: Margarita Trillo***, Convenor of the Competition Policy and Deregulation Group, APEC and Head of International Relations and Technical Co-operation, INDECOPI (National Institute for the Defense of Competition and Protection of Intellectual Property), Peru.

***Rapporteur: Joanna Shelton***, Interim Director, the University of Montana, USA; Former Deputy Secretary General of the OECD

The interlinkage between efficient regulation and open conditions for trade and investment is an important aspect of regulatory reform. The Doha Development Agenda agreed by WTO Ministers in November 2001 will directly and indirectly intensify the focus of economies on non-tariff barriers arising from national or local regulation. A regulatory system that avoids unnecessary barriers to trade and investment will help countries draw full benefit from competition in a global economy by strengthening national economic performance and enlarging consumer benefits. This concept underlies the APEC Principles to Enhance Competition and Regulatory Reform as well as similar OECD principles. This session will be divided into three panels:

- ***Complementary Relationship between Regulatory Reform and Market Openness***
- ***The regulatory framework for internationally contestable markets: the case of customs procedures***
- ***Problems and solutions in favouring the use of international harmonised standards and the recognition of equivalence of foreign measures***

9:30 – 10:45

***Panel 1: Complementary Relationship between Regulatory Reform and Market Openness***

Does the national regulatory system allow enterprises to take full advantage of opportunities for competition in global markets? Reducing regulatory barriers to trade and investment enables countries in a globalising economy to benefit more fully from technological innovation and achieve greater efficiency in production and marketing, thereby bringing greater benefits for consumers. Maintaining an open world trading system requires regulatory styles and content that promote global competition and economic integration, avoid trade disputes and improve confidence across borders. In this panel, regulatory reforms that enable a more open market for products, services and investment will be discussed.

Among the invited speakers are:

- ***Gerardo Traslosheros***, Director General for Multilateral Trade Affairs, Ministry of Economy, Mexico
- ***Anthony Kleitz***, Head of Trade Liberalisation and Review Division, Trade Directorate, OECD “Integrating market openness into regulatory systems: some experience and emerging best practices”

- **Wenhong Tang**, Director, Department of Treaty and Law, Ministry of Foreign Trade and Economic Co-operation, China, “Clearance, amendment and formulation of China's laws and regulations to support China's entry into WTO”
- **German King**, Vice chair of Committee on Trade and Investment of APEC
- **Andrea Camanzi**, Senior Vice President of Regulatory Affairs, Telecom Italia SpA (discussant)

10:45 - 11:00

Coffee and visits to document tables

11:00 – 13:15

***Panel 2: The regulatory framework for internationally contestable markets: the case of customs procedures***

Customs procedures respond to a wide array of government objectives, including revenue collection, health and safety protection or prevention of illegal practices. They tend as a result to be based on highly complex and sometimes duplicative practices, imposing significant delays and costs on commercial operators. The increasing importance of these time and cost burdens relative to more “traditional” trade barriers has put “trade facilitation” (i.e. the simplification and harmonisation of international trade procedures) high on the political agenda. Reform in this area tries to reconcile the efficient pursuit of these objectives with a simplified way of doing business, streamlining documentary requirements and accelerating product clearance.

Among the invited speakers are:

**Evdokia Moise, Administrator**, Trade Liberalisation and Review Division, Trade Directorate, OECD

- **Dong Yufan**, Section Chief for Multilateral Affairs Division, Department of International Co-operation, Customs General Administration of China “Achieve Greater Facilitation through Improved Customs Procedures”
- **Fermin Cuza**, Chairman of the International Chamber of Commerce Commission on Customs and Trade Regulations (Absent)
- **Peter Wilmott**, Non-executive Director, Simpler Trade Procedures Board(SITPRO), the United Kingdom, “Trade Facilitation- the UK experience”

13:15 - 14:30

Lunch and visits to document tables

14:30 - 16:15

***Panel 3: Problems and solutions in favouring the use of international harmonised standards and the recognition of equivalence of foreign measures***

A significant cause of regulatory barriers to trade and investment is the divergence and duplication of regulations in different markets, obliging firms wishing to be present in several markets to maintain different production lines and to submit them to duplicative testing and certification procedures. While there may be valid justifications for these divergences and duplications, they nevertheless entail costs that may seem excessive. In such cases, the question arises whether certain approaches would enable achievement of the intended regulatory results through more efficient and less costly means.

The approaches most often identified are international harmonisation of applicable standards and recognition of equivalence of national testing and certification procedures (both through MRAs and unilaterally). Keeping in mind different national situations as well as sectoral specificities, this panel will discuss experience with and prospects for adopting such approaches.

Among the invited speakers are:

- ***Koichi Noda***, Vice President, JETRO Geneva office, Former APEC/SCSC contact of Japan “Japan and APEC/SCSC Activities for Regulatory Reform Related to Standards and Conformance”
- ***Brian Jenkinson***, Deputy Head of Unit, the European Commission “A toolbox of measures to facilitate trade in the fields of technical regulations, standards and conformity assessment”
- ***Graeme Drake*** Head of Conformity Assessment, International Organisation for Standardisation (ISO); Former General Manager - International, Standards New Zealand, “Regulatory Structures and Trade - Mutual Recognition of Conformity Assessment and Use of International Standards”
- ***Chan-Hyun Sohn***, Senior Fellow, Department of Trade and Investment Policy, Korea Institute for International Economic Policy, Korea “What can we do about regulatory reforms in standards and conformance- linking the actions of the APEC, OECD and WTO”
- ***Charlotte Nyberg***, Director Trade Policy, Confederation of Swedish Enterprise International Trade, Sweden (discussant)

16:15– 16:30

**Summary by the Rapporteur**

16:30 – 17:00

Final statement by APEC and OECD and announcement of the next workshop in Seoul, Korea

### **III. REPORT OF THE RAPPORTEURS**

**LUIGI CARBONE, ITALY**

#### **RAPPORTEUR FOR SESSION ONE**

##### **1. Foreword: the “sense” of these common general conclusions and the “role of RIA”**

###### ***a) A step forward from the “Beijing conclusions”***

In the first APEC-OECD workshop on Regulatory Reform in Beijing, we reached some common general conclusions on how governments can “design and sustain a broad regulatory reform programme” focusing in particular on consultation and simplification. In Merida we examined from a broad perspective what is perhaps one of the most useful advanced and sophisticated tools of regulatory quality: Regulatory Impact Analysis.

###### ***b) Again, not a single recipe***

It is widely acknowledged that the design of a RIA system depends heavily on the legislative, administrative and judicial framework in which it operates. However, we can identify some common “basic ingredients” for a good RIA system. This is because the role of RIA is generally similar across countries.

RIA does NOT replace the need for a political process. Neither is it a “magic tool” to solve all regulatory problems. Rather, it provides information essential to a good policy development process. In other words, RIA supports a “informed decision” at the political level.

##### **2. Setting up the institutional framework for a successful RIA system**

###### ***a) What avoid in an RIA system***

We learned from today’s discussion that, in designing a RIA system, there are three common mistakes to avoid:

- to transform RIA into an *ex post* justification;
- to create another unnecessary bureaucracy, and
- to define each problem following only ministerial structures. In this case, we have to try to evaluate the “whole dimension”, the whole latitude of each problem, crosscutting the governmental and the administrative organisation.

### ***b) The role of sectoral Ministries***

The role of sectoral ministries in RIA is crucial since they are the ones to have relevant expertise. A good practice is to designate in each ministry an official (sometimes a Vice-Minister<sup>1</sup>) responsible for a regulatory reform programme and RIA in particular.

On the other hand, it has been generally recognised that sectoral ministries should not be the only principal agent in a RIA system. It is essential to create a balance between centralisation and decentralisation.

### ***c) The role of the “Centre of the government”: why and how?***

*Why should “the Centre” be involved in RIA?*

The “Centre of the government” has at least two reasons to intervene in RIA:<sup>2</sup>

- sectoral ministries often have a tendency to use RIA to justify rather than to assess their regulatory proposals. Thus there is a need of an external review or ‘check and balance’ system, and a review system instituted in the Centre of the government is often the most effective.
- The Centre of the government can facilitate the dialogue between different ministries concerning the impacts of their policy proposals.

*How should “the Centre” manage the RIA process?*

Participants identified some good examples:

- a commitment from the highest political level is essential. This is made evident by the growing use of autonomous “Central Units” which is devoted to RIA and reports directly to the Centre usually the Prime Minister;<sup>3</sup>
- the Centre should not expropriate the regulatory functions of sectoral ministries and or regulators; but should rather integrate the assessment of regulatory impacts into the regulatory process;<sup>4</sup>
- the Centre should set up a clear ministerial accountability system;<sup>5</sup>
- some countries that are advanced in RIA<sup>6</sup> indicated that a later stage in the development of a RIA system may be to move from a top-down approach to a decentralised one. This means that, once RIA is well integrated into regulatory process more responsibilities should be delegated to sectoral ministries.

### ***d) The “autonomy” (and not necessarily “independence”) of the “Central Units” that review RIAs***

Several countries mentioned the importance of establishing trust in the RIA system. A RIA system must be reliable and should not unduly be influenced by “sectoral interests” pursued by line ministries or sectoral regulators, otherwise, there is a risk that RIA can become an *ex post* justification for regulators.

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<sup>1</sup> This is the case in Mexico.

<sup>2</sup> Mexico, Australia, Canada, UK made this point.

<sup>3</sup> This is the case in almost all the countries that intervened in the session such as the UK, the Netherlands, the USA, Australia and Mexico. For instance, in the Mexican case, the Central Unit responsible for RIA and better regulation has been moved from SECOFI (Ministry for Industry and Development) to COFEMER (Federal Commission for better regulation), whose director is directly appointed by the Prime Minister.

<sup>4</sup> Australia is a very good example.

<sup>5</sup> The OECD and the Mexican presentations provided concrete examples on this point.

<sup>6</sup> Canada is an example.

Experience shows that autonomy of RIA units often helps to build its credibility and public confidence. Frequently units responsible to review RIAs are established in an autonomous position from regulators (often within the Prime Minister's Office, but this does not exclude other models). However, this does not mean that the Units are *outside* the governmental structure. RIA is an integral part of the regulatory process. It is not a judicial control. RIA, as we agreed, should not replace political decisions. Therefore, the "autonomy" of RIA Units from sectoral interests is not comparable to the "independence" of the judges from the government.

On the other side, in some countries the role of the Centre is even strengthened by an Inter-ministerial Committee at the political level.<sup>7</sup> This political role has not only avoided undermining the autonomy of the RIA Unit, but on the contrary strengthened its power.

***e) The balance between flexibility and consistency. Sanctions for poor RIA?***

Finally, it was stressed that a proper institutional framework for a successful RIA system is necessary. That such institutional framework needs to balance flexibility and consistency, but that the balance heavily depends on the national legal system.<sup>8</sup>

For instance, several countries indicated that they have established sanctions for non-compliance with RIA requirements, "return letters" to ensure the effective implementation of RIA<sup>9</sup> and, in general, consequences for regulators that do not satisfy mandatory RIA requirements.

Furthermore, many countries -- especially, but not exclusively, "civil law" countries -- noted that the introduction of a law to ensure the RIA works has contributed to its success. But this should not lead to an excess of regulation.

**3. Analytical tools and methods in RIA systems**

Here again, participants identified common elements though, of course, no single model prevails. For instance, according to their legal context, some systems, such as the UK and Australia, stress flexibility. Other systems, such as in Mexico focus on the administrative procedural aspects of the RIA process. But in many cases some questions received a similar answer.

***a) When to assess the impacts of regulation?***

It was generally recognised that the RIA process needs to start at the very beginning of the regulatory process.<sup>10</sup> This can not only allow the identification and assessment of different alternatives but also the engagement of all stakeholders from the very beginning. In some cases an early RIA avoids the preparation of an unnecessary new regulation.<sup>11</sup>

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<sup>7</sup> Cases in study are the Council of Mexican COFEMER and the MDW in the Netherlands.

<sup>8</sup> Canada made this point.

<sup>9</sup> Used in the USA.

<sup>10</sup> The Australian presentation stressed on this point.

<sup>11</sup> The UK and Canadian experience have exemplified the issue of development of alternatives.

### ***b) What to assess: Scope and thresholds of RIA?***

The scope of RIA is becoming more and more extensive. Starting from a “business-impact” approach, in many countries RIA is progressively including the assessment of impacts on consumers and other stakeholders such as public administrations and sectoral regulators.<sup>12</sup> In some cases, these impacts are assessed through *ad hoc* projects.<sup>13</sup>

This naturally leads to the topic of the exemptions to RIA and, in general, of the establishment of a threshold under which RIA is not needed. Almost every country has exemptions to RIA, either for specific issues<sup>14</sup> or for “un-substantive” regulations. In some countries there are very limited exceptions applied to RIA.<sup>15</sup>

An inappropriate system of exemptions can lead to the ineffectiveness of the whole RIA system. Experience has shown that minor regulations can also have a dramatic impact. In this regard, some countries have found useful a progressive, two-step approach; almost all regulations should be submitted to a preliminary RIA but the more in-depth RIA should be done only for the cases where the impacts are believed to be substantial.<sup>16</sup> The “proportionality” approach has also been widely applied where the intensity of RIA should be proportional to the impacts of the regulation assessed.<sup>17</sup> It is also underlined that the decision of whether a regulation goes through a formal RIA should be independent of the authority that has proposed the regulation.

### ***c) How to assess?***

The first step is the data collection. Many ways have proven to be effective (such as consultation, expert meetings, surveys and test panels).<sup>18</sup> In some cases, the indicators used are simple and flexible, depending on the goals.<sup>19</sup>

As far as methods of analysis are concerned, every system has to find its own equilibrium between a quantitative and a qualitative approach. In some countries,<sup>20</sup> the way of keeping the right balance is to be flexible. An interesting issue raised is the “reproducibility” of the analysis.<sup>21</sup> The same data and the same methods should lead to the same answers. Reproducibility can be a proof of the objectivity of the methods used and reinforces the credibility of the RIA system.

It is generally agreed that a successful RIA not only needs a good set of techniques but also common sense and perseverance<sup>22</sup>.

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<sup>12</sup> It is the case in the UK, the Netherlands, Australia and USA. Canada has a very broad range of impact assessments.

<sup>13</sup> As in the Netherlands.

<sup>14</sup> For instance, in the Mexican case of emergency and fiscal regulation.

<sup>15</sup> For instance in Australia.

<sup>16</sup> Such as in the UK, EU and in several other OECD countries.

<sup>17</sup> As the case in Australia.

<sup>18</sup> As shown by the best practices among the OECD.

<sup>19</sup> In the case of the Netherlands.

<sup>20</sup> Australia, Canada and USA.

<sup>21</sup> Raised by the USA.

<sup>22</sup> As noted by the OECD, Mexico, the USA, the Netherlands and Australia.

Last but not least, it is a challenge<sup>23</sup> to find the balance between speed, quality analysis and transparency in a RIA process. In doing so, time is an important dimension to take into account. .

***d) Improving RIA with RIE (Regulatory Impact ex post Evaluation)***

The “next step” of a developed RIA system is to extend the approach from an *ex ante* assessment to an *ex post* evaluation. This need is felt in more developed countries using RIA.<sup>24</sup> It is pointed out that *ex post* monitoring can relate to a compliance analysis system.

The OECD and APEC can play an important role in encouraging and supporting countries’ efforts in this new respective.

***e) The role of failures (and of poor RIAs)***

Learning from poor RIAs can be very useful.

It is noted, however, that self-evaluations are not sufficient and often may not be objective enough. A more formal, independent and objective check should therefore be provided<sup>25</sup>.

**4. RIA as a consultation and communication tool**

Consultation as a general tool of regulatory quality has already been discussed in Beijing. Today’s discussion focused on the specific role of RIA in the consultation process.

***a) At least four reasons for using consultation in a transparent RIA process have been identified:***

- to ensure democracy and transparency of the regulatory making process;
- to create a “sense of ownership” among stakeholders and therefore improve compliance;
- to collect data from the “recipients” of the regulation: they often know better than others do how to improve a regulation ;
- to inform the regulated: the market should not be “surprised” by a new regulation.

***b) Consultation is different from lobbying: therefore, the consultation processes should be totally transparent***

This point has been well covered in Beijing. Today’s discussion added that being part of the preparation of a new regulation, consultation should be conducted by those who draft regulations.

This is also coherent with the need to start consultation from the very beginning rather than in the middle of or at the end of the regulatory process.

***c) Need of an equilibrium between speed and transparency in consultation***

It is necessary to find an equilibrium between the speed and transparency of the consultation process.

Information and Communication Technologies (ICTs) can, however, help to improve quality and efficiency<sup>26</sup>.

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<sup>23</sup> Canada noted this.

<sup>24</sup> The point was raised, in particular, by Canada, but also by the Netherlands.

<sup>25</sup> The USA, for instance, has started the practice of “peer review”.

***d) Importance of consulting workers and “front lines” besides management***

In addition to elements discussed in Beijing on public consultation, a point was made that it is often workers that can help bring other stakeholders on board.<sup>27</sup>

***e) The delicate issue of the “non-identified stakeholders ”***

It is also important to take into account the needs of the ones that do not yet “sit around the table” of consultation such as the babies that are not born yet and the businesses that have not yet been created.

The question remains who can represent their interests. Governments, NGOs, Trade Unions and sectoral regulators all have a role in it.

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<sup>26</sup> The Canadian State of Ontario provided a very interesting example.

<sup>27</sup> By TUAC.

## JOANNA SHELTON, THE UNITED STATES

### RAPPORTEUR FOR SESSION TWO

The major themes of today's session, which, not coincidentally, also found their way into the discussions of yesterday in many ways, are the importance of the principles of **transparency** including consultation, **non-discrimination** and **competition**.

These principles not only represent the basic principles underlying virtually all international trade and investment rules today in the WTO, APEC and OECD or other fora but also apply to regulatory reform in the broadest sense whether talking about regulatory impact analysis, customs procedures or standards. Today's discussion elaborated upon these principles and helped us understand why they are so important to improved market access and to improved economic performance.

We learned more about the interlinkage of reform of customs procedures and harmonisation of standards on the one hand with market openness on the other; and the interlinkage of regulatory reform and trade liberalisation with domestic economic performance more broadly. Our panellists helped us understand why, as tariff barriers fall, customs procedures, standards and other domestic laws and regulations are not only more visible but also are relatively more important.

Most importantly, with all discussed today and yesterday, we have to keep in mind that our main goal is to help our economies perform better and compete better and through that to improve the lives and living standards of the people who make up our societies. As Mr. Mike Waghorne has reminded us repeatedly, we can never forget that it is people who are behind everything we do. Regulatory reform is just one means of reaching the objective of improved economic performance and higher living standards, but is certainly a very important means.

Now let me summarise some key points from today's presentations.

The first panel focused on the complementary relationship between regulatory reform and market openness. Mr. Anthony Kleitz from the OECD focused on the OECD's work in this area. He pointed out that there is a great synergy between market openness and regulatory reform. The decline of Tariff Barriers (TBs) world-wide makes Non Tariff Barriers (NTBs), including regulatory systems, more evident. He then described OECD's conceptual framework of six "principles of efficient regulation" in international trade and investment. They are **transparency** and openness of decision-making; **non-discrimination**; **avoidance of unnecessary trade restrictiveness**; **use of international harmonised standards** or **recognition of equivalency**; **streamlining conformity assessment procedures** and; **use of competition principles**. It is important to recognize that competition principles underlie both market openness and regulatory reform. As Mr. Kleitz pointed out, the same broad six principles also apply to customs regulations and to internationally harmonised standards and the equivalence of standards.

Mr. Gerardo Traslosheros, who is chairman of APEC's senior officials group, spoke broadly about APEC's initiatives in regulatory reform and broad lessons learned. He stressed that we need to make sure domestic regulations help ensure international competitiveness. He used the term of "regulatory improvement" and pointed out that regulatory improvement leads to greater market openness and greater competition, which in turn leads to greater efficiency, innovation and consumer welfare; all of which in turn lead to greater economic growth. He posed the question of how domestic regulations affect international trade and investment and outlined three key areas in response. First, onerous or outdated regulations impose undue costs on businesses and society at large and must be adjusted to minimise the negative impacts. Second, regulations might pose duplicative or divergent requirements. This increases costs for international businesses, especially for new enterprises and Small and Medium-sized Enterprises (SMEs), which in many of our economies are very important for employment and economic growth. In the area of divergent requirements, he said that if economic efficiency is valued by all of us, we should see convergence of regulations. It is in the area of social regulations where the case is stronger for divergent regulations due to

different values and cultural standards. However, as income levels and social values among countries converge, the case for greater convergence of these regulations also increases. Third, he pointed out an area where vested interests seek regulations as a protective measure. Countries should resist the use of regulations in this way, and international efforts can often help to address this issue.

Mr. Tang from China outlined in great detail the reform of China's laws and regulations in the area of foreign trade and investment to support China's entry into the WTO. He pointed out since the year 2000, two stages of review have been carried out. So far, about 40% of regulations have been abolished and others been amended. The key changes are to regulations in the areas of trade in goods and technology; foreign direct investment; intellectual property rights; and trade in services. He indicated that as the reform of regulation with respect to foreign trade and investment is proceeding at the national level, the central government is now resolved to promote the effective implementation of reform at different levels of local government, whose work will be essential for the success of the programme. He pointed out all these efforts should lead to a uniform transparent system throughout China and represents a new approach of China's government in its administration of trade and investment law. We all agreed that these changes were both far-reaching and impressive, especially considering that they were implemented over such a short period.

Mr. German King from APEC/CTI outlined APEC's activity in trade and investment as well as Chile's experience. He pointed out that Non Tariff Barriers (NTBs) are now more important than Tariff Barriers (TBs). He then turned to APEC's activities on liberalisation and regulatory reform, with working groups on: Market access; Services; Trade and Investment; and Competition Policy and Deregulation. He pointed out that APEC has been heavily involved in trade facilitation. Chile's experience is that free trade agreements are very important but they are not sufficient to ensure that goods, services and investment flow freely. It is important to realise that domestic reform goes hand in hand with international liberalisation. He also stressed that Chile hopes to achieve its goal of greater international openness without giving up its national interests, which is certainly an objective for every economy represented in this room.

Mr. Andrea Camanzi from Telecom Italia, as a discussant, focused on transitional regulatory measures that have been put into place as economies liberalise. There is often a risk that they will become permanent. He urged all of us to look harder at this issue and to watch how regulatory authorities use their powers. He suggested that regulators make much better use of sunset rules, particularly in the area of transitional measures, which will force the authorities either to let the measures expire or to renew them. He went further to suggest that the OECD add a sunset clause principle to its principles of regulatory reform.

Panel 2 focused on the regulatory framework for internationally contestable markets particularly the case of customs procedures. Ms. Evdokia Moise from the OECD focused on the role of Regional Trade Agreements (RTAs) in implementing the principles of good regulations to achieve greater market openness and efficiency. She pointed out that objectives of border procedures are wide ranging and include revenue collection, health, safety, sanitary and environmental protection, control of illegal goods or collection of statistical information. All these objectives are legitimate as well as important but their implementation can impede international trade. Therefore the goal should be to achieve these objectives in the least trade restrictive manner. She said that costs to businesses due to inefficient border procedures range from 2 to 15% of the trade transaction value. Inefficient border procedures also raise serious problems for the administration and reduce government revenues, which is a problem particularly relevant to developing countries.

Mr. Dong from China Customs focused on China's efforts to improve customs procedures. The extent of the reforms and the high level of standards that have been achieved by China Customs were truly impressive. He first introduced the activities of the APEC Sub-Committee on Customs Procedures (SCCP) and its Collective Action Plan (CAP). He noted that the new challenges to Customs stem from increased international trade; greater use of information technology; the demand for greater customs efficiency; and a rapid increase in the volume and sophistication of international crime. As a result of these trends, Customs practices should be reengineered. Then he outlined the key APEC principles in Customs reforms: **facilitation, accountability, consistency, transparency, and simplification**. CAP in this area provides a guide for all member economies. The advantages of CAP are to set out: specific objectives for SCCP's work; specific target dates for implementation; framework for technical assistance and human resource building and; supportive programmes whereby more experienced economies providing experience and assistance to less experienced ones. He described in great detail the Shanghai Model Port Project (SMPP), which is a co-operative venture of China Customs and U.S. Customs Service (USCS) and US business sector. He also outlined China Customs' ambitious reform and strategic plan of modernising Customs to facilitate trade.

Mr. Peter Wilmott from the UK Simpler Trade Procedures Board (SITPRO) introduced the UK experience on trade facilitation. He first gave us a broad picture of the UK trading context and SITPRO's role. He focused on business needs from Customs thereafter. His conclusions were quite enlightening. He said Customs can be either a significant barrier to or a facilitator of international trade, depending on whether Customs gets things wrong or right. Second, facilitation is about much more than Customs; and an integrated approach should be adopted with respect to border issues. Economic integration offers some solutions but also creates new problems to trade facilitation. Next, he said, short-term issues will often override longer-term facilitation policies, and ministers seldom have facilitation as a priority goal. Lastly he said the price of free trade is eternal vigilance. Business and stakeholders should keep watching what the regulators are doing and should offer suggestions instead of merely criticising. It is important to keep in mind that organised voices are always more effective than separate ones.

Finally panel 3 provided an in-depth discussion of issues related to the use of internationally harmonised standards and the recognition of equivalence of foreign measures.

Mr. Koichi Noda, from the JETRO Geneva office, gave us a description of Japan's efforts in adapting international principles to address technical barriers to trade. He outlined the Mutual Recognition Agreements (MRAs) between Japan, the EU and Singapore. He then talked in depth about APEC's Sub-Committee on Standards and Conformance (APEC/SCSC), which is actively involved in harmonisation of standards, and outlined the eight areas of the Sub-Committee's work.

Mr. Brian Jenkinson from the European Commission provided a review of EU's policies in facilitating trade in the fields of technical regulations, standards and conformity assessment. The EC has negotiated six MRAs. There are a number of benefits to MRAs as a tool to facilitate trade: they reduce approval costs; they reduce duplicate testing; provide more predictable market access; allow a faster time to markets; and provide increased transparency. He also described a range of other measures available to facilitate trade, including regulatory co-operation, harmonisation, recognition of equivalence, voluntary agreements, and support for the development of international standards. Depending on their needs and specific economic and regulatory environments, countries should seek the most suitable and cost-effective method in this toolbox to facilitate trade.

Mr. Graeme Drake from the International Organisation for Standardisation (ISO) focused on regulations, conformity assessment and international standards. He provided some helpful advice for formulating regulations. First, you have to identify the problems accurately before you try to develop a solution. The wrong approach can worsen the problem. Second, you must link regulation to a policy context. What is the intent of the regulation? What is that you want to achieve? He also gave some concrete and useful recommendations for conducting conformity assessment including the roles of MRAs in this area. He concluded that as we head towards more international standards and MRAs, we are heading towards more intense competition in the area of conformity assessment. There probably will be a handful of recognised testing bodies around the world operating in any given sector. He said, therefore, that as countries develop their standards and regulations today, they must try to discern what the trend is in the international arena and make sure that their producers still will be competitive in 3 to 5 years.

Mr. Sohn from the Korea Institute for International Economic Policy examined the actions and roles of APEC, OECD and WTO in the area of standards and conformance. He gave an interesting example of travelers who own two razors, one for domestic use and the other for international use. This may seem to be very reasonable, but it is an example of duplication, which increases inefficiency and costs. He pointed out there have been about 3500 standards-related complaints filed at the WTO, and standards are the second biggest obstacle to furthering the EU single market. He focused in detail on the different approaches to standards taken in APEC, OECD and WTO. However, he noted, dialogue among these organisations is increasing; and this fact, coupled with other efforts, could lead to an efficient, well-integrated and internationally harmonised system in this area.

Finally, we had Ms. Charlotte Nyberg from the Swedish business sector as a discussant. She said business feels as if it is “held hostage” to different regulatory systems. The goal of reform of standards should be “Approved once, Accepted everywhere”. We need a stronger political commitment towards that end. Among other measures, she also suggested that governments could institute a “bonus system” as an incentive for regulators to ensure that they pursue high quality regulations. She concluded that harmonisation should lead to less, not more, regulation.

During the question and answer session, it was noted that the benefits of harmonisation are well known but there are some concerns that need to be considered. The first is there is a wide public perception that harmonisation leads to downward harmonisation. This might not be true in most cases, but governments need to be sensitive to this concern. The second concern related to competition. One speaker argued that different standards among countries may be useful in promoting innovative approaches, adding that international harmonisation may reduce this competition of ideas and lead to average or lower quality regulatory systems. There was not a consensus around this point during our discussion.

## IV. SUMMARY OF THE PRESENTATIONS

### Session I. Regulatory Impact Analysis Systems

#### Panel 1. Setting up the institutional framework for a successful RIA system

##### *Regulatory Impact Analysis- a revolution in the rule-making process*

*Cesar Cordova-Novion, OECD Regulatory Reform Programme*

A powerful trend toward more empirically based regulation is underway in OECD countries. High-quality regulation is increasingly seen as a prerequisite for governments to produce the desired results of a public policy as cost-effectively as possible. There is a developing understanding that all government policy action involves trade-offs between different uses of resources, while the underlying goal of policy action – including regulation – of maximising social welfare is increasingly being explicitly stated and accepted. In a rule-based society these trade-offs need to be assessed and discussed in a transparent and accountable manner. That is, a policy is needed to justify when a governmental regulator establishes a regulation.

This new public governance perception started in the mid-1970s in the USA and Canada. But by the end of 2000, 22 OECD countries had adopted the practice of always explicitly justifying the need for government action before taking a regulatory decision, while five more did so in at least some cases.

The main vehicle for applying the policy – often called regulatory policy -- is through the application of regulatory impact analysis (RIA) to regulations. In effect, RIA is basically an "evidence-based decision method" used to reach regulatory decisions. RIA complements and sometime compete with other methods to make a regulatory decision: through the use of trusted experts, by consensus reached among a group of stakeholders, based on the benchmarking of an outside model, or of course, through the political process. A successful RIA will always be to integrate it to the other methods of public decision-making.

In essence, RIA attempts to clarify the relevant factors for decision-making. It pushes regulators toward making balanced decisions that trade off possible solutions (including the decision to do nothing) to specific problems against wider economic and distributional goals. Far from being a technocratic tool that can be simply "added on" to the decision-making system by policy directive, it is a method for transforming the view of what is appropriate action, indeed, what is the proper role of the state. Experience makes clear that 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. Significant cultural changes are required to make such analysis genuinely a part of increasingly complex decision-making environments.

In 1997 the OECD published *Regulatory Impact Analysis: Best Practices in OECD Countries*.<sup>1</sup> In particular the report concluded with ten best practices that are associated with effective RIA (Box 1). These ten practices do not imply that a single system for the implementation of RIA is desirable in all countries at all times. Institutional, social, cultural and legal differences between countries require differing system designs. The learning that occurs with RIA over the longer term requires continuous consideration and evolution of the system design. However, these elements of “best practice” serve as starting points for the design of a system likely to maximise the benefits of RIA.

**Box 1. Getting maximum benefit from RIA: Best practices**

1. Maximise political commitment to RIA.
2. Allocate responsibilities for RIA programme elements carefully.
3. Train the regulators.
4. Use a consistent but flexible analytical method.
5. Develop and implement data collection strategies.
6. Target RIA efforts.
7. Integrate RIA with the policy-making process, beginning as early as possible.
8. Communicate the results.
9. Involve the public extensively.
10. Apply RIA to existing as well as new regulation.

*Source:* OECD (1997), *Regulatory Impact Analysis. Best Practice in OECD Countries*, Paris.

Since the publication of the report the OECD has been monitoring the establishment and the use of RIA among countries. The overall assessment of the results shows a positive picture. There is nearly universal agreement among regulatory management offices that RIA, when it is done well, improves the cost-effectiveness of regulatory decisions and reduces the number of low-quality and unnecessary regulations. RIA has also improved the transparency and accountability of decisions, and enhances consultation and the participation of affected groups.

Yet positive views continue to be balanced by evidence of non-compliance and quality problems in RIA. Of the ten good RIA practices discussed above, most OECD countries rate poorly on several. Most commonly on data collection, training civil servants and applying RIA to existing regulation. Another problem is that scope of coverage remains patchy. Many countries use RIA consistently for lower-level or subordinate regulations, while only a few use it consistently for legislation. Exemptions to RIA programmes are often broad. RIA is rarely used at regional or local levels. Moreover, RIA is most of the time applied to a single regulation, rather than regulatory regimes as a whole, embracing both new and existing regulations. It thus can provide only very broad estimates of the cumulative impacts in time and through jurisdiction.

However, careful programme and institutional design can avert most of these problems. An important lesson derived from countries that have recently implemented RIA is that, despite high levels of political support and a greater understanding of RIA requirements that has now been gleaned via the “early adopter” countries, it is wise to start modestly. The scale and scope of RIA can then be expanded, fairly rapidly, once the use of the tool has become more accepted and expertise and experience have begun to develop.

## *Setting Up a Regulatory Impact Unit-The UK Experience*

*Steve Blake, Regulatory Impact Unit, Cabinet Office, the United Kingdom*

The UK set up its Regulatory Impact Unit to help the Government ensure new and existing regulation is necessary, meets the principles of better regulation<sup>28</sup> and imposes the minimum burden. The RIU is based in the Cabinet Office, the central department responsible for modernising and co-ordinating government.

The strategy for achieving this aim, as far as new regulation is concerned, is by creating a framework for impact assessment. The Unit created a guide to regulatory impact assessment and set up a Departmental Regulatory Impact Unit in each government department. In 1998, it became mandatory to complete a RIA for any new regulation with an impact on business, charities or voluntary bodies.

In 1999 the work of the RIU was strengthened with the creation of a ministerial panel. The panel has a strategic overview and ensures individual departments take any necessary steps to improve their regulatory proposals. The panel has an enforcement capacity and the RIU provides advice on this based on their own internal expertise and on department's RIAs.

In 2001 the commitment to better regulation was strengthened again with a minister in each department being allocated a specific responsibility for ensuring new regulations are truly necessary and involve the least burden to business.

This year the RIU will be continuing to provide advice and support to departments and ministers on RIAs. The Unit will also be completing an expansion of the assessment process to include regulations that affect the public sector. The objectives are the same; to minimise burden and manage impact, but the framework (known as the "Policy Effects Framework") is different in order to:

Reflect the difference between the private and the public sectors.

Increase the quality of the outcomes by increasing departments' ownership of the process.

In seeking to address these differences, the Policy Effects Framework includes:

- A wider definition of regulation; encompassing not just statutory requirements, but codes of practice, guidance and information returns.
- Use of "front line staff time" as the measure of burden rather than financial cost.
- A greater emphasis on preventing unnecessary burdens, learning from experience in removing/simplifying existing regulations.
- A "light touch" scheme that is less prescriptive, simpler and voluntary to adopt.

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<sup>28</sup> These principles are that regulation should be: transparent, accountable, proportionate, consistent and targeted.

## *Improving Capacities and Enforcing RIAs among Regulators: Mexico's experience*

*Ali Haddou-Ruiz, Federal Regulatory Improvement Commission, Mexico*

In order to ensure the development of high quality regulations, regulatory impact analysis must not only be well designed technically. It must also be implemented in an adequate institutional setting that provides proper checks and balances, and adequate incentives for regulators to produce clear justifications for government involvement, and accurate analysis of potential economic and social effects.

These design considerations are:

**A proper legal framework.** Because there is a natural reticence on the part of regulators to subject their proposed regulations to third party review, the legal basis for RIA must be solidly anchored in administrative procedural requirements. Some countries have opted for including such requirements in an executive decree; others, such as Mexico, have included the obligation directly in an administrative procedures law in order to give RIA a more solid statutory authority.

**Clearly specified and limited exemptions.** It must be clear to all parties involved, which regulatory proposals are subject to RIA requirements. If the scope of RIA is not precisely specified, there is an increased possibility that some regulators may seek to circumvent the process. This provides a strong argument to limit exemptions to a minimum, to areas such as national defence and criminal justice for example. Many countries, such as Mexico, also include fiscal regulations in their list of general exemptions, though in some cases it may be recommendable to include such regulations in regulatory review mechanisms. While Mexico's RIA system applies to all regulations that impose compliance costs on private parties, it also includes an exception for emergency situations, which allows for the RIA to be presented after the regulation is adopted. Emergency regulations, however, can only be applied for 6 months.

**Clear review process.** Regulators' most frequent complaint about RIA and regulatory review in Mexico is that it is a time consuming process that limits and delays their ability to produce regulations. It is therefore recommendable to clearly specify the duration of the process. In Mexico, the regulatory review body has 30 working days to produce its opinions. If it does not emit judgement in that time, the regulator is free to publish the regulation in the government gazette. It is important for regulators to initiate RIAs as soon as possible in the process, and to adjust their calendars for the time required by the review process in order to avoid unnecessary friction or animosity in the process.

**Consistent and transparent review standards.** The quality of the content of RIA and of the regulatory review body's opinions or verdicts will be enhanced significantly if the regulatory review body can build a reputation for fair and high quality review. In Mexico, it is deemed essential for the regulatory review body to have independence and political strength in order for it to feel free to emit critical opinions of potentially delicate issues. Also, getting affected parties involved by making all review documents public provides greater incentives for the regulators to produce high quality analysis.

**Mechanisms to avoid non-compliance.** Even if there is a legal obligation to prepare RIAs and submit regulatory proposals to review, it does not necessarily guarantee compliance, particularly in politically sensitive matters. It may be necessary to consider a scheme of sanctions for non-compliance or automatic barriers that impede going around the process. In Mexico, this involves strong sanctions for public servants and barriers to publication of regulations in the government gazette if the regulatory review process is circumvented.

**Training and technical development.** The introduction of a RIA system requires the regulatory reform body to undertake some form of training program, particularly in countries where personnel trained in cost benefit analysis is scarce. Training efforts and positive feedback from the regulatory reform body can enhance compliance levels significantly. In Mexico, training is coupled with an online system that provides guidance and facilitates the administrative process of sending RIAs to the regulatory reform body.

**Patience and perseverance.** Setting up a successful RIA program often means creating a cultural shift in the public administration towards analysis, transparency and good government. It can therefore take years for a RIA system to produce a noticeable change in the overall quality of regulations. A sustained commitment is necessary to ensure results, and this will often require strong political backing and framing the regulatory reform program in terms that enable the formation of a stable constituency for reform. Adequate staffing and funding for the regulatory reform body is also obviously one of the keys to success.

## **Panel 2: Analytical tools and methods in RIA systems**

### *Measuring the Impact of Regulation in the Netherlands*

*Gé Linssen, Ministry of Economic Affairs, Netherlands*

The Netherlands started its regulatory reform programme in 1994 when the economy was in a recession with growing deficits and unemployment. The support for the programme has been strong ever since.

The regulatory reform programme consists of two components: MDW project and New Legislation. MDW in this context means competition, deregulation and quality of legislation. The goal of the project is to simplify rules and to increase the quality of regulations and therefore to enhance competition. Since 1994, the government has conducted around 70 MDW projects in different policy areas such as labour market, health care and education. A few years ago, the government set out to assess the effects of the MDW projects. In doing so, we divided all MDW projects into four groups. The first is to lessen the administrative burden; the second to increase competition; the third to increase quality of legislation and; the fourth to introduce new policy instruments. For each group, indicators and methods to analyse are different. The lessons we have learned from the assessment of MDW programmes are that you have to carefully find out the main goals of different projects and identify the right indicators. We do not need complicated econometric analysis instead we want the right and simple indicators. Other lessons are that the assessment of MDW projects helps to solve problems that emerge during the implementation, and that it also helps the responsible ministry to realise what the positive effects can be.

The second policy line is New Legislation. For every new law proposed, its impacts on business, consumers and environment etc. are assessed. The interdepartmental Working Party on Proposed Regulation (WVR) checks whether the impact tests have been conducted properly. The Quick Scan is intended for legislation with effects that are difficult to express in figures. In the past year, a guide to the use of Cost-Benefit Analysis (CBA) has been developed. The proposing Ministry has to answer a list of questions in helping the analysis. In doing so, the Ministry itself also learns a lot about the impacts of the law.

The Netherlands' experience is that the assessment of MDW projects and new regulations has been playing a crucial role in identifying alternatives and in finding the right policy instruments.

## *Improving RIA Quality: Insights from the U.S.*

*Randall Lutter, AEI-Brookings Joint Center for Regulatory Studies, US*

A potentially significant obstacle to sensible regulatory reform is the poor quality of some regulatory impact analyses prepared by regulatory agencies. According to some observers, such analyses frequently fail to meet basic standards. To promote higher quality analysis, the Bush Administration has recently taken some constructive steps.

In accordance with a new law, the U.S. Office of Management and Budget recently issued guidelines to improve the quality of information put forth by federal agencies. The guidelines (See <http://www.whitehouse.gov/omb/fedreg/reproducible.html>) require federal agencies to issue their own guidance ensuring and maximising the quality, objectivity, utility and integrity of information disseminated by the agency. While the OMB guidelines are quite broad and apply to all information, they have a special impact on regulatory impact analyses and associated risk assessments.

The OMB guidelines define objectivity to reflect whether disseminated information is presented in an accurate, clear, complete and unbiased manner. The guidelines also state that information may be generally presumed to be of acceptable objectivity if the data and analytical results have undergone formal independent external peer-review.

The guidelines put forth an even higher standard for quality for agencies that disseminate influential scientific, financial or statistical information. OMB directs these agencies to develop their own guidelines on information dissemination, including a high degree of transparency about data and methods to facilitate the reproducibility of such information by qualified independent third parties.

The guidelines establish an administrative appeals procedure for affected parties to place complaints about poor quality information.

The guidelines also direct agencies to adopt or adapt scientific risk characterisation principles borrowed from the existing law about drinking water quality.

Thus the OMB's guidelines set new standards for high quality RIAs. As a result the quality of U.S. RIAs will rise, though the final result may depend partly on the outcomes of future lawsuits testing the limits of these new guidelines.

But these improvements are not a panacea. Agencies may still face incentives to avoid admitting when their proposed regulations impose costs much greater than benefits. This means they may still misuse procedures to discount costs and benefits, neglect more efficient alternatives, and make net benefits look attractive. Nonetheless, the new standards could lead to significantly better quality economic and scientific analysis of the effects of regulations.

## *Measuring the impact of regulations: an Australian perspective*

*Dr. Stephen Rimmer, Office of Regulation Review, Australia*

The use of Regulation Impact Assessments (RIAs) in Australia is part of a wider program to review and reform the stock of existing regulation and the flow of new or amended regulations. The objective of this reform program is to ensure that regulations are both efficient and effective. The trigger for preparing a RIA is that a proposed regulation impacts on business or restricts competition, with several exemptions for minor and non-regulatory matters. RIAs are prepared by departments and agencies administering regulations. The Office of Regulation Review (ORR) – which is part of the Productivity Commission – is independent from the executive arm of Government and provides guidance and advice to departments and agencies regarding RIAs. The ORR also reports directly to decision-making forums and publicly on RIA compliance by regulatory departments and agencies.

The Australian RIA requirements are outlined in a Government endorsed ‘A Guide to Regulation’. This Guide requires clear identification in an RIA of a clear problem and objective, alternative solutions, a discussion of the range of impacts and a statement of consultation. A cost/benefit assessment provides the central analytical framework of Australian RIAs.

A key operational principle is that the level of analysis should be commensurate with the impact of proposals. Qualitative measures are used where quantitative data are unavailable. The RIA should establish that the benefits of a proposal outweigh the costs and that the preferred option provides the best solution.

There has been steady progress in implementing RIAs in Australia over the last five years, with both the standard of analysis and compliance with RIA requirements increasing. Departments and agencies make decisions about the use of quantitative measures in RIAs. A sample of Commonwealth RIAs for the first six months of 2001-02 illustrates that 29 per cent employed quantitative measures, with the use of quantification being directly related to the significance and likely impact of a regulatory proposal. Such quantification usually focuses on compliance costs on regulated business. None of the RIAs surveyed included second and subsequent round impacts and none employed quantitative risk analysis.

The cost and benefit assessment allows for consideration of favourable and adverse effects of regulation and helps ensure that regulation generates net benefits. The level of analysis in an RIA is typically related to the significance and likely impact of a regulatory proposal. The extent of analysis is decided flexibly on a case by case basis. Where quantification is employed it should have a sound basis and methodology. In some cases specialised regulation review units which assess RIAs may not be well placed to measure the quality of quantification techniques employed in an RIA.

Looking forward, the ORR will focus on better aligning the level of analysis with the significance and impact of regulatory proposals. The ORR also encourages preparation of RIAs early in the policy making process and public consultation using RIAs.

### **Panel 3: RIA as a consultation and communication tool**

#### ***Regulatory Impact Analysis in Canada: Benefits & Challenges***

*George F. Redling, Privy Council Office, Government of Canada*

Using RIA as a consultation tool provides significant spin-off benefits for governments, stakeholders, and citizens alike. Building on the basic benefits associated with consultation (e.g., openness, better information, and the creation of a sense of ownership), the use of RIA provides further advantages by building relationships founded on trust, credibility and mutual respect between government and stakeholders. The RIA is also a international communication mechanism used to provide Canada's trading partners notice of upcoming regulatory changes.

Over the past two and a half decades, the regulatory reform agenda in Canada has evolved from a culture of centralised command and control to one of ongoing reform and good regulatory management. This transition to regulatory management has been coupled with a move to a more decentralised and flexible system.

Canada's Regulatory Policy, a first among OECD nations, is the embodiment of the principles of this management agenda. First adopted in 1986 to provide a common framework for the use of regulatory powers, the Policy continues to enjoy strong support at the political level.

Critical to the implementation of the policy is the Regulatory Impact Analysis Statement (RIAS), which has transparency as its most important function and is presented publicly for scrutiny and challenge.

Given ongoing concern for transparency, responsiveness, and quality, significant challenges for the Canadian system remain. Among them are public and private capacity to conduct, and contribute to, impact analysis; finding the balance between quality analysis, transparency, and speed; and the question of consultation fatigue.

Looking forward, the need for the RIAS will continue, and likely develop and evolve. Current work includes: the definition of RIAS Quality Standards; development of a method of tiering analytical requirements; developing an approach to performance measurement; and exploring the area of instrument choice.

## *RIA as a Tool from Chinese Taipei's Perspective*

*Changfa Lo, National Taiwan University, Chinese Taipei*

In Chinese Taipei, regulators use a number of methods to reach regulatory decisions. Some are required by legislations, among which is the Administrative Procedure Law expecting government agencies to hold hearings before making regulatory decisions. Regulators and government agencies also invite experts to express their views or ask scholars to complete research projects for them for the purpose of collecting information. In many situations, the views expressed by these experts play important roles in the decision making process of the regulators.

Balancing the interests of stakeholders of incumbents and new comers is also an important approach regularly adopted. Another commonly used method is benchmarking, which include the reliance of rules under international organisations, such as the WTO, as well as those applied in other jurisdictions. It is sometimes very useful (or even very powerful) to cite the international requirements to show the need of having the reforms. It is also very common for the government agencies and regulators to cite examples in other jurisdictions.

These methods can be illustrated by the change of the regulatory regimes in the telecommunications, which had been started since 1987, with greater reforms in 1996 and 1999, when Chinese Taipei committed to liberalise its telecommunication markets under its WTO accession framework.

Although regulatory impact analysis is not formally required by any legislation in Chinese Taipei, similar analyses with respect to certain sectors are still made on a case-by-case basis. A more apparent example of impact assessment is in the telecommunications. Another apparent example of impact analysis can be found in the trade liberalisation. The trade and industries authorities conducted impact analyses in a more systematic way. They either carried out the analyses on their own or entrusted research institutes to do the analyses.

The impact analyses being made are considered useful to obtain public support of the regulatory arrangement due to the belief that proper analysis provides an accountable basis for the public to trust that a particular regulatory arrangement is the better way to achieve efficiency of the sector and thus benefiting the public. It is also a more transparent method than others in that the general public is able to perceive the contents of the assessment without being afraid of receiving distorted interpretation of the data. Furthermore, a proper impact analysis could provide a sound basis for the stakeholders to consider accepting an arrangement based on more scientifically collected and analysed data.

Also, an effective regulation might result in over-regulation. An impact assessment could provide with accurate information as to whether a regulation has been overly designed and whether there is a need of reducing the level of regulation without compromising or lowering the effectiveness. It is also useful to communicate with the relevant agencies as well as political community as to the proper regulatory arrangement.

Notwithstanding the above, there are some potential costs and difficulties from Chinese Taipei's perspectives with respect to the adoption of formal impact analysis program, including how to maintain high quality reviews, the need of immense resources, the ways of ensuring and maintaining independent review, and the avoidance of the misuse of the impact analysis.

***Motivating Public Sector Workers: using regulatory impact assessment as a consultation and communication tool***

*Mike Waghorne, Public Services International*

Representing public sector workers, Public Services International's (PSI) view is that motivating these workers to support and promote regulatory reform and regulatory quality through consultation and communication is an important element in the success of such programmes. This is not least because workers and their union often have a better understanding of the full cost and benefit assessment of proposed new rules than does management. That does not mean unions should have privileged access to consultation processes. Rather, RIA should involve the whole range of stakeholders and open the process up to the possibility of competing ideas.

**Consultation:** Regulatory Impact Analysis (RIA) presents a good opportunity to engage in sound consultative behaviour. There are several issues that are worth emphasising. Firstly, the content of consultation is important. RIA first of all invites all staff who are involved in the operation concerned to examine their current work practices. RIA then asks the crucial question whether the proposed changes allow work to be done differently. Secondly, the process of consultation is equally important. Thirdly, consultation fatigue needs to be addressed. Fourthly, it should be remembered that consultation is not a commitment by the government to take everything discussed on board but this should be clarified at the outset. Lastly, an organisation with whom the authorities consult and whose recommendations are adopted should advocate the agreed position to its own constituency.

**Communication:** A good RIA should generate useful data about potential costs and benefits. Good RIA will also often clarify the objectives of the current or proposed legislation/regulation-objectives which have not been specified before. The experience in many countries is that better communication between ordinary staff and senior policy makers helps flatten the management structure or turn supervisors or middle-level managers into professional support staff who can respond to the needs of front-line staff as they organise their own work but need expert advice on tricky problems.

In conclusion, an RIA process which maximises its consultation and communication elements can be a powerful way of motivating public sector workers, with the support of their trade unions, to welcome and promote a constant search for better quality regulations and the quality outcomes we all seek to achieve.

## **Session 2: Integrating Market Openness into Regulatory Systems**

### **Panel 1: Complementary Relationship between Regulatory Reform and Market Openness**

#### *Complementary Relationship between Regulatory Improvement and Market Openness*

*Gerardo Traslosheros, Ministry of Economy, Mexico*

The important message of this panel is that domestic regulations are a determinant of international competition and we should create an environment of market openness through regulatory reform or regulatory improvement. Regulatory improvement leads to greater market openness and greater competition which in turn leads to greater efficiency, innovation and consumer welfare, all of which in turn lead to greater economic growth.

This is the reason why APEC, which has three founding pillars, is divided into two chapters. The first chapter is dedicated to trade and investment liberalisation and facilitation. The second one is dedicated to technical and economic co-operation. In this context, liberalisation relates mainly to traditional border procedures whereas facilitation relates to domestic measures that will have effects on international trade and investment. Since the finalisation of Uruguay Round, the issue of domestic regulations that limit market openness and competition is gaining more and more importance.

The next question is then when and how domestic regulations will affect international trade and investment and there are three key areas. Firstly, excessively restrictive regulations impose undue costs on businesses and society at large. The second one is when regulations pose duplicative or divergent requirements, which increases costs for international businesses especially for new enterprises and Small and Medium-sized Enterprises (SMEs), which in many of our economies are very important for employment and economic growth. The third case is where regulations are abused by invested interests. Invested interests can often be powerful during regulatory reform since costs from reform tend to concentrate on a few and benefits are scattered and sometimes take a long time to become visible.

Co-ordinated international efforts can play an important role in helping countries to address the issue of domestic regulations. That is why organisations like the APEC, OECD and WTO are important.

***Integrating Market Openness into Regulatory Systems:  
Some Experience and Emerging Best Practices***

*Anthony Kleitz, Trade Directorate, OECD*

The interlinkage between trade and investment liberalisation and efficient regulation has been increasingly recognised, which contributes to a strong dynamic in favour of regulatory reform. The objective of this presentation is to introduce briefly the conceptual framework developed by the OECD Trade Committee for reviewing national experiences with regulatory reform in the perspective of the implications for international market openness.

In the context of its ongoing multidisciplinary work on regulatory reform, the OECD Trade Committee has identified six “principles of efficient regulation”, which are all interdependent, to help assess the extent to which regulations are both economically efficient and trade and investment friendly. The analyses conducted so far at OECD also allow identification of some approaches to implementing the principles in a manner of achieving domestic objectives while maintaining or improving market openness.

**Transparency** and openness of decision-making, with respect to the development and administration of regulations;

Transparency is probably the most frequently recurring theme in the application of the other principles of regulatory efficiency. Five approaches are seen as providing successful means for its implementation: systematic publication of information about regulations; clear commitment to public consultation; clear, open procedures for making and implementing rules; clearly written rules and simple procedures to ensure predictability of interpretation; and clear and open appeals procedures.

**Non-discrimination** among market participants;

Three particular issues in this area deserve attention to ensure the trade friendliness of domestic regulation: due process; regional trade arrangements and public procurement.

Avoidance of unnecessary trade restrictiveness when setting up domestic regulations;

Two approaches have attracted particular interest among those identified for reducing the potential burden of government formalities on trade and investment:

Fostering awareness of the trade and investment implications of regulations, including when undertaking Regulatory Impact Analysis;

Favouring trade-friendly approaches to regulation and its implementation.

**Use of international harmonised standards or recognition of equivalence** as means for overcoming potential trade impediments from technical measures and standards;

**Streamlining conformity assessment procedures**, particularly so as to avoid duplicative procedures;

Costs that arise from cumbersome conformity assessment procedures may be reduced through mutual recognition agreements (MRAs) or alternative approaches such as recognition of supplier’s declarations of conformity (SDOCs), unilateral recognition of conformity assessment results and voluntary arrangements between conformity assessment bodies.

**Use of competition principles** to ensure that open markets ensue from deregulation.

Some relevant policy elements include the concept of effective access to networks, encouragement to industry associations to maintain membership and dissemination of information that are open to all potential market participants, and effective complaint procedures.

Customs procedures and internationally harmonised standards, being the focus of this session, are worth particular attention here.

Notable benefits can be secured by applying the principles of transparency and least trade restrictiveness to customs clearance. In streamlining and automating customs procedures, two particular approaches can be successful for undermining accelerated customs clearance: faster movement of low-risk goods and international harmonisation of customs procedures.

The diversity of standards in different markets is often perceived as a barrier to trade and investment. Greater competition can be achieved through the *use of international standards*. In cases where international harmonisation is not feasible, alternative approaches should be explored such as improving the transparency of and broad participation in the development of standards and *recognising foreign measures as equivalent*.

## ***Clearance, amendment and formulation of China's laws and regulations to support China's entry into WTO***

*Wenhong Tang, Ministry of Foreign Trade and Economic Co-operation, China*

The purpose of this presentation is to introduce the achievement China has made in the past two years on the improvement of the foreign trade legal system and the future work China is committed to carry out.

As part of the commitments of China's WTO accession, the Ministry of Foreign Trade and Economic Co-operation (MOFTEC) has initiated a programme to streamline the current laws and regulations related to foreign trade and investment. An *ad hoc* task force-WTO Legal Group- headed by the Minister of MOFTEC, was established in 2000 to implement the programme. So far, 381 legal documents out of 1413 have been repealed and 51 have been amended. 10 new legal instruments have been promulgated and 10 more will come up soon. The programme shall end by the middle of 2002. By then, all legal documents on foreign trade and investment and intellectual property rights will be compiled and published in serial volumes.

Up to now, China has made significant progress in the reform of legal system concerning foreign trade and investment and has drafted a number of new laws and amended old laws mainly on four areas including trade in goods and technology; foreign direct investment; intellectual property rights and; trade in services.

### **Foreign trade in goods and technology**

MOFTEC has amended "Regulation on Anti-dumping" and "Regulation on Countervailing" and drafted "Regulation on Safeguards", "Regulation on Import and Export of Goods" and "Regulation on Import and Export of Technology", all of which were approved by the State Council and have come into force as of January 1, 2002.

### **Foreign direct investment**

In 2000 and 2001, the National People's Congress(NPC) of China approved Amendments to Chinese and Foreign Equity Joint Ventures Law, Amendments to Chinese and Foreign Contractual Co-operative Enterprise Law, and Amendments to Foreign-Capital Enterprise Law. The three laws are the pillars of China's FDI legal framework. The relevant implementation regulations have been updated accordingly. An important legal document- Industrial Guidance on Foreign Investment in China and Automobile Industry Policy- has also come into force recently.

### **Intellectual Property Rights**

Important legislations on intellectual property rights including Trademark Law, Copyright Law, Patent Law and Implementation Rules of Patent Law and Regulations on Computer Software Protection have all been reviewed and revised. Regulation on Integrate Circuit Typography Protection and Regulation on New Foliage Variety Protection were recently effected.

## **Trade in services**

There are several important regulations coming into effect regarding trade in services during the past two years including Regulation on the Representative Office of Foreign Law Firm in China; Regulation on the Insurance Institutions with Foreign Capital; Regulation on Foreign Investment in telecom enterprises; Provisional Rule on Sino-foreign Joint Venture and Co-operative Medical Institutions and; Regulation on International Sea Transportation. Furthermore, amendments were made to major current regulations on trade in services.

As the regulatory reform with respect to foreign trade and investment is proceeding at the national level, the central government is resolved to promote the effective implementation of the reform at different levels of local governments, whose work will be essential for the success of the programme.

## *Complementary Relationship between Regulatory Reform and Market Openness*

*German King, Committee on Trade and Investment, APEC*

The presentation focused on APEC's activities in liberalisation of trade and investment as well as Chile's experience.

Mr. King firstly outlined the current world economic and trade environment particularly in the Asia Pacific arena. He pointed out that as tariff barriers go down, Non Tariff Measures (NTMs) become more relevant; that regulation was related to globalisation, not only cross border regulations but also domestic regulations; thus market access depends on regulatory frameworks and systems; however, attention must be paid to the different levels of economic development of the global players, and domestic realities of each of them.

He then turned to APEC's activities in the area focusing on the number of working groups working on liberalisation and regulatory reform. These working groups include Group on Market access; Group on Services; Committee on Trade and Investment and; Competition and Deregulation Group. The implementation of actions to further liberalise and facilitate trade across the region has been established in the Shanghai Accord (commitment of APEC Leaders in 2001) where several specific actions were defined: implementation of the APEC trade facilitation principles, implementation of trade policies for the new economy; implementation of transparency principles and; broadening of the Osaka Action Agenda (roadmap to achieve the Bogor goals of free and open trade by 2010/2020 for developed/developing economies). He stressed that all this cannot be achieved without capacity building programs and co-operative work between APEC and other institutions such as OECD, WTO, and World Bank. Furthermore, regulatory reform must bring benefits not only to the private/business sector, but also from a social, labour, and environmental perspective.

Chile is moving forward its agenda on trade liberalisation and facilitation through free trade agreements but this alone is not sufficient to ensure free trade and must be complemented with work being carried out at the multilateral level. It is also important to realise that domestic reform goes hand in hand with international liberalisation efforts and plays a crucial role in trade facilitation. However, he stressed that countries have their specific economic, political and social background and this needs to be taken into account when international society tries to facilitate trade and that Chile hopes to achieve its goal without giving up its national interests.

## **Panel 2: The Regulatory Framework for Internationally Contestable Markets: the Case of Customs Procedures**

### *The role of Regional Trade Agreements in implementing efficient market openness regulation principles to improve customs efficiency*

*Evdokia Moise, Trade Directorate, OECD*

Responding to a wide array of government objectives, customs and border procedures play an important role in trade facilitation. Red tape and inefficiencies at the border pose a serious problem both for businesses and for the administration. It is estimated that costs incurred by businesses due to inefficient border procedures range from 2 to 15% of the trade transaction value. Inefficient border procedures also increase administrative and enforcement costs by the Customs and reduce the collection of import duties.

The implementation of the “six principles of efficient regulation”, which were identified by the OECD in the context of market openness, is essential for addressing the problems. Particularly relevant here are the principles of **transparency**, **avoidance of unnecessary trade restrictiveness** and **harmonisation** of procedures and formalities at the border. The purpose of this presentation is to address the role played by regional initiatives in exemplifying the principles and providing a useful test ground for advancing the trade facilitation agenda.

Trade facilitation provisions are not contained in all Regional Trade Agreements and the degree of sophistication varies. Comprehensive facilitation endeavours seem to be at a relatively early stage within regional trade initiatives but APEC is an interesting exception in this regard. Those RTAs that do contain trade facilitation provisions frequently go beyond, and complement provisions in the WTO. In “new-generation” RTAs, trade facilitation is a major focus.

There are some examples on how the efficient regulation principles have been effected in RTA provisions on trade facilitation:

**Transparency and due process** are essential facilitating measures in most RTAs. The terms of these provisions closely correspond with those of the WTO. RTAs also promote transparency through the collection and dissemination of all relevant information through centralised inquiry points. In several RTAs, the principle of transparency and due process is not stated explicitly but implied as objectives to be achieved through the implementation of other principles.

**Harmonisation of procedures and formalities.** Full harmonisation of procedures and formalities is still limited in RTAs and therefore it would be more appropriate to talk of convergence of the modes of operation of concerned administrations. RTAs commonly refer to relevant WTO provisions and offer useful opportunities for testing those practices in reality. Customs-related provisions in RTAs often provide for the development of a common understanding among concerned administration on the daily management of border procedures. Alternatively, where the level of regulatory confidence is high, RTAs may provide for mutual recognition of formalities carried out by the competent authorities of the other parties.

**Simplification and avoidance of unnecessary restrictiveness.** In a number of established RTAs, simplification is limited to measures specifically related to products of preferential origin, such as customs fees or marking. Other RTAs widen the scope of simplification to cover border inspections and formalities.

**Modernisation and the use of new technology.** RTA provisions increasingly acknowledge the importance of technological developments in promoting efficient customs and border procedures. New technologies are central in RTA endeavours to achieve a “paperless” clearance environment.

## *Achieve Greater Facilitation through Improved Customs Procedures*

*Yufan Dong, China Customs*

**Introduction of the APEC SCCP and its CAPs:** In order to help its member economies to meet new challenges to Customs administrations in the rapidly changing global trade context, APEC established a Sub-Committee on Customs Procedures (SCCP) in 1994. Its mandate is to facilitate trade through simplifying and harmonising Customs procedures in the Asia Pacific region. Under the framework of its five guiding principles -**facilitation, accountability, consistency, transparency, simplification**-, SCCP endorsed a work programme known as the Collective Action Plan (CAP) in 1995 to help member economies improve their customs procedures. So far, many member economies have already made considerable progress in implementing CAP. It should be underscored that business community has an important role in assisting governments with Customs reform.

**Implementation of the Shanghai Model Port Project:** Shanghai Model Port Project (SMPP) was launched by China Customs and the US Customs Service (USCS) and some US businesses co-operatively under the umbrella of APEC in April 1999. The project was devised within the framework of the SCCP's CAP and consisted of four major components: IT upgrading; training programme, an express consignment centre and; an Intellectual Property Rights (IPR) display centre.

- **IT upgrading:** This component was to upgrade the existing hardware, the operating system software and all database programmes and to introduce a server platform for the Internet. It was completed by mid 2001.
- **Training programme:** During the course of the project, about sixty officers from Shanghai Customs attended overseas training courses, workshops and field studies, which were organised by the US Customs and sponsored by the National Centre for APEC.
- **Express Consignment Centre:** One of the important part of the project was the construction of the Shanghai International Express Consignment Customs Supervision Centre located at Shanghai Pudong airport. It was finished and put into operation in August 2001. The centre now serves as an effective and efficient vehicle for processing all express consignments and providing expeditious release of inbound and outbound packages.
- **Shanghai Customs Website and IPR information centre:** On July 1, 2001, the Shanghai Customs website was officially open to the public. The website provides the public with timely and updated information on Customs laws and regulations, guidelines and announcements, status of shipments as well as information on other Customs offices. There is also an online IPR information centre that puts up IPR laws and regulations, guidelines, case studies and information on enforcement and international co-operation.

The construction of SMPP took two and half years and came to completion in October 2001. The project has greatly improved the efficiency of Shanghai Customs and encouraged further implementation of CAPs in China and other APEC economies.

**China Customs' Major Efforts in Trade Facilitation:** In recent years, China Customs has been making major efforts to facilitate trade through encouraging easier and faster movement of goods, providing an easier clearance procedure for large and high-tech enterprises and establishing electronic clearance system. In 1998, China Customs embarked on an ambitious reform and developed a strategic Customs modernisation plan that comprised of 8 objectives, namely **modern Customs legal system; business compliance management system; information management system; modern Customs clearance system; goods flow control system; modern Customs anti-smuggling system; modern Customs administration system and; Customs public relation system.** According to the plan, by 2003, China shall set up the basic framework of a modern Customs system across the country and by 2010, shall establish a relatively perfect modern Customs system. China has already made significant progress towards this end. To fully accomplish the goal, it is important for the Customs to adopt a market-oriented approach and co-operate with business sector to enhance competition and efficiency.

## *Trade facilitation: the UK experience*

*Peter Wilmott, Non-executive Director, SITPRO*

**Introduction of SITPRO:** Simpler Trade Procedures Board (SITPRO) is a UK government sponsored organisation solely focused on the removal of barriers to international trade through the simplification and harmonisation of trade procedures. It has played a key role, throughout its thirty-year history, both in the UK and internationally, in devising standards for use in international trade and in promoting simpler ways of doing business across borders.

**The UK trading context:** The EU is the largest customs union of sovereign states with around a fifth of the world's imports and exports and a single body of customs law, which covers most areas with regarding to foreign trade. Despite that, differences in tax administration and key trade-related legal provisions mean that the EU does not enjoy the full benefits of trade facilitation that such a large integrated economy would otherwise grant.

Business needs:

- **Transparency:** first and foremost, business needs unambiguous official documents that should be clearly communicated and easily understood.
- **Predictability:** Predictable compliance costs help businesses to trade competitively.
- **Trust:** Government authorities should treat the majority of traders as trustworthy citizens unless known otherwise. Risk-based assessment processes will enable administrations to concentrate on risky traders and deal more quickly and cheaply with trustworthy businesses.
- **Documentation:** Business needs internationally standardised data requirements and documentation. The data requirements should be kept to an absolute minimum and maximum use of already available commercial data minimises re-keying.
- **Harmonised procedures:** This helps improve predictability and transparency, and lower costs for business.
- **Modernisation:** we should optimise the use of IT and avoid getting stuck with out-dated technology and inflexible processes.
- **Measurement:** Increased analysis of the costs of international trade and comparative measures of different economies' performance help maintain pressure for improvement.
- **Open discussion about all these issues:** This helps provide politicians and bureaucrats with stimulation to ensure they are to keep moving forward and feedback to reassure them that they are doing things right.

**UK facilitation priorities:** Firstly, in the context of WTO negotiation, it is important to make sure that a new facilitation agreement be enforceable, clear and unambiguous. Secondly, with E-business gaining momentum, it is essential to ensure that its growth be orderly and co-ordinated.

**Conclusions:** In conclusion, several matters are worth underlining. Firstly, although Customs is certainly a key player in international trade, trade facilitation is about much more than customs, and an integrated approach to border issues is essential to success. Secondly, economic integration brings some major benefits regarding trade facilitation but also poses new problems. Thirdly, the natural tendency of regulators is to meet short-term objectives while sacrificing long-term goals and therefore constant pressure from concerned interests is necessary to make sure that long-term facilitation policies be maintained as priorities. Lastly, business has to always be vigilant to maintain the benefits of trade facilitation.

### **Panel 3: Problems and Solutions in Favouring the Use of International Harmonised Standards and the Recognition of Equivalence of Foreign Measures**

#### *Japan and APEC/SCSC Activities for Regulatory Reform Related to Standards and Conformance*

*Koichi Noda, JETRO Geneva office, Japan*

Japan has made many efforts to avoid unnecessary technical obstacles for trade according to the WTO/TBT agreement.

Japan has already aligned Japanese Industrial Standards -JIS- with international standards as much as possible based on the Three Year Plan for Alignment Works (from 1995 to 1997) and established Enquiry Points at JETRO and Ministry of Foreign Affairs. Japan has also amended many laws and regulations to harmonise standards according to the Deregulation Promotion Three-year Plan.

MRAs with the European Community and with the Republic of Singapore have also progressed in recent years. It took a long time to negotiate Japan-EC MRA but the agreement was finally enacted in January 2002 and Japan-Singapore MRA was signed during the same month. Japan-EC MRA mainly covered four fields: Telecommunications Terminal Equipment and Radio Equipment; Electrical Products; GLP for Chemicals and; GMP for Medicinal Products. Japan-Singapore MRA covered two areas, which are Telecommunications Terminal Equipment and Radio Equipment and Electrical Products.

APEC/SCSC (Sub-Committee on Standard and Conformance) was established in 1994 to implement the objectives set out in the section of “Standards and Conformance” of Osaka Action Agenda, which was endorsed by APEC leaders in 1995. SCSC’s work mainly focuses on the following areas:

- ◆ Promotion of alignment with international standards;
- ◆ Encouragement of participation in international standardisation;
- ◆ Promotion of Good Regulatory Practice (GRP);
- ◆ Promotion of MRAs in regulated and voluntary sectors;
- ◆ Technical infrastructure building;
- ◆ Promotion of transparency; and
- ◆ Contribution to the related WTO activities

APEC/SCSC has made significant progress in these areas. Its work not only provides guidance to standards and conformity assessment activities within APEC but also offers opportunity for co-operation and technical assistance among member economies.

*A toolbox of measures to facilitate trade in the fields of technical regulations, standards and conformity assessment*

*Brian Jenkinson, European Commission*

All governments make regulations. When such regulations relate to products, there will be an effect on trade with other countries, since foreign suppliers have to comply with the importing country's rules. Consequently substantial efforts have been made to reduce the impact on trade of national or regional regulation. Regulations should serve legitimate ends, but at the same time care must be taken to ensure that regulation is not more trade-restrictive than necessary to achieve such ends. The application of the principle of proportionality ought to ensure the necessity and effectiveness of the measures undertaken in comparison to the objective pursued.

The experience of the European Commission in trade facilitation has led to the view that a broad variety of measures can be applied to reduce trade barriers. Conditions for open trade include compatibility of approach, coherence of regulations and standards, transparency of rules, appropriate levels and means of regulation, impartiality in certification, compatibility of market surveillance measures and supervision practices, and an appropriate level of technical and administrative infrastructure.

Different measures are available to the European Community and its trading partners to bring these ideal conditions closer. These measures include:

- Regulatory co-operation (to make regulatory and market surveillance systems more compatible);
- Harmonisation (to create common technical rules);
- Recognition of equivalence (of regulations or standards);
- Mutual recognition agreements (to eliminate costs arising from unnecessary duplication of certification requirements);
- Support for the development of international standards (to create compatibility and interoperability of products and, eventually, to provide a common technical basis for conformity assessment procedures).

The European Community is working towards achieving an optimal mix of actions from these measures. This presentation looks at the measures available, together with some examples, in order to understand the factors to be considered to choose the most appropriate measure to lower trade barriers.

With the increasing recognition of the importance of technical barriers to trade in goods, a number of mechanisms to lessen the impact have been identified. The choices available need to be considered in order to offer a variable response, adapted to the needs and opportunities that present themselves in each specific situation. The choice of the most appropriate instrument will depend on the characteristics of the markets, the regulatory environment and technical infrastructure in the countries or regions concerned, the nature of the products, and the willingness on the part of industries and regulators to make use of such different instruments.

## *Regulatory Structures and Trade - Mutual Recognition of Conformity Assessment and Use of International Standards*

*Graeme Drake, International Organisation for Standardisation (ISO)*

The presentation focused on three topics: regulation; conformity assessment and international standards. From the traders and manufacturers' perspective, there remains a lot of confusion about technical barriers to trade, including how to deal with customs requirements, technical regulation, conformity assessment and international standards. One needs therefore to slow down and carefully look for where the real problem exists. Otherwise, a wrong solution can often worsen the problem.

In the WTO TBT context, **technical regulations** are sometimes standards but only when compliance with the standard, or parts of the standard, is mandatory. This definition itself produces confusion and sometimes increases frustration among businesses.

Regarding technical regulations, international organisations (such as the WTO, OECD, and APEC), regulators and businesses have come to prefer performance based regulations rather than prescriptive ways of writing laws and product requirements.

However this often means change for technical regulators and regulations. While trade officials can see global trade benefits from adopting performance based regulation and harmonised standards, many regulators resist this change, and are often resentful about being told what they should be doing in their areas of legal responsibility, and expertise.

One of the ways these two levels of government policy can engage, and defuse any tensions is to approach regulatory reform by splitting the consideration of regulatory content from the regulatory administrative roles.

Regulators will remain in charge of regulator content, particularly in establishing the performance parameters or thresholds in regulation. Regulators will also choose the means of compliance that must be demonstrated to meet the performance thresholds in the regulation. However the regulator need not undertake this assessment of conformity with the regulations directly, but through recognised third party conformity assessment systems and bodies. This may rely on first party or supplier's declaration of conformity (SDoC), or on independent third party certification. The regulator can maintain a role in post-market surveillance capacity.

Focusing on the administrative side of regulations, alternative means of compliance that meet stated performance thresholds should be permitted. Allowing for acceptance of certification from manufacturers or third parties, regulators maintain control but provide manufacturers and traders with the opportunity to be innovative and lessen the costs and time of conforming to technical regulations.

In terms of **conformity assessment**, several factors important to consider are risk, costs and benefits, effects on trade, structure of payoffs, other agreements and the future.

In the APEC context, mutual recognition agreements (MRA) on conformity assessment are agreed between governments but are always based on voluntary mutual recognition arrangements (MRA) between accreditation bodies. There are a series of ISO Guides that underpin this system. A number of regional and international accreditation bodies already exist to provide the basis for voluntary MRAs.

**International standards:** International standards will improve trade when used as a means of compliance. The international standards development process is normally undertaken by an independent process administrator, such as ISO or IEC, and has the intent and mechanisms to involve all stakeholders including regulators, industries and consumers.

In **conclusion**, one needs to carefully analyse the source of the technical barrier to trade whether it be technical regulation, conformity assessment or lack of international standards. There are different response to each of these, and a danger it mis-matching 'cause and cure'. Secondly, regulatory structures should be performance based; allow for mutual recognition of conformity assessment and; use international standards as a means of compliance. Thirdly, existing international and regional voluntary systems for conformity assessment should be used to underpin G2G MRAs. They exist, work and are growing in membership and sectoral application - trade and other forms of officials should not reinvent the wheel without considering these first.

***What Can We Do about Regulatory Reforms in Standards and Conformance  
- Linking the Actions of APEC, the OECD and the WTO -***

*Chan-Hyun Sohn, Korea Institute for International Economic Policy*

Although many international organisations have tried to enhance the efficiency of standards through international harmonisation and recognition of equivalence, standards across the world are still diverse and duplicating. Such discrepancies function as regulatory technical barriers, significantly deterring international trade and investment, as indicated in a lot of literature by various international trade organisations.

Regulatory reforms of standards have been extensively discussed and examined at the WTO, OECD and APEC. However, their approaches differ greatly. The WTO examines standards issue in terms of trade barriers or counter trade-facilitation measures. The OECD views standards as an issue of regulatory reform, whereas APEC takes a rather practical approach, namely, encouraging alignment to international standards and mutual recognition arrangements.

The standards (in the broad sense) system of a country consists of standards (in the narrow sense), technical regulations and conformity assessment procedures. Standards aim for compatibility and interoperability through technical specifications but they are observed on a voluntary basis. Technical regulations are mandatory and rigorously administered to protect public interests, such as safety and environment protection. Conformity assessments may be conducted to test and inspect the appropriateness of an embedded technical specification in products, processes and services: it can provide both voluntary and mandatory certification or accreditation.

While we recognise the importance of regulatory reforms in standards and conformance, there seems to be no consensus on concrete future actions. In my presentation, I would like to suggest a future direction: APEC's current efforts to align with international standards need to be strengthened along with efforts of harmonisation or equalisation. We need to adopt a performance-based approach like the New Approach of the EC in the area of technical regulation. We also need to promote MRAs for certifications and/or test results. With those future developments, we can further adopt regulatory impact analyses based on the principle of proportionality, suppliers' self-declaration, and an effective product liability system. These actions will bring together the efforts of the APEC, OECD and WTO, thereby answering, at least partly, the question of what we can do with regulatory reform in standards and conformance.

## V. APPENDIX I: SUBMITTED PAPERS

### *Achieve Greater Facilitation through Improved Customs Procedures*

*Yufan Dong, Customs general administration of China, China*

#### **I. Introduction of the APEC SCCP and Its C.A.P.s**

The nature of the global trade environment in which Customs administrations operate is changing rapidly, providing new challenges for Customs administrations. Customs administrations operate as an integral part of the global marketplace, which is experiencing:

A dramatic increase in international trade;

- Greater use of information technology, including the internet for supply logistics and purchasing;
- A reduction in effective tariff rate increases, the relative value of saving that could be achieved through greater efficiencies in customs procedures; and
- A rapid increase in the volume and sophistication of transnational crime, particularly as it relates to drugs.

Because of these challenges, Customs administrations have more complex roles and increasing volume of work. In most cases, the need for improved performance is made more difficult by diminishing resources.

Harmonisation and simplification of Customs practices and procedures will directly contribute to trade facilitation and reduce costs of international trade transactions, as well as improve efficiency within Customs administrations. These changes to the international trade environment require Customs administrations to re-think the ways in which they operate. Old practices no longer work and are no longer appropriate in a freer and globalised trade environment.

Customs has a diverse role of trade facilitation and community protection and revenue collection while being a necessary presence in the global trading system. However, while business must ensure compliance to fair Customs procedures, inefficiencies must be addressed. The big challenge for Customs administrations is to reduce costs to industry while providing a capacity for Governments to fulfil their community protection (or enforcement) roles.

## ▪ **APEC Sub-Committee on Customs Procedures**

To help APEC address these issues, the APEC Sub-Committee on Customs Procedures (SCCP) came into existence in 1994. Its mandate is to facilitate trade by simplifying and harmonising Customs procedures within the Asia Pacific region.

There are the Key Principles issued by the APEC SCCP which are appropriate guiding principles to help Customs administrations to move ahead in Customs reforms and modernisation. These Principles called FACTS comprising: *Facilitation, Accountability, Consistency, Transparency, Simplification.*

In 1995 the SCCP agreed on a work program known as the Collective Action Plan (C.A.P.), by which all member economies would implement a number of specific initiatives which fell under the umbrella of the five Guiding Principles. The Collective Action Plan has since evolved from the initial nine-point in 1995, twelve-point in 1997 and thirteen-point in 1999 into fourteen-point in 2001. The advantages of the Collective Action Plan are

### ▪ **Specific objectives to provide a focus for the SCCP's work and co-operation;**

- Specified target dates for implementation;
- Framework for technical assistance and human resource development, and
- Supportive program whereby the more experienced Customs administrations pool their resources and expertise in order to provide technical assistance and training to the less experienced members.

### ▪ **The APEC SCCP's Collective Action Plan**

(1) *Harmonisation of Tariff Structure with the HS Convention*, (the standard international harmonised system for the classification of goods. The objective of this CAP is to ensure accurate, consistent and uniform application of the HS Convention by all APEC economies.)

(2) *Public Availability of Information on Customs Laws, Regulations, Administrative Guidelines, Procedures and Rulings*. (The objectives are to ensure traders have access to all pertinent Customs information required for business decisions, to improve transparency of APEC Customs administrations, to enhance the APEC Customs administration's competency in the dissemination of information on customs laws, regulations, procedures, rulings and guidelines.)

(3) *Simplification and Harmonisation on the Basis of the Kyoto Convention*. (The Kyoto Convention is the International Convention (WCO) for the Simplification and Harmonisation of Customs Procedures. It specifies certain minimum standards for customs procedures and aims to improve efficiency in Customs clearance and the delivery of goods. Simplified and standardised Customs procedures implemented by all APEC members will in turn improve the trade facilitation environment.)

(4) *Paperless Trading* (Using appropriate technology will speed up customs clearance procedures and reduce the need for paper. It seeks the reduction or elimination of requirements for paper document needed by Customs by the year 2005 for developed economies and the year 2010 for developing economies.)

(5) *Adoption of the Principles of the WTO Valuation Agreement and the WTO Intellectual Property (TRIPS) Agreement*

(7) *Clear Appeals Provision.* (This is to provide business with an opportunity to challenge Customs decisions which they believe are incorrect through mechanisms for transparent, independent, and timely appeals.)

(8) *Advance Classification Ruling System.* (The objective is to speed up the clearance process by classifying goods prior to importation, and to establish simplified procedures for providing classification information prior to importation into the customs procedures of each APEC economy.)

(9) *Provision for Temporary Importation, e.g. Acceding to the A.T.A. Carnet Convention or the Istanbul Convention.* (Its objective is to help business temporarily import goods such as commercial samples, professional equipment, tools of trade and exhibition material with a high degree of certainty as to how they will be treated by Customs.)

(10) *Harmonised APEC Data Elements.* (The objective is to simplify and harmonise the data required by Customs for the importation of commercial goods. Eventually it is expected that this will form a foundation for harmonised Customs clearance procedures in the APEC region.)

(11) *Risk Management Techniques.* (This CAP item will assist all APEC Customs administrations to implement risk management techniques which are appropriate to their needs and which will focus their enforcement efforts on high-risk goods and travellers while facilitating the movement of low-risk shipments.)

(12) *Express Consignment Clearance.* (The objective is to implement the principles contained in the WCO's "Guidelines on Express Consignments Clearance", the international standard procedures for clearance of express goods. This CAP item is implemented in partnership with express industry associations.)

(13) *Integrity.* (The objective is to improve the levels of integrity in Customs administrations, specifically to develop Integrity Action/ Implementation Plans and individual Customs 'Codes of Conduct')

(14) *Customs-Industry Business Partnerships.* (This CAP item was adopted by the SCCP to develop Customs-industry partnerships and enhance cooperation for compliance and facilitation purposes.)

The CAP was initiated in 1995 and considerable work has been undertaken. In 2001, the SCCP has completed a comprehensive evaluation of the implementation of its CAPs. As a result of the findings, a number of CAPs have been implemented according to their target dates, and the future work program has been determined to move into a new stage of the implementation of the various CAPs.

Over the last decade, we have seen many Customs administrations in APEC moving to include the SCCP's Guiding Principles in implementing Customs Reforms and Modernisation. The reality is that some Customs administrations have embarked on Reforms and Modernisation earlier than others. Some have incorporated the Principles to a greater depth while others have done it to a lesser extent.

While significant progress has been made, it should be pointed out that the SCCP cannot achieve implementation of the CAP collectively. The responsibility is on each individual economy to implement the CAP objectives in their own Customs administration.

In the APEC trade and liberalisation process, it should be emphasised that there is a role for business in assisting domestic governments to implement the Customs reforms that the SCCP is working towards.

## **II. Implementation of the Shanghai Model Port Project**

In April 1998, the U. S. Customs Service (USCS) and some U. S. Business sector represented by the U.S. National Centre for APEC (NCAPEC) launched an initiative to work with China Customs under the framework of APEC to build the entry port of Shanghai into a model port by 2001 when the APEC Leaders' Meeting would be held in Shanghai. This initiative was intended to set Shanghai Customs as a model for other economies of APEC region.

In April 1999, China Customs, the U.S. Customs Service and the U.S. National Centre for APEC jointly signed a letter of intent to establish a coalition, which symbolized the birth of the Shanghai Model Port Project, known as SMPP. The purpose of the project was to boost earlier implementation of the SCCP's 13-point Collective Action Plans by Shanghai Customs.

After several rounds of discussions and common efforts among the three parties, a concrete phase-in work plan was developed. On the basis of the SCCP's CAPs, we mapped out the general cooperative schedule of the Project, which was broken down into four main components: IT upgrading, an express consignment centre, training programs and an IPR display centre.

### **▪ IT Upgrading**

This important component was related to the implementation of eight CAP items, including transparency of rules and regulations; pre-classification, risk management, adoption of WTO valuation code, adoption of WTO TRIPs agreement, express consignments, clear appeals provisions and temporary importation. The component was to upgrade the existing hardware to a modern level, to upgrade the operating system software and all database programs, and to introduce a server platform for the internet. The Chinese side developed/upgraded the existing software and also provided the hardware equipment, while Compaq and Oracle companies tested the IT system of Shanghai Customs and proposed solutions to the technical problems. Technical advisor from the U.S. Customs Service provided valuable expertise and suggestions on the implementation of this component. This part of the project was satisfactorily completed by mid 2001.

### **▪ Training program**

During the implementation of the SMPP, around sixty officers from Shanghai Customs attended overseas training courses, workshops and field studies which were sponsored by the National Centre for APEC and organised and conducted by the U.S. Customs. The training program covered subjects on goods classification, Customs valuation, risk management, express consignment clearance and information technology. Three follow-up training courses on IT sponsored by the U.S. Trade Development Agency (TDA) have also been organised for Chinese Customs officers recently.

### **▪ Express consignment centre**

Another outstanding component of the SMPP was the construction of Shanghai international express consignments Customs supervision centre located at Shanghai Pudong airport. The Centre was designed and constructed according to the principles of the WCO Guidelines on Express Consignment Clearance and in consultation with express companies, making use of experiences and best practices of international Customs. The Chinese side invested US\$14 million to the construction of the centre. In addition, China Customs provided US\$2.25 million financial support for purchasing Customs inspection equipment. The Centre was completed and put into operation in August 2001.

The centre now serves as an effective and efficient vehicle for processing all express consignments and providing expeditious release of inbound and outbound packages. With the support of advanced facilities and information technology for control of movement of shipment, the centre has adopted the latest fast clearance mode in the world and created a favourable operating environment for both Customs and business sector. Inside the centre, Customs operate 24 hours, providing “one stop shopping” services on commodity inspection, quarantine inspection, security inspection and bank. Also Customs procedures for advance classification of goods, risk management, release against security, EDI declaration, pre-arrival declaration, EDI payment of duties, are all fully adopted within the centre. With such simplified procedures in place, clearance of more than 95% shipments can be realised in less than one hour.

▪ **Customs-business partnership**

An MOU is a manifestation of the willingness and determination of both parties to promote trade through the establishment of a better Customs-industry partnership. It provides for enhanced co-operation in promoting efficiency and effectiveness of Customs controls and facilitation in the clearance of express consignments. The MOU paves the way for collaborative efforts in the interdiction of narcotics smuggling and commercial fraud. Shanghai Customs has signed MOU with the enterprises and set up a mechanism for holding regular business dialogues, improving transparency of Customs performance, sharing shipment data for the purpose of advance risk analysis so as to expedite release of goods, thus raising the efficiency of clearance.

In general, the development of the centre has enabled Shanghai Customs to achieve full implementation of SCCP’s thirteen collective action plans.

▪ **Shanghai Customs website and IPR information centre**

On 1 July 2001, the Shanghai Customs website was officially open to the public. The address is “www.shcus.gov.cn”. The website provides the public with timely information on Customs laws and regulations, Customs guidelines and announcements, status of ships as well as status of other Customs offices. The website is also open with a function of providing online advises on Customs procedures, as well as monitoring and reporting function. In addition, there is an SMPP homepage on the website which provides applicable information on Customs laws and regulations, clearance of express consignments, advance classification of goods, electronic transfer of payment of duties, etc. The SMPP homepage sets up an online IPR information centre which is the replacement of the original IPR display centre under this project. The IPR centre sets up columns of IPR-related laws and regulations, application for recordation, online advises, enforcement information, international co-operation, case explanation. Currently, the daily visitors of Shanghai Customs website are over 5,500 averagely.

The construction of SMPP underwent for two and half years and came to a completion in last October when its achievements were showcased to the APEC Leaders and the public. In the course of this project, Shanghai Customs, in conjunction with the China Customs modernisation process, has made positive, comprehensive and effective efforts in simplifying and harmonising Customs procedures, raising transparency of Customs enforcement, optimising information technology and protecting the legal right and interest of importers and exporters. The SMPP project has promoted deeper implementation of SCCP’s CAPs in China Customs. It has improved the operating environment and clearance efficiency of Shanghai Customs in particular. The successful outcome of this project has also strengthened the contact and co-operation between Customs and business. We believe that the success of SMPP will be of great significance in moving ahead the APEC trade and investment liberalisation process, expanding the trade between China and other APEC economies, and improving co-operation between Customs and business community of APEC.

### **III. China Customs' Major Efforts in Trade Facilitation**

Over a long period of time, China Customs has set its prioritised tasks of achieving a more cost effective Customs clearance and giving full support to the national economic growth. In recent years, China Customs has taken various measures to facilitate trade in the following areas:

Easier and faster movement of goods through Customs

To ensure undisturbed movement of legitimate goods through the Customs, China Customs has opened 24-hour clearance facilities at some busy ports of entry by increasing manpower and creating other necessary working conditions.

- **Provision of an easier clearance procedure for large and high-tech enterprises**

To support the development of high-tech industries and the exportation of their products, China Customs and MOFTEC have jointly initiated 10 facilitation measures so as to provide a "Green Channel" for the exportation of large and high-tech enterprises. Any enterprise engaged in the production of high-tech products that are listed in China High-tech Export Products Catalogue and have achieved an annual export value of over US\$100 million may apply to the Customs for the facilitation measures which are pre-arrival declaration, on-line declaration, fast transit procedure, checking and release at the premise, urgent clearance, release with deposit and prioritised consultation. As the "Green Channel" is based on the credibility of the enterprises, the concerned enterprises must comply on their initiative with the relevant laws, regulations and their own commitments, strengthen their internal control and subject themselves to the Customs supervision.

- **Implementation of electronic clearance procedures**

In recent years, China Customs has been making great efforts in bring forth new ideas in science and technology and facilitation procedures to accelerate the process of Customs modernisation. From 1 February of this year, a trial operation of paperless clearance was first carried out in Shanghai Customs and came to be very successful. Another trial operation was started in Qingdao Customs on 1 March. According to the plan, paperless clearance procedures will be tried in other six regional Customs from April 2002.

With the adoption of paperless clearance procedures, Customs can improve trade efficiency and Customs control, while business can reduce transaction costs and strengthen its international competitive power. The implementation of paperless clearance is an important breakthrough in China Customs reform, by which any segments in the clearance process that can undergo paperlessly are all electronicised. This enables most enterprises to have their cargo go through Customs, complete all the clearance procedures, be put into production and markets in the fastest speed. As a result, the time for release of goods has been greatly shortened and the enterprises have gained unprecedented benefits. Taking the trial operation in Qingdao Customs as an example: from 1 March to 8 March, there were 139 export shipments belonging to 10 enterprises which were cleared smoothly with paperless method. The matrix below indicates a comparative study on the time used to clear goods before and after introducing paperless clearance procedures.

From the matrix, we can see the difference, the efficiency and effectiveness brought about by implementation of paperless clearance procedures by China Customs.

	from arrival of cargo to declaration to Customs (Average time)	From declaration to Customs to release of cargo (Average time)	Feedback of information on release of cargo by Customs (Average time)
Before intro. of paperless pro.	3 hrs	25 min.	Depending on speed of passing info by a broker
After intro. of paperless pro.	5 min. and 17 sec.	5 min.	7 sec.

▪ **Basic framework of China Customs modernization regime**

In 1998, China Customs embarked on a strategic process of Customs reform and modernisation and developed an ambitious blueprint. The near-term objective for China Customs modernisation construction is to establish a modern Customs regime, specifically to develop a new Customs administration system with vitality and energy that is adaptable to the market-oriented economy and opening-up, and meets requirements of new situations through modernised administration concepts, administration system, administration methods and administration instruments, so as to realise all functions of China Customs in a comprehensive and high-quality manner. The general framework of China Customs modernisation regime comprises of eight systems, namely: (1) *Modern Customs legal system*, (2) *business compliance management system*, (3) *informatisation management system*, (4) *modern Customs clearance system*, (5) *goods flow control system*, (6) *modern Customs anti-smuggling system*, (7) *modern Customs administration system*, and (8) *Customs public relation system*.

According to the two-phase implementation strategy proposed in 1998, China Customs would take five years to preliminarily set up the basic framework of modern Customs regime in all Customs regions across China, and would then use another five years or by 2010, to finish establishing a relatively perfect modern Customs regime. By now, four years have passed, and we have reached the expected goals with the progresses achieved to different extents in the above mentioned eight systems. The tangible results have thus brought the construction of China Customs modernisation regime into a new level.

With China's accession to the WTO and its participation in international market competition and with the change of international trade rules, China Customs is confronted with more opportunities and challenges. There are big challenges which include:

- the accelerated integration of global economy,
- the increasingly close international and regional economic relationship, which requires Customs to move forward trade facilitation,
- the formation and rapid development of modern international logistics service and the progress of business electronicalisation driven by information technology, which require the informatisation of Customs administration,
- rapid updating of enterprise management theories and practices, which require Customs to innovate administrative concepts and control methods,
- increasingly intense international economic competition, which requires Customs to strictly enforce laws and regulation and protect national socio-economic safety.

It is more important that being a member of WTO, Customs law enforcement will be under dual restrictions of national legal system and international rules. The primary function of Customs is no longer to make direct interventions in behaviours of enterprises and markets. Instead, Customs shall play a major role to maintain market rules and order, and to provide better public services. To meet these challenges, China Customs, in the course of moving forward the construction of modern Customs regime, needs to constantly adjust its goals, set up “market-oriented” concepts and resolve the contradictions between “strict control and efficient operation”. Customs shall not only enforce laws strictly, but also facilitate trade and serve to enhance the competitiveness of domestic industries and enterprises.

It is equally important that Customs works together with business sectors to promote compliance and facilitation. While simplifying and harmonising its procedures, China Customs shall endeavour to develop a strategic partnership with business community, extend constant dialogues and communication between Customs and the business, maintain and enhance the economic competitiveness, create a set of new Customs administration modes which can not only adapt to the needs of new operating methods of enterprises, but also meet the requirements of Customs control, so as to create a “win-win” situation for both Customs and business sectors.

***Regulatory Structures and Trade  
Mutual Recognition of Conformity Assessment and Use of International Standards***

*Graeme Drake, International Organisation for standardisation, New Zealand*

**Introduction**

In a recently completed APEC report<sup>29</sup>, APEC food, electrical and electronic, and telecommunications regulators identified the following benefits to trade in mutually recognising conformity assessments undertaken in any one of their economies:

- the facilitation of trade liberalisation through mutual recognition of conformity assessments that would otherwise act as technical barriers to trade;
- reducing the costs and time for manufacturers to gain conformity assessment by reducing or eliminating the need for duplicate approval procedures;
- increasing transparency in each others regulatory and conformity assessment requirements through exchange of information;
- provision of increased domestic and international competition, productivity and innovation in goods and services, which are expected to translate in more consumer choice at lower prices;
- provision of a basis for rationalisation of domestic conformity assessment procedures;
- builds trust and mutual confidence, and broadens and deepens the economic relationships between the parties;
- provides a basis for the development of greater competence in national technical infrastructures; and
- assists in the prevention of dumping of goods.

1. In the same report the APEC regulators identified the following problems they face in committing to mutual recognition of conformity assessments:

- the need to change regulatory systems and procedures;
- lack of resources (money, time and labour) to attend meetings, negotiate and subsequently implement mutual recognition agreements (MRAs);
- lack of confidence amongst potential participants in the competence of each others technical infrastructures;
- lack of fully developed technical infrastructures;
- the sector being considered in a MRA is not economically significant to a potential MRA participant;

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<sup>29</sup> Final Report of APEC CTI 07/2001 T Promoting Participation the APEC Mutual Recognition Agreements (MRAs), presented to the APEC Subcommittee on Standards and Conformance (SCSC) on 28th February 2002 in Mexico City.

- that the MRAs do not address the most significant barrier to trade e.g. tariffs or technical regulations may be the main problem, not conformity assessment procedures;
- reluctance to make the changes required to existing technical regulations and institutions to enable mutual recognition of conformity assessment;
- low levels of political and regulator commitment, or that involvement is a political position without following up on the necessary practical implementation;
- low level of policy knowledge and understanding of MRAs;
- duplication with other MRAs, e.g. development of an ASEAN MRA, bilateral MRAs and MRAs with the EU make it difficult to prioritise negotiations and technical resources;
- inability to show tangible benefits for specific economies;
- translation difficulties from English into domestic language;
- concern over liability issues if MRAs made operational and mutually recognised conformity assessment found substandard; and
- the potential impact on domestic producers.

2. Technical regulation, conformity assessment procedures, and the use of standards (whether they are national, regional or international) affect trade. As the comments from regulators above illustrate, understanding and separating out what to tackle in terms of overcoming an existing technical trade barrier, or in endeavouring to reform or design new regulatory frameworks that do not adversely affect trade, is difficult.

3. The fact that technical regulations, conformity assessment procedures and standards pose trade barriers is also well documented from a private sector perspective<sup>30</sup>.

4. One suggested approach, as elaborated in this paper, is to tackle these barriers through considering three distinct elements:

- the relevant regulatory structure, content and administration;
- the degree to which mutual recognition of conformity assessment is permissible; and
- the extent to which international standards are referenced.

5. It is also recognised that there may be other barriers to trade originating from state action that have to be addressed in resolving a specific issue. Consideration must also be given to the fact that specific trading difficulties could simply be reflective of a correctly operating market place, that does not wish to patronise specific products or services due to consumer choice preferences.

6. This paper has been developed in the context of the WTO Agreement on Technical Barrier to Trade (TBT), the APEC Subcommittee on Standards and Conformance (APEC SCSC) Guidelines for the preparation, adoption and review of technical regulations (2000), and the Final Report (2002) on Promoting Participation in APEC Mutual Recognition Agreements (MRA) (APEC CTI 07/2001 T).

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<sup>30</sup> As evident in statements from the WTO, the APEC Business Advisory Council (ABAC) 2001 Report, the OECD, and the recent the Survey of New Zealand Exporters on Non Tariff Barriers to Trade (2001).

## Regulatory Structure, Content and Administration

1. With regard to trade liberalisation and regulatory structures, content and administration a number of aspects are relevant:
  - the degree to which the regulations are structured in prescriptive or performance based terms;
  - the ability for the unique social, environmental and cultural positions of a society to be reflected in the regulatory content of the specific economy; and
  - the degree to which compliance with the regulation is administered, especially to what extent the regulator has retained a monopoly for pre or post market compliance functions.

## Prescriptive and Performance Based Regulation

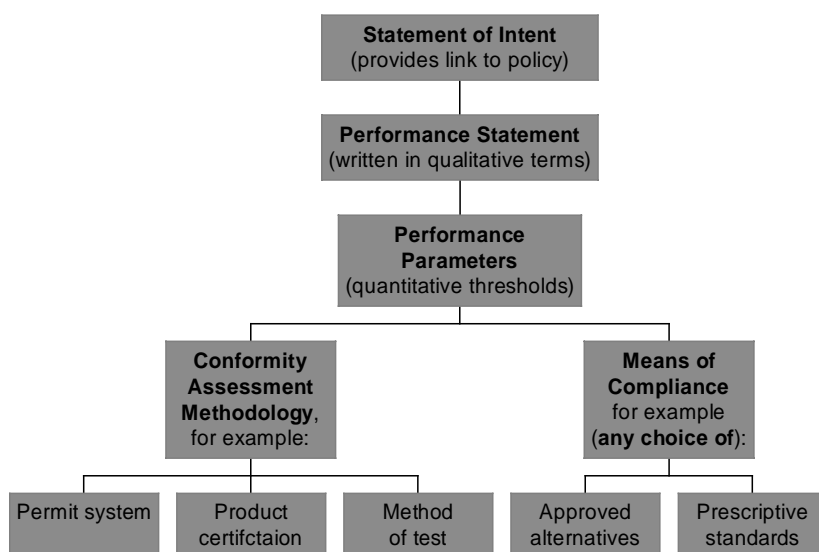
2. Article 2.8 of the TBT Agreement recognises the importance of performance based regulation, in stating that:
  - Wherever appropriate, Members shall specify technical regulations based on product requirements in terms of performance rather than design or descriptive characteristics
  - Prescriptive regulation generally defines a list of products, processes, and procedures required to achieve compliance. Prescriptive regulation focuses on the **means** by which the objective will be achieved rather than on whether the desired **outcome** is achieved.
  - The advantages of prescriptive regulations are that they are self-contained, precise, easily implemented, understood, followed and enforced.
  - Although easier to enforce, such regulations are often considered to be inflexible and are more likely to restrict trade and competition, inhibit innovation, and limit use of more advanced alternatives. Prescriptive approaches do not respond quickly to changing consumer preferences, technological change, changes in materials, products or systems. In effect they freeze time. More often than not the intent and purpose of the regulation becomes unknown. Like all regulations, they are difficult and slow to change.
  - In contrast, performance regulation is focused on **outcomes** rather than **inputs**. The major advantage of such an approach is that different means of compliance can be accepted provided the outcomes of the regulation are met. Thus performance-based regulation provides flexibility while achieving a specific result.
  - Flexibility in methods of compliance provides incentives for firms to look at ways to minimise the costs of complying, and so they create the right environment for innovation and technological advancement.
  - To provide a degree of certainty to market players (manufacturers, retailers and consumers) regulators can provide guidance through specifying acceptable solutions that, if followed, will be 'deemed to comply' with the regulation. These 'shake and bake' solutions can include references to voluntary international standards.
  - What is important in performance-based regimes is that they allow for alternative means of compliance. They may fail if the technical regulation is written in performance-based terms, but then there is only one means of compliance.

3. Performance based regulation requires a number of explicit statements to operate. They can be considered in the following hierarchy<sup>31</sup>:

- Statement of Intent
- Statement of Performance
- Performance parameters
- Conformity assessment methodologies
- Means of compliance

4. The following illustration shows the above hierarchy:

*The Performance Based Regulation Model*



5. Considering the extent to which regulations are prescriptive or performance based enables insights into how regulations may be reformed or structured to enable trade, while ensuring minimum performance parameters are maintained.

### **Regulatory content**

1. Having considered the desirability of a performance based regulatory structure, a regulation's content and administrative components can be considered.
2. It is important separate out these two components or characteristics, as regulators when requested to review their institutional arrangements on trade grounds will often respond in a negative or non-co-operative manner.

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<sup>31</sup> Further details on the above model can be found in a paper by the same author delivered to a APEC Good Regulatory Practice Seminar, held in Mexico City on 26th February 2002. This paper and other Good Regulatory Practice presentations can be found in the [APEC Good Regulatory Practice Database](#) hosted by the Australian Department of Industry, Tourism and Resources.

3. What is important to stress is reform of regulation to provide greater trade liberalisation does not equate to any loss of sovereignty or bypassing the right for regulation to reflect the unique social, environmental and cultural positions of specific societies.
4. Explaining this can be achieved by drawing a line between the **content** of the regulation that relates to the establishment and wording of the performance parameters, and the **'administration'** side, which covers the how compliance (or conformance) to the regulation is determined. Once regulators understand this their propensity to consider regulatory reform is enhanced.
5. This does not preclude the efforts of economies harmonising their regulation, however for the time being it is recognized this will remain a difficult proposition on a truly international scale.
6. Effectively it is acceptable to have different performance parameters or threshold enshrined in national regulation. Compliance to these thresholds remains paramount regardless where or who undertakes the compliance or conformity assessment functions.

### **Regulatory administration**

1. With reference to the administrative side of the regulatory regime in some cases changes will be necessary in regulations and institutional arrangements to allow conformity assessment by parties other than the regulator.
2. This understandably raises concerns with some existing regulators, many of whom have operated in the dual roles as sole rule setter and consent agency in the past, and in some cases are reliant on the revenue generated in pre-market conformity assessment for their operations.
3. Regulators retain a role in a reformed system by:
  - maintaining their role as the body that established the performance parameters or thresholds;
  - the granting of status to third party domestic and foreign conformity assessment bodies as being competent to determine compliance to the relevant regulations; and
  - re-establishing themselves with a focus on post-market surveillance functions rather than pre-market approvals.
4. To summarise the regulatory structure, content and administration section, trade barriers can exist through the reliance on one way of doing things. In other words the use of a prescriptive regulation that specifies one method of achieving an outcome, and the retention of a monopoly role to the regulator as the sole arbiter of whether a product or service entering an economy meets that regulation, has a high potential to act as a trade barrier in terms of costs and time delays.
5. More progressive regimes, as encouraged by international trade bodies (APEC, OECD and the WTO etc), make reference to performance based regulatory structures, where the minimum levels of performance are transparently stipulated. Manufacturers and importers are then left with the discretion to design and provide products that meet the performance outcome, rather than be limited by one specific product type.
6. This flexibility can be further enhanced by designating more than one competent conformity assessment body, and by permitting competition amongst them for conformity assessment services.

## Mutual Recognition of Conformity Assessment

1. From the basis of a performance based regulatory regime further improvements are possible in terms of reducing the costs of trade by regulators agreeing to mutually recognise the results of conformity assessment bodies deemed competent by other agencies. This is the essence of mutual recognition of conformity assessment.
2. Lack of acceptance of test data across borders and of recognition of certificates of conformity create significant barriers to trade. This can often result in multiple testing, time delays, and an overall reduction in the competitiveness of imports. One way of overcoming this problem is for economies to recognise each other's conformity assessment procedures.
3. The TBT states that economies will recognise the results of conformity assessment procedures of other members, provided they are satisfied that those procedures offer an assurance of conformity with the applicable technical regulations. The TBT Agreement does, however, recognise that an important precursor to recognition of conformity assessment procedures is confidence in each other's systems and procedures.
4. There are a range of conformity assessment options, including:
  - self declarations by manufactures that their products conform to specific technical regulations or standards,
  - market to market agreements on conformity between buyer and seller;
  - independent third party certification;
  - Government approvals, generally through a regulator or a body appointed by a regulator (these can be consents, certificates, licences, permits etc); and
  - post-market surveillance activities by regulators and consumer groups.
5. When deciding what methodology to use a regulator must give consideration to the following issues:
  - **level of risk.** In some circumstances the level of risk may require mandatory requirements for government or third party conformity assessment. This is sometimes warranted in areas where public health, safety or environmental concerns are high.
  - **the costs.** Legal requirements for conformity assessment can be both complex and expensive. A decision to impose mandatory conformity assessment requirements should only occur if the serious risk of harm justifies the cost burden of imposing regulator or third party assessment.
  - **the effects on international trade.** Consideration must be given to minimising the effects of any conformity assessment requirements on international trade. The TBT Agreement (5.1.2) states that members shall ensure:

*"Conformity Assessment procedures are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade. This means, inter alia that conformity assessment procedures shall not be more strict or be applied more strictly than is necessary to give importing members adequate confidence that products conform with the applicable technical regulation or standard, taking into account the risks non conformity would create."*

- **the incentives on producers to comply.** In the absence of pre-market mandatory regulator or third party conformity assessment, consideration must be given to the incentives created by the post market surveillance and penalties for non-conformance, the specific demands of customers and the potential for private liability. In this regard consumer protection legislation is often used to underpin the relationship between buyer and seller;
  - **other trade related agreements.** Many economies also have bi-lateral, pluri-lateral or regional conformity assessment agreements. Examples include the APEC government-to-government MRAs and the voluntary MRA/MLAs of the voluntary accreditation agencies (more information on the latter is provided below).
  - **the likely form of conformity assessment industry in the future.** The voluntary MRA/MLAs have a considerable potential to change the nature of conformity assessment delivery options in the future. Economies should be conscious of this while making investment decisions in domestic infrastructures.
6. Consideration must also be given to the existing structures of the voluntary global conformity assessment system. Principally this refers to the groups of agencies that run accreditation activities, and the mutual recognition arrangements they currently have in place amongst themselves.
  7. These bodies operate at national (often as part of Government), regionally as cooperation's, and internationally. Examples include:

**National**

International Accreditation New Zealand, New Zealand

National Administration of Testing Authorities, Australia

Joint Accreditation System of Australia and New Zealand, Australia and New Zealand

**Regional**

Asia Pacific Laboratory Accreditation Cooperation (APLAC)

Pacific Accreditation Cooperation (PAC)

European Cooperation for Accreditation (EA)

**International**

International Laboratory Accreditation Cooperation (ILAC)

International Accreditation Forum (IAF)

8. Each of these bodies has standing mutual recognition arrangements (MRAs) or multilateral arrangements (MLAs). This means a laboratory test, management systems, or product certification by a conformity assessment body that has been accredited as competent by one member of the MRA or MLA, is acceptable to all other members of the MRA or MLA. No retesting or further certification is required.
9. These MRAs and MLAs are in the process of moving to full implementation, with a program of peer assessments and audits being carried amongst the national body members, prior to a economy gaining ascension to an arrangement. For example representative from a group of current signatories will visit and interrogate the competence of a proposed signatory. Furthermore amongst the signatories themselves there is periodic review and further peer assessment to ensure the competence of signatories remain current.

10. It is for the regulators to engage with their domestic accreditation agencies and satisfy themselves that the procedures within these voluntary arrangements for testing competence and providing conformity assessment against their native regulations is sufficiently rigorous. If so they can make reference to the voluntary agreements as a method of designating or approving conformity assessment bodies. Operating examples include testing houses and product certification bodies in Australia, certifying Australian and New Zealand products in accordance with European Directives and standards. European regulators mutually accept these certifications, as if they had been carried out in Europe.
11. This mutual recognition reduces the costs of trade substantially and allow for quicker access to markets where it is in place.

### **MRAs as a trade policy tool**

12. Before venturing into MRAs, it must be recognised they are resource intensive to negotiate and during implementation may require considerable change to existing functions and methods of conformity assessment within specific sectors. For this reason a careful analysis needs to be undertaken of the following elements:
  - what are the specific trade difficulties with in the sector;
  - what are the most appropriate tools that can be used or combined to overcome trade barriers with in a sector, such as regulatory harmonisation, bilateral or unilateral declarations of equivalence, development and adoption of international standards as the basis of compliance by regulators, and MRAs;
  - a visioning of the ‘end game’ in terms of what the trading environment will look like once full implementation is useful, from both a domestic and international perspective;
  - a proper cost benefit analysis, considering costs and benefits from both a domestic and international perspective;
  - views from stakeholders (politicians, trade officials, regulators, standards and conformance bodies, manufacturers and consumers); and
  - consideration of other trade liberalisation efforts being undertaken by other bodies related to the sector (especially other MRA efforts in different fora).
13. Only after taking into account these considerations can a reasoned decision be made that a MRA is the correct tool and that sufficient momentum is present with stakeholders to provide the necessary resources for negotiation and implementation.
14. Further considerations in MRA creation include the need to build domestic awareness and buy-in, especially by domestic regulators. Methods to achieve this can include national symposiums and training sessions with the stakeholders of a particular sector. Such training sessions should include trade officials, regulators, standards and conformance bodies (including conformity assessment bodies) and manufacturers.
15. Regulators should be directly involved in MRA negotiation and implementation at the international level, with the relative success of the APEC Electrical and Electronic Products MRA (EEMRA) and Telecommunication MRA (TelMRA) being associated with their participation in the Joint Advisory Committee and TelMRA Task Force, respectively.

16. For MRAs to function properly and certain level of technical infrastructure is required. Many respondents stated for further APEC MRA participation their economies would have to upgrade their technical infrastructures, especially to a level that enabled full participation of domestic bodies in the voluntary MRAs of APLAC, PAC and the IECEE CB scheme.
17. In this regard economies should think carefully about the resource requirements, long-term competitiveness and the possible use of established conformity assessment structures in other economies. This is especially so given the realisation that fully operating MRAs will result in the acceptance of certified products in economy A, which are produced in economy B, that may have gained conformity assessment approvals from designated conformity assessment bodies in economy C. In other words conformity assessment bodies in the future will be competing with each other to provide test reports and product certifications to manufacturers, regardless of the economy to which the exports are destined.

### **Use of International Standards**

18. At this point, we can establish that by having a performance based regulatory regime, that allows alternative means of compliance, and through MRAs compliance can be gained from any number of competent agencies, that we have substantially lessened the costs for manufacturers and importers in providing products and services to markets. However, at this point manufacturers may still need to be making several versions of a product to satisfy the performance parameters for various economies.
19. This is where international standards come into their own. Should regulators determine an international standard meets their performance parameters, then they should cite those standards as a means of compliance. As soon as this happens in several economies, the manufacturer can make one product that satisfies several markets at one time.
20. Presumably the increased economies of scale achieved may lead to reduction in costs to consumers in those markets, a more rapid time to market for new products and services, and an expansion in trade especially in those markets where previously it was considered too expensive to make specialised products for.
21. Note this does not do away with the need for each economy to specify its own sovereign performance parameters, it simply enables economies to determine that the one international standard may meet the specific thresholds, even if thresholds are cast in slightly different ways amongst economies.
22. Regulators themselves are involved in the development of appropriate international standards. International standardising bodies, such as the International Organisation for Standardisation (ISO) manage the processes where by regulators, manufacturers and consumers deliberate and create international accepted procedures for conformity assessment and international standards for products and services.

### **Summary**

23. To summarise, when considering technical barriers to trade, it is suggested consideration be given to analysing the specific problem carefully. One approach is to look first at the technical regulations that apply to the products or services of interest. There is a clear international intent that where possible such regulations should be structured in performance base terms.

24. Additionally there is a clear international understanding that while the content components of those regulations is a sovereign matter for each economy to decide, that the administrative, or conformity assessment side should permit mutual recognition of conformity assessment in cases where the body undertaking the conformity assessment is competent to do so.
25. Before undertaking negotiations with other economies on mutual recognition of conformity assessment appropriate cost/benefits need to be identified, and sufficient domestic resources need to be committed to ensure the agreements are reached and implemented. In some cases existing regulation will need to changes for regulators to designate third party conformity assessment bodies and move into a more post-market surveillance role. Regulators should have a lead role in negotiating MRAs.
26. At this point its is recognised real or perceived trade barriers can be potential reduced. Through the mutual recognition amongst regulators, and of regulators of the voluntary conformity assessment arrangements, manufacturers have a greater choice of agencies to use to gain conformity assessment for their products.
27. To further press these advantages, regulators should consider the use of international standards in terms of specifying adequate means of compliance. If this is done in several countries trade is improved, with the manufacturer needing only one conformity assessment from a conformity assessment body that has been sanctioned by several economies. Regulators should participate in international standards development.
28. The most powerful combination of regulation, conformity assessment and standards in terms of facilitating global trade and providing an innovative environment for economic development is when:
  - the regulatory structure is performance based with the ability to prove compliance using any alternative;
  - the regulator relies on post-market surveillance actions, and the use of mutual recognition arrangements of conformity assessment to accept third party conformity assessments (whether they be domestic or foreign); and
  - international standards are cited as an appropriate means of compliance with the performance parameters of domestic regulations.

## *Integrating Market Openness into Regulatory Systems: Some Experience and Emerging Best Practices*

*Anthony Kleitz, Trade Directorate, OECD*

### **I. Introduction**

In recent years it has become increasingly apparent that the benefits of international trade and investment depend not only upon policy measures directly affecting trade and investment flows but also upon domestic regulations that are economically efficient and favour trade and investment. Past progress in tariff liberalisation has brought attention to focus on other types of impediments to such flows, in particular domestic regulations whose trade and investment effects may be unintentional.

Recognition of this interlinkage between trade and investment liberalisation and efficient regulation is contributing to a strong dynamic in favour of regulatory reform. Countries want to draw full benefit from the strengthened global competition expected to emerge from trade liberalisation; at the same time, the multilateral trading system and the liberalisation achieved under it entail national obligations, including explicit or implicit commitments to adopt certain regulatory practices, e.g. as specified under the TBT and SPS Agreements and in the GATS.

These two factors combine in support of reform that will allow the efficient achievement of regulatory objectives with as little trade restrictiveness as possible. In fact, for regulatory reform to be successful in achieving more efficiently the specified objectives, account must be taken of its international dimension, i.e. of the trade and investment impact of regulations.

The objective of this presentation is to introduce briefly the conceptual framework developed by the OECD Trade Committee for reviewing national experiences with regulatory reform in the perspective of the implications for international market openness. This framework involves six principles of efficient regulation and has already been used (and further developed) in the review of sixteen OECD countries. This presentation will then look at some of the experience and promising approaches that have emerged from these reviews with respect to the six principles and will attempt to set the stage for this session by focusing on how to avoid trade restrictions arising from national practices with respect to customs procedures and standards.

### **II. Principles of Efficient Regulation**

In the context of its ongoing multidisciplinary work on regulatory reform, OECD has considered the implications of domestic regulations for “international market openness” (referring to the extent to which markets are open to global competition, principally through trade and investment). The OECD Trade Committee has identified six “principles of efficient regulation” to help assess the extent to which regulations are both economically efficient and trade- and investment-friendly. These principles in fact broadly underpin the WTO, and can be seen to be particularly relevant in the TBT and SPS Agreements and the GATS when they touch on domestic regulation. They are:

- **Transparency** and openness of decision-making, with respect to the development and administration of regulations;
- **Non-discrimination** among market participants;
- Avoidance of unnecessary trade restrictiveness when setting up domestic regulations;
- **Use of international harmonised standards** or **recognition of equivalency** as means for overcoming potential trade impediments from technical measures and standards;

- *Streamlining conformity assessment procedures*, particularly so as to avoid duplicative procedures; and
- *Use of competition principles* to ensure that open markets ensue from deregulation.

Through studies at OECD that have examined the regulatory regimes of different countries and the ways in which they have implemented these principles, it has become apparent that the principles are in fact interdependent. Together, they form a comprehensive package for creating a level playing field to promote international competition and ensure that countries can reap the benefits of globalisation. In particular they can support efficient regulatory decision-making by:

- Making clear the costs and benefits of regulation to all stakeholders;
- Providing business (domestic and foreign) with predictable conditions;
- Reducing discretionary or arbitrary implementation;
- Facilitating identification of alternatives favouring trade, investment, competition and economic growth.

### **III. Some emerging “Best practices” for Regulation in a Market Openness Perspective**

The analyses conducted so far at OECD allow identification of some approaches to implementing the principles that seem of interest in light of their positive contribution to achieving domestic objectives while maintaining or improving market openness. One of the objectives of the APEC-OECD Co-operative Initiative on Regulatory Reform is to share such emerging results and to consider the experiences of a broader range of countries. It is important to take such experiences into account, since the same regulatory model is not necessarily appropriate for all countries. The choice of regulatory objectives and priorities among them is left to each government, while differing situations of countries may alter the effectiveness of particular means for achieving those objectives.

The remainder of this presentation will now summarise some ideas relating to how to put the different principles into effect. It will conclude up by focusing on customs procedures and internationally harmonised standards, which will be the main subjects of this session.

#### ***A. Transparency and openness of decision-making***

Transparency is perhaps the most frequently recurring theme in the application of the other principles of regulatory efficiency. It concerns the provisions of both legislation and subordinate measures, as well as decision-making in the contexts of regulation setting and of the administration of regulations. Six particular approaches are raised here

##### ***1. Systematic publication of information about regulations***

For the sake of efficiency, a number of countries have established consolidated codes of regulations, thus facilitating the access of business to the various regulations to which they may be subject. This is of course particularly useful for businesses that not incumbent in a market. Moreover, enquiry points can provide an important service to economic actors, as an easily identifiable and accessible source of information, able to respond to queries and provide clear explanations. In the WTO, requirements for enquiry point already exist under the SPS Agreement and the GATS. These approaches have been enhanced by countries that have created internet websites providing extensive regulatory information and permitting enquiries, thus strengthening transparency and reducing business costs.

Even for countries with a good record in these areas, there is often more that can be done. For example, enquiry points should of course not be limited to SPS measures and services. In addition, information facilities remain significantly weaker with respect to sub-federal regulations.

### *2. Clear commitment to public consultation*

When a new regulation is being defined and put into place, “prior consultation” normally consists of a “notice and comment” procedure involving public announcement of the consultation procedures that will be followed, of the proposed regulation and of any comments received. Consultations should be open to foreign as well as domestic parties, and without favouritism in their selection.

Prior consultation provides benefits by ensuring equality of treatment among different stakeholders, including foreign ones, who may be in position to contribute significantly to the development of the local economy. This equality of treatment allows regulatory authorities to make a fuller assessment of stakeholders’ views and gives the ensuing regulation a higher degree of legitimacy. It also provides stakeholders with better information on future regulations, including their objectives and rationale, which can be especially important for business.

### *3. Clear, open procedures for making and implementing rules*

Some countries have enacted specific legislation to ensure transparency in administrative procedures for implementing regulations, e.g. including requirements in such areas as publication of objective criteria for judging requests; standard time periods for decisions; and providing explanations when requests are denied.

### *4. Clearly written rules and simple procedures to ensure predictability of interpretation and implementation*

This approach can contribute significantly to efficient procedures at different stages of the process of setting and implementing regulations. It typically calls for rigorous vetting of draft regulations, periodic reviews of existing laws and regulation, and establishment of central enquiry points to clarify rules and their implementation.

### *5. Clear and open appeals procedures*

Regulations will only be accepted and work efficiently if both domestic and foreign economic actors have access to remedies when they consider that they are confronted with overly burdensome or unclear regulatory requirements or unsatisfactory results. This can require:

- Formal legislation or effective informal channels for lodging and advancing complaints, clearly open to domestic and foreign parties;
- Clearly defined time limits for appeals processes;
- Adequate explanations, e.g. when requests are denied.

## ***B. Non-discrimination***

The principle of non-discrimination involves both national treatment (i.e. equivalent treatment to national as well as foreign suppliers) and most-favoured nation (MFN) treatment (i.e. no differentiation in treatment among foreign producers). Mention may be made here of three particular issues that are important for the trade-friendliness of domestic regulation.

- *Due process*, or the right to appeal administrative decisions or actions, irrespective of nationality.
- *Regional trade arrangements* by their nature provide preferential (i.e. discriminatory) treatment for their members. Yet arrangements with certain characteristics may be less trade-distortive and may contribute in a positive way to the growth of world trade and competition. This may be the case, e.g. when the net effects of an arrangement are trade-creating rather than trade-diverting; when arrangements abide by WTO rules (e.g. they should not increase trade barriers to third countries and should cover substantially all trade); and when arrangements liberalise trade in areas not yet well covered by the WTO, such as services. Further study is needed to identify better such characteristics.
- *Public procurement* in OECD countries represents approximately 20% of their GDP, according to recent work in OECD. For non-OECD countries the figure is close to 15%. It is thus a significant market, which is often effectively closed to foreign suppliers and may not even be contestable domestically. Greater efficiency and economic benefits can be expected if procedures become more transparent and more strongly based on non-discrimination.

### ***C. Avoidance of unnecessary trade restrictiveness***

This far-reaching principle remains far from clearly defined. It is not intended to replace other legitimate objectives that governments may choose but rather to provide a tool for helping to select the most appropriate and efficient means for achieving such objectives. Among the approaches so far identified for reducing the potential burden of government formalities on trade and investment, the following have attracted particular interest:

#### *1. Fostering awareness of the trade and investment implications of regulations, including when undertaking Regulatory Impact Analysis*

Regulatory impact analysis (RIA) has been developed as a process for ensuring that regulatory decisions are made on the basis of easy access to all information relevant for understanding the benefits and costs of proposed regulations. The rationale of RIAs is thus to help ensure the adoption of regulations that are efficient in achieving their objectives. A trend has been observed in a number of countries toward increasing public involvement and more transparent RIA procedures. There is also increasing recognition of the usefulness of including consideration of trade and investment effects, in particular to help identify options that are least restrictive of trade and investment. In order to do this, RIAs should consider the purpose of a regulation, its impact and possible alternatives.

It is worth recognising that some countries (in particular developing countries) have expressed concern that requirements to conduct RIAs may be a heavy and costly administrative burden that is incommensurate with their governmental capacity. In such cases, a lighter (though less effective) alternative could be simply to publish the rationale for new or proposed regulations.

#### *2. Favours trade-friendly approaches to regulation and its implementation*

This issue arises when defining standards and technical regulations. When based on design standards, they are susceptible to “regulatory capture” by established interests and tend to discourage innovation aimed at greater efficiency, in particular by new market entrants. Similarly, qualification requirements for professional services (e.g. based on nationality) may be overly burdensome. The preferable approach in such cases is to define requirements in terms of *performance criteria*, which are usually more directly linked to the objectives sought.

Another issue relates to the institutional character of regulators. Greater efficiency can usually be achieved in attaining regulatory objectives when the regulatory body is separate from any suppliers subject to the regulations. Similarly, the decisions and procedures of regulators should be non-discriminatory among all market participants. Such an approach is reflected in the WTO Reference paper on Basic Telecommunications, which foresees that regulators in this sector should be separate from suppliers who are subject to the regulations. This is intended to facilitate transparent, non-discriminatory and balanced implementation.

#### ***D. Streamlining conformity assessment procedures***

Excessive costs that arise from cumbersome conformity assessment procedures, and particularly duplicative requirements in different countries, may be reduced through mutual recognition agreements (MRAs), typically covering testing results or certification. However, given the complications frequently encountered in negotiating such agreements, attention has recently focused on alternative approaches, in particular recognition of supplier's declarations of conformity (SDOCs), which reflect tests by the manufacturer or by a third party. Progress can also be made through unilateral recognition of conformity assessment results reported in other countries, which is possible when the same or similar technical regulations are applied. In some instances, voluntary arrangements between conformity assessment bodies in different countries have also been effective.

#### ***E. Use of competition principles***

Anti-competitive practices are normally addressed through national processes. However, an interesting example of a multilateral effort to establish a framework for this approach can be seen in the GATS Reference Paper for Basic Telecommunications, which stresses the concept of effective access to networks. This provides guidelines for avoiding practices such as discrimination in interconnection, cross-subsidisation, excessive charges not based on costs, as well as lack of transparency and discrimination in access conditions.

Other policy elements that appear relevant for ensuring that regulatory reform enhances competition include encouragement to industry associations to maintain membership and dissemination of information that are open to all potential market participants. In addition, it will be important for effective complaint procedures to exist for such parties concerning perceived impediments to competitive opportunities.

### **IV. A focus on how customs procedures and standards harmonisation can contribute to open markets**

#### ***A. Customs***

Procedures relating to customs clearance can often impose significant delays and costs on traders. Notable benefits can be secured by enforcing the principles of transparency and least trade restrictiveness.

Some approaches in this regard seem relevant for ***administrative procedures in general***, both on entry to a country (where customs takes place) and within the domestic market. Examples include the streamlining and automating of documentary requirements and administrative procedures, including access to information relating to them. Another example is the provision of seamless service: "One-stop shop" for information; "one-window" for transactions; interoperability of computer systems used for customs.

In contrast, some approaches are more specifically relevant when considering what happens ***on entry to a country***. A number of WTO Agreements already have implications for customs procedures. These include the Agreements on Customs Valuation, on Import Licensing Procedures, on Preshipment Inspection, on Rules of Origin, on TBT and on SPS. In the preparations on "trade facilitation" for the 5<sup>th</sup> WTO Ministerial, consideration is being given to whether these provisions need to be strengthened and made more coherent.

At the national level, two particular approaches may be mentioned with a view to *streamlining and automating customs procedures*, particularly to accelerating clearance:

a) An important cluster of actions focuses on achieving *faster movement of low-risk goods*, through such techniques as pre-arrival processing, to allow expedited clearance upon arrival; risk-assessment techniques, to minimise interventions when consignments cross borders; moving from transaction-based control procedures to audit-based controls, thus eliminating intervention during movement of goods; and co-operation between customs and other government agencies, and also between customs administrations of different countries;

b) International *harmonisation of customs procedures* as under the International Convention on the Simplification and Harmonisation of Customs Procedures (Kyoto Convention) revised in 1999.

When pursuing these approaches, it is important to keep in mind the *costs and benefits* of their implementation. For example, the costs of implementing the Kyoto Convention are considered to be significant and may be a factor in the very slow progress toward its implementation. At the same time, this Convention is expected to bring benefits to developing countries such as more efficient revenue collection.

### ***B. Internationally harmonised measures and recognition of equivalent measures***

The diversity of standards in different markets is often perceived a barrier to trade and investment. One of the most evident ways to overcome the burden that this may impose on market participants and to facilitate market competition is through the *use of international standards* as a basis for regulations. This in fact is required by the TBT and SPS Agreements, where feasible. However, when international standards do not exist, some positive effects can be achieved by striving to improve the transparency of standards applied and by ensuring broad participation in the development of standards.

In this regard, transparency and openness in standards development processes can make a significant contribution to predictability and elimination of cumbersome requirements. These processes should be in conformity with agreed international disciplines, such as the TBT Code of Good Practice for the Preparation, Adoption and Application of Standards. They should be accessible to the range of relevant stakeholder interests and should aim to provide a balance between them. There should be clear and adequate timeframes for public comment before decisions on standards and their implementation. Furthermore, standards-setting bodies should be accountable for the decisions they take by providing public explanations. Drawing on experience at the national level, it is then important for national bodies and interests to participate actively in international standards-making efforts.

In cases where international harmonisation is not feasible, *recognition of foreign measures as equivalent* for attaining the same regulatory objectives should be explored, as foreseen in the SPS Agreement. Typically this will involve a close comparative assessment of the objectives and effects (through risk assessment) of measures in different countries.

### **V. Concluding remarks**

OECD's trade-related "principles of efficient regulation" have been identified on the basis of concepts underpinning the GATT/WTO system. They are general and seem relevant for all countries -- although our understanding of them evolves in the light of particular national experiences. Knowledge of best practices has grown out of experiences collected in a number of OECD countries (so far including five APEC countries: US, Japan, Mexico, Canada and Korea). There should be no presumption that these practices are valid in all cases, since situations may differ significantly among sectors and countries; nevertheless, these practices are worth consideration in the context of national efforts at regulatory reform.

The practices identified could also be considered in the context of international co-operation and co-ordination that aims at promoting market-opening regulatory reform. They could moreover be relevant as and when there is interest in considering whether or to what extent multilateral disciplines have a role to play in contributing to predictability. Thus national experiences may provide insights for the effective implementation of WTO disciplines and for possible strengthening and clarifying of international approaches. Meetings such as this one, organised under the APEC-OECD Co-operative Initiative on Regulatory Reform, can play a highly productive role in advancing understanding in this regard.

## *RIA as a Tool from Chinese Taipei's Perspective*

*Changfa Lo, National Taiwan University, Chinese Taipei*

### **1. Methods Commonly Used by Regulators in Chinese Taipei to Reach Decisions**

There is no absolute method in Chinese Taipei used by regulators or government agencies to reach regulatory decisions, with the exception that some legislative requirements need to be performed. For example, there is a provision in the Administrative Procedure Law of Chinese Taipei enacted in 1999, which expects government agencies to conduct hearings before the administrative regulations delegated by any legislation having an effect on the rights and obligations of people are issued or amended. It is considered of great help in terms of gathering useful information for government officials to make decisions about regulations.

Other methods adopted by the agencies or regulators in Chinese Taipei are not requirements of laws or rules. This does not mean that, prior to the making of the decisions, the government agencies are not expected to take appropriate measures or steps useful for achieving consensus in the relevant sectors as well as among the general public.

When an agency needs to decide whether to establish or change any regulation having greater importance from any parameter, one of the most resorted methods is to call meetings inviting experts to express their views. The experts mostly invited are those teaching at universities and doing researches at academic institutes. People from the private sectors might also be invited as experts with special knowledge, especially technical ones. Regulators sometimes even decide to ask scholars to complete research projects for them for the purpose of collecting information and making recommendations. In many situations, the views expressed by these experts play important roles in the decision making process of the regulators.

Stakeholders are in most of the above-mentioned meetings invited to express their views. As a matter of course, their views tend to favor their own interests. The agencies need to balance the interests among incumbents, and between these incumbents and new comers. For instance, there was a meeting called by the Fair Trade Commission of Chinese Taipei discussing the requirements of allowing new refueling services in an international airport as well as the number of the new suppliers which could be allowed to operate at this airport. The sole incumbent petroleum company, the newly established oil refinery, and the importers were all invited. The Fair Trade Commission was to receive balanced information and to make balanced decision on such matter.

Another commonly used method is benchmarking, which include the reliance of rules under international organisations, such as the WTO, as well as those applied in other jurisdictions. It is sometimes very useful (or even very powerful) to cite the international requirements to show the need of having the reforms. For example, Chinese Taipei's engagement in its first major regulatory reform in telecommunication sector in 1996 was due to its commitments in the bilateral trade negotiations with the United States under its WTO accession framework. According to the commitments, Chinese Taipei separates the business operation from the regulatory function of the sector by establishing Chunhwa Telecom as an independent business and the Directorate General of Telecommunications. Another commitment was to liberalise its telecommunication markets by allowing foreign capitals to participate the mobile phone business and some other businesses. The later liberalisation steps in the telecommunication sectors are also more or less influenced by the WTO negotiations.

Another benchmarking approach is to look into the practices in other countries as indexes. It is very common for the government agencies and regulators to cite examples in other jurisdictions. For instance, quite a lot of studies conducted by agencies and regulators on sectors of electricity, petroleum, gas, gas stations, telecommunications, etc. are about the regulatory schemes and the reform methods in countries such as the U.S., Australia, the United Kingdom, Germany, France, EU, New Zealand, etc. Specifically, the liberalisation in the telecommunication sector in Chinese Taipei has been partly, but mainly, based on the market opening experiences in these countries and Chinese Taipei's commitments for the WTO accession. In this context, it could be of help to briefly explain the methods used in this sector.

## **2. A Brief Illustration about the Methods Adopted in the Liberalisation of Telecommunications:**

The change of the regulatory regimes in the telecommunications had been started since 1987 when the value-added businesses of telecommunications were liberalised. As indicated earlier, Chinese Taipei separated Chunhwa Telecom from the Directorate General of Telecommunications and opened up mobile phone business and satellite communication business in 1996 for domestic and foreign capitals. This was considered a major step of liberalisation of telecommunications. Later in 1999, the Directorate General started liberalising fix networks business as well as rental business of international cable lines. At current stage, there are four fix networks and three rental companies of international cables.

In order to further promote liberalization in the telecommunication sectors and to ensure administrative neutrality as well as to establish fair competition environment, the Directorate General has further endeavored in collecting various views from the industries, government officials and academia through various public hearings, seminars and websites.

In early 2001, the Directorate General started its further liberalization initiative. It invited persons representing various aspects to join the process of enacting the relevant rules governing the issuance of licenses and regulatory schemes. The purpose of the steps is to ensure a more circumspection with regard to the enactment of relevant regulations, to promote continuous growth of the telecommunication sector, and to enhance the international compatibility of the domestic telecommunication enterprises.

The Directorate General of Telecommunications was instructed by the Ministry of Transportation and Communications to establish the "Working Group on the Liberalisation of Telecommunication", which started its function on February 14, 2001, for the purpose of reviewing the current liberalisation situation and planning future policy direction of the liberalisation in telecommunications.

On February 20, 2001, the "Working Group" under the Directorate General published the "Consultation Document on the Review of the Liberalisation Policy of Telecommunications" for the purpose of soliciting opinions and comments from any individual or enterprise who was interested in or concerned with the development of future regulatory regime. In the "Consultation Document", there were a number of questions posted for discussions. These questions were presented with explanations. Among the questions are:

- 1. What should be the current policy objective and whether there is a need of adjusting previous policy objective?**
- 2. Whether the regulation should be made toward light handed or heavy handed one? Under what market conditions the sector-specific regulation can be replaced by the general competition rules?**
- 3. How to use incentive-based regulation to replace the traditional regulation of command and control?**

- 4. Whether there is still a need to regulate based on different categories, taking into consideration of the current trend of liberalisation and convergence?**
- 5. Whether to adopt general authorisation for most of the licenses?**
- 6. Whether to further lift the restriction on foreign share holdings of telecommunication companies?**
- 7. Whether to reduce the threshold for the application of licenses for certain telecommunication businesses?**
- 8. Whether to lift the restriction on the use of certain channels and what are the problems needed to be dealt with for such lifting?**
- 9. How to adjust the current technical regulations to cope with the environment after liberalisation?**
- 10. Whether to change the current asymmetric regulation on the enterprises with dominant market power?**
- 11. Whether to use the competition law (the Fair Trade Law) or the Telecommunications Law as a prime basis of regulating the anticompetitive behaviours?**
- 12. Facing the trend of convergence, should the regulator be more self-restraint or be more active in directing the development of such trend? And how to deal with the regulatory issues or competition problems arising from cross-sector service provision or cross-sector ownership?**

Between May 20, 2001, when the Consultation Document was published, and March 31, 2001, there were 25 comprehensive comments and opinions submitted by domestic and foreign telecommunication companies, associations, law firms, legislators and individuals. There was even the representative office of the US government in Chinese Taipei making its comments. The opinions thus collected are integrated into a single document, which was made available on April 4, 2001 to the general public on the Directorate General's website. Before May 31, 2001, there were nine meetings held in the Working Group to discuss above-mentioned related issues and the Working Group completed its task of making a comprehensive proposal for future liberalisation.

On June 18, 2001, the Working Group issued a 140-page Concluding Report explaining their suggestions; among which are to amend the Telecommunications Law to increase the maximum foreign shares of the fix networks companies from the current 20% up to 49%; to reduce the restrictions on the scope of the services that can be provided by the suppliers; to maintain the asymmetric regulations over the dominant suppliers with respect to the charges, inter-connection between different networks, accounting matters, etc, with the definition of the dominant power of a higher threshold; to simplify the license categories according to the trend of convergence; to conduct evaluation process on the quality of the services so as to encourage the investment on the research and development by the businesses; to replace the previous heavy handed regulation by light handed one; to establish a single independent regulator on the regulatory matters of telecommunications, while in the transition period, to enhance the coordination among various agencies having to do with the matters; to enact relevant rules to ensure public safety and consumer interests; etc.

In January of 2002, the Directorate General published the White Paper on the Liberalisation of Telecommunications. The White Paper is formulated mainly for the purpose of informing the general public about the sequence of the liberalisation in the telecommunication sector, the current policies and measures, and the future planning. It indicates the lifting of unnecessary regulations and the reliance on market competition mechanism. It also emphasises the trend of convergence among telecommunication, information and broadcasting, and the necessary reform of the regulatory framework to cope with such trend. The overall indication has been in line with the Concluding Paper of the Working Group. This has shown that experts and stakeholders have played extremely important role in the deregulation process of telecommunications.

### **3. Examples of Informal Impact Analysis:**

As explained earlier, there is no formal regulatory impact analysis required by any legislation in Chinese Taipei. However, similar practices in regulatory activities with respect to certain sectors still can be found. In competition related regulations, the Fair Trade Commission does more research on the benefits that could arise from the deregulations, including the higher quality of the supply, lower price and more choices.

A more apparent example of impact assessment is in the telecommunications. In order to show the need of further liberalisation, positive impacts had become the ones emphasised by the above-mentioned Working Group. In part, it states in its report that: Ever since the opening up of the telecommunication market, the mobile phone business was the fastest developed and the most successful one. In order to cope with the market competition, companies invested huge amount to construct basic telecommunication networks so as to provide more varieties and better services. This has also caused the relevant industries producing far more telecommunication facilities. Take 2000 as an example, the total worth of production of telecommunication equipments achieved USD 2.85 billion, among which the terminal equipments accounted for USD 1.25 billion, representing a 165% growth. The main contribution was from mobile phone production. The worth of the single mobile phone products achieved USD 0.86 billion, which represents 5.5 times of growth and almost 1/3 of the total worth of the whole telecommunication market.

Another apparent example of impact analysis can be found in the trade liberalisation. The trade and industries authorities conducted impact analyses in a more systematic way. They either carried out the analyses on their own or entrusted research institutes to do the analyses. Among the analyses are “A Study on the Impacts on the Economy as a Whole and the Import/Export Arising from the Accession to the WTO” (1995); “The Effects on Cross-Strait Trade Relations after the Accession to the WTO” (1998); “The Impacts on the Bilateral Trade between the Two Sides of Taiwan Strait after Lifting the Import Restrictions over the Products from Mainland China” (1999); “The Impacts on the Domestic Economy Arising from the Direct Interaction between Two Sides of Taiwan Strait” (2000); “The General Report of Impacts Analysis and Measures to Cope with Such Impacts” (2001).

### **4. Prospect of the RIA as a Useful Tool:**

Although Chinese Taipei does not have comprehensive experiences of the regulatory impact analysis, the impact analyses being made on a case-by-case basis can still be considered useful. Based on those analyses, the useful aspects of having such assessment include:

(1) To use it as a tool to communicate with the general public: Public support of the regulatory arrangement is important in that it ensures compliance and monitoring the compliance of relevant players. A proper impact analysis provides an accountable basis for the public to believe that a particular regulatory arrangement is the better way to achieve efficiency of the sector and thus benefiting the public. It is also a more transparent method than others in that the general public is able to perceive the contents of the assessment without being afraid of receiving distorted interpretation of the data. In the above-mentioned examples, the general public is able to understand the benefits arising from liberalisation and thus is more willing to support the liberalisation steps in telecommunications and foreign trade.

(2) To use it as a tool to consult with the stakeholders: Incumbents tend to expect regulators not to open up the market so as to maintain their market position; while new comers are apt to a more liberalised market so as to allow them to compete with the incumbents. A proper impact analysis could provide a sound basis for the stakeholders to consider accepting an arrangement based on more scientifically collected and analysed data. In the telecommunication example, the assessment coupled with the consultation process served as a good foundation to receive support from the current and potential competitors in the market.

(3) To use it as a tool to help the regulators in making their decisions: One of the most concerned aspects of a regulator could be to achieve effective regulation of which it is in charge. However, an effective regulation might result in over-regulation. An impact assessment could provide with accurate information as to whether a regulation has been overly designed and whether there is a need of reducing the level of regulation without compromising or lowering the effectiveness. In the telecommunication case, it was partly because of the Directorate General of Telecommunications' belief that further progressive liberalisation will contribute to the enhancement of the industry as well as the competitive situation in the market, the Directorate General was confident about taking further steps toward liberalising the regulations.

(4) To use it as a tool to consult with other relevant agencies: In order to achieve effective implementation of regulation, there sometimes need co-operation and co-ordination with other government agencies. It could be an endless debate about how to deal with the relevant sectors among agencies and regulators without precise data and assessment available for the decision-makers to refer to. A sound analysis serves to end unnecessary arguments about regulatory arrangement.

(5) To use it as a tool to consult and communicate with members of political community: Political aspects are the ones regulators could never avoid facing. If no proper justification, many regulatory arrangements can be politicised and thus jeopardised. Scientifically collected and assessed data is useful in neutralising the regulatory arrangement and accordingly in carrying out the proposed reform.

## **5. Potential Difficulties needed to be looked after**

Having explained the positive aspects of conducting impact analysis, perhaps some potential costs and difficulties from Chinese Taipei's perspectives with respect to the adoption of formal impact analysis program might also be worthwhile of mentioning:

(1) The maintenance of high quality review: In order to generate those positive aspects of impact analysis, it is important to have high quality review. To maintain high quality review, there need quite a number of experts skilful enough to do proper reviews. There is still a lack of such amount of experts capable of doing high quality impact analyses in Chinese Taipei.

(2) Resources: The carrying out of the reviews by an independent review body could be considered more independent and more expertise-oriented, but there will need additional resources to support the review process. Chinese Taipei is currently engaging in streamlining the government structure, the purpose of which is to reduce the need of manpower and resources in the government. It could be controversial to establish any form of independent review body responsible for conducting the impact analysis. While if the reviews are conducted by the relevant ministries or regulators, there will still be a heavy need of technical skills, which also require additional resources for the purpose of training people with required knowledge and skills to conduct useful and accurate reviews with proper cost-benefit analysis. Allocation of proper resource should be a first step to have a comprehensive type of impact analysis regime. And there could need a cost-effective analysis even with respect to the adoption of impact analysis scheme so as to build a consensus about necessity of having the RIA.

(3) The maintenance of independent reviews: It is important that the reviews are made with independence so as to assure that there will be accurate reviews and there is a trust by the public and the government agencies toward the review. If the reviews are made by regulators themselves, the task would be how to persuade the public that the outcomes are trustworthy. The design of a review scheme to ensure avoidance of political intervention and avoidance of incorrect and misleading information or data are essential.

(4) Avoidance of the misuse of the impact analysis: It could be very possible that an analysis shows that there will be great impact in the relevant sectors arising from deregulation, although there could produce greater welfare to the society and economy as a whole therefrom. Political forces having to do with the affected sector could use the negative portion of the RIA as its tool to support their counteraction against deregulation or liberalisation. The stakeholders might also find it useful to resist deregulation or liberalisation. Sometimes the impact analysis shows that there would be huge impact, but the government still considers that it is the unavoidable trend to have such regulatory reform. In case there is impact on particular sector according to the RIA, but the overall gain is greater, the way and skill of communicating with the general public about the positive aspects are extremely important.

***The role of Regional Trade Agreements in implementing efficient market openness  
regulation principles to improve customs efficiency***

*Evdokia Moise, Trade Directorate, OECD*

Among the regulatory policies that are particularly relevant for the openness of national markets, perhaps the one that appears most obvious to the international trader is Customs and border procedures. As tariff levels have declined through successive GATT/WTO rounds and global supply chains have come to dominate production patterns growing attention has been directed to the remaining cost factors that are important for international competitiveness, in particular those incurred by trade formalities and procedures at the border. The importance of enhancing the efficiency of such procedures and formalities in order to facilitate international trade was acknowledged by WTO Members in the Singapore Ministerial meeting in 1996. In November 2001 in Doha, the WTO Members recognised “... *the case for further expediting the movement, release and clearance of goods, including goods in transit...*”.

Border procedures respond to a wide array of government objectives, such as revenue collection, health, safety, sanitary and environmental protection, control of illegal goods (drugs, counterfeit trade) or collection of statistical information. Estimates about the costs incurred by businesses due to inefficient border procedures range from 2 to 15% of the trade transactions value. Differences in costs incurred from country to country depend not only on the characteristics of traded goods and on factors such as the size and type of businesses but also on the efficiency and integrity of interacting businesses and administrations. These figures should be compared to the WTO estimate that the post Uruguay Round weighted average tariff of developed countries or industrial goods excluding petroleum is 3,8%.

Recent research conducted by the OECD showed that existing studies on the business benefits of trade facilitation suffer from methodological and data problems, in particular lack of original and up-to-date data and difficulties to perceive the relative importance of the different factors at the root of transaction costs. These information gaps have pushed the OECD to undertake the construction of a template in order to allow member and non-member economies to estimate more accurately the business costs that could be avoided through trade facilitation measures.

However, no-one denies that red tape and inefficiencies at the border represent a serious problem both for businesses and for the administration. More specifically elements relating to particular aspects of border procedures are available and can give evidence of their impact on the movement of goods. I will provide some examples:

- The Indian National Transport Policy Committee estimated that road hauliers wasted 30-46% of effective travel time on inspection formalities at various internal state borders.
- It has been argued that monopoly port service providers and inefficient regulation of port operations give rise to implicit tariffs ranging from 5 to 25% on exports in Latin America.

The International Road Transport Union estimated that 1 to 7% of total road transport costs in Western Europe and 8 to 29% of road transport costs in Central and Eastern European countries are attributable to time lost as a result of customs formalities.

Inefficient border procedures also strongly reduce the collection of import duties, a fact that is particularly penalising for developing countries which heavily depend on these revenues. The introduction of automated systems in Bolivian Customs raised duty collection by 11% (25% when taking into account the applied reduction in tariff rates) while in the Philippines the increase after introduction of the ASYCUDA system was more than US\$215 million annually.

In addition to enhanced revenue collection, trade facilitation measures may save on the costs born by governments to pursue Customs administration and enforcement. An increase in public sector efficiency may enable governments to cut redundant resources or move such resources from resource-sufficient activities (such as document format verification) to more labour intensive activities (such as physical inspection). This becomes particularly relevant in light of the increased security concerns following the September 11th events.

As for other aspects of regulatory policy, the implementation of the principles for efficient regulation described this morning is essential for addressing the problems I have just described. Particularly relevant in this context are the principles of

- **transparency** with respect to the implementation of applicable regulations and requirements;
- **avoidance of unnecessary trade restrictiveness** in enforcing these regulations and requirements; and
- **harmonisation** of procedures and formalities at the border.

The first two principles are reflected in GATT Articles X (for transparency), V (which calls for the avoidance of any unnecessary delays or restrictions for traffic in transit) and VIII (which calls for the simplification of import and export formalities). These articles are currently under review in the WTO with a view to deciding whether additional or enhanced provisions should be negotiated. WTO Members also undertook to identify the related needs and priorities of Members, in particular developing and least-developed countries.

These efficient regulation principles and corresponding WTO provisions obviously just set the stage for trade facilitation at the international level. They need to be given concrete expression in practice at the national level. Such national approaches will be presented to you by the following speakers. In the context of this presentation I would only like to draw your attention to the role played by regional initiatives in exemplifying the principles and providing a useful testing ground for advancing the trade facilitation agenda.

Trade facilitation provisions are not contained in all Regional Trade Agreements and the degree of sophistication in them is influenced by a number of factors, such as

- the **date** when the agreement was concluded (recent regional initiatives focus much more strongly on trade facilitation);
- the **type** of the agreement (the common external tariff of *customs unions* is a considerable simplifying factor that *free trade areas* lack)
- the **number** and **relative level of development** of participating countries (noting that, all other things being equal, it is easier to simplify and harmonise procedures bilaterally, especially where concerned countries display similar levels of development).

Comprehensive facilitation endeavours seem to be at a relatively early stage within regional trade initiatives. With respect to the movement of goods in international trade, several older RTAs focus exclusively on lowering tariff barriers and do not contain any provisions to simplify and harmonise related procedures. RTAs which take some steps towards facilitation commonly aim at simplifying and harmonising certification procedures related to technical requirements and to sanitary and phytosanitary measures. There are very few RTAs in force that tackle more specifically import, export and border-crossing procedures in detail. In general, applicable procedures stay within the ambit of domestic regulation well after preferential tariff treatment has been established by means of an RTA.

APEC is an interesting exception to this observation: although Members' co-operation does not entail preferential provisions intended to facilitate trade between them, APEC Members have developed a set of principles on trade facilitation intended to be used on a voluntary basis and in a co-operative manner with the business sector. The principles are supplemented by illustrative examples of such initiatives that would contribute to putting them into practice. They are intended to encourage individual initiatives by APEC Members with a view to gradually suppressing procedural burdens and red tape, saving time and reducing costs for businesses, and more generally improving business conditions in the region.

Those RTAs that do contain trade facilitation provisions frequently go beyond, and complement, provisions in the WTO. They do so by promoting transparency, by harmonising and simplifying procedures and by fostering the use of new technology. In doing so, they are influenced by existing multilateral instruments, such as the WCO Kyoto Convention or Arusha Declaration, or the UN/EDIFACT initiative, to which they have usefully given concrete, practical expression. In this way, while often falling short of full harmonisation, they help foster convergence of modes of operation within regional groupings and beyond.

In "new-generation" RTAs, such as the Japan-Singapore Economic Partnership Agreement (JSEPA) or the Free Trade Area of the Americas (FTAA), trade facilitation is a major focus. Increasingly new generation RTAs adopt common approaches for risk management so as to facilitate the clearance of low-risk goods with minimal or no documentary verification and physical inspection; they elaborate differentiated, simplified procedures applicable to express shipments; they develop common data sets to be requested in the process of release and clearance. Moreover, one of the main factors stimulating facilitation initiatives in recent RTAs is the attention paid by negotiators to electronic commerce and the increased use of information and communication technologies. Electronic data interchange is an essential feature both in the JSEPA and in the FTAA.

I will provide below some examples on how the efficient regulation principles have found their way into RTA provisions on trade facilitation.

***Rules on transparency and due process.*** Transparency and due process are essential facilitating measures in most RTAs, especially in order to prevent persisting differences in implementation from jeopardising facilitation. The terms of these provisions parallel quite closely corresponding WTO provisions, such as GATT Article X, to which several RTAs refer explicitly. RTAs also promote transparency through the collection and dissemination of all relevant information through centralised inquiry points, publications and display on-line. ASEAN has established a Customs website, including information on ASEAN countries' practices for handling complaints and appeals from the trading community. Although still under negotiation, the FTAA already makes available on-line information on customs procedures, laws, regulations, guidelines and administrative rulings, namely through the publication of a *Hemispheric Guide on Customs Procedures*.

Consistency and predictability may be seen as corollaries of the principles of transparency and due process. In several RTAs they are not stated explicitly but only implied as objectives to be achieved through the implementation of other principles. In the APEC framework the principle is not limited to advocating the predictability necessary for informed business choices, but stresses the importance of uniform application and the restriction of discretionary interpretation and implementation for promoting integrity and combating corruption in customs services. Reference is made to the Arusha Declaration of the World Customs Organisation with respect to the management of operations and personnel in customs. The principle also recommends the introduction of commitments to the public with respect to targeted maximum processing times or other service standards.

***Harmonisation of procedures and formalities*** Full harmonisation of procedures and formalities is still limited in RTAs. It would be more appropriate to talk of convergence of the modes of operation of concerned administrations. Such convergence draws both on the momentum of regional integration and on the elaboration of best practices for customs and border procedures worldwide. RTAs commonly refer to relevant WTO provisions, such as GATT Article VII, but the most important reference is the WCO Kyoto Convention on the simplification and harmonisation of customs procedures. RTAs offer useful opportunities for testing those practices in reality. APEC principles reaffirm the importance of harmonisation and mutual recognition for reducing administrative and compliance costs for business not only in the area of customs procedures and customs tariff classification and valuation, but also with respect to data requirements for import and export procedures. The principles further call for the development of mutual recognition arrangements for standards and conformity assessment results, or for professional qualification and registration.

Customs-related provisions in RTAs often provide for the development of a common understanding among concerned administrations on the daily management of applicable requirements and procedures in tariff classification, valuation procedures, clearance documentation and data transmission and storage. In NAFTA, the Customs administrations of the three countries decided to establish a "Trilateral Heads of Customs Conference" during the negotiations and implementation phase, in order to co-operatively address issues related to the conduct of business between them. One of these issues was the requirement of NAFTA Article 906 for enhancing the compatibility of standards and conformity assessment related measures and procedures so as to facilitate trade.

In ANZCERTA a *Memorandum of Understanding Regarding Mutual assistance between Customs Agencies* provides for co-operation to harmonise customs procedures and policies "to the maximum extent practicable". This entails *inter alia* closer alignment of national level tariff structures involving a minimum of national subdivisions and of national legal notes relating to tariffs, formats and phraseology; consultations on interpretations; or elaborating common bases for valuation. MERCOSUR has established a series of agreements ensuring co-operation between customs authorities, including the 1999 Asunción Programme on measures for simplifying foreign trade procedures and border procedures, setting goals relating to the streamlining of administrative procedures.

***Simplification and avoidance of unnecessary restrictiveness*** In a number of established RTAs simplification is limited to measures specifically related to products of preferential origin, such as customs fees or marking. The NAFTA Agreement provides that any measure relating to country-of-origin marking adopted and implemented by the Parties shall be designed so as to minimise the difficulties, costs and inconveniences that the measure may cause. Furthermore, although some merchandise processing fees are still applicable to imports and exports between NAFTA countries, customs user fees are no longer allowed for originating goods.

Other RTAs widen the scope of simplification to cover border inspections and formalities. APEC principles indicate that the streamlining of applicable rules and procedures in order to avoid unnecessary trade restrictiveness may be achieved by minimising documentation and procedural requirements and instituting one-stop-shopping services, expediting customs clearance, or gradually reducing the frequency of conformity assessment controls to match good compliance records. The ASEAN Framework Agreement on the Facilitation of Goods in Transit encourages joint customs inspection for goods in transit.

EFTA provides that border inspections and formalities must be carried out with the minimum delay necessary and be centralised at one place only to the extent possible. Parties are expected to promote the use of simplified procedures and data processing and transmission techniques. For instance, they are to allow for the different involved authorities to delegate their inspection powers to a service (preferably the customs service), which will carry out inspection on their behalf.

*Modernisation and the use of new technology* RTA provisions increasingly acknowledge that technological developments may render inefficient procedures that used to be well adapted to prevailing circumstances. APEC principles call for the regular updating of applicable rules and requirements to match changed circumstances, and for maintaining the efficiency of procedures through the introduction of modern techniques and new technology. Examples of such technology are advanced risk management and systematic cargo-profiling techniques which curtail the physical examination of shipments; or computerisation, electronic data interchange (EDI) and internet technology which provide an environment for paperless trading, including the use of secure on-line technology to facilitate certification procedures. Authorities should ensure the interoperability and/or interconnectivity of such technologies.

NAFTA countries are also in the process of developing a concept of trade automation (North American Trade Automation Prototype or NATAP) that implies introducing standardised trade data elements, harmonising customs clearance procedures and promoting the electronic transmission of standard commercial data using UN/EDIFACT MESSAGES and advance processing by governments. NATAP will use advanced technologies such as the internet for the transmission and receipt of data and Intelligent Transportation System transponder technologies to electronically identify conveyances.

New technologies are central in RTA endeavours to achieve a "paperless" clearance environment. Australian and New Zealand Customs have developed a common format to expedite cargo clearance, accessible either from client's own facilities, via community data networks or via facilities in Customs premises. In the framework of the JSEPA it is aimed to establish a paperless trading system allowing the electronic transfer of all trade-related information and documents (including invoices, bills of lading etc.) between importers and exporters in Japan and Singapore. A joint Committee on Paperless Trading will work to implement such a system by 2004 and ensure that electronic trade-related information exchanged between enterprises is used as supporting documentation by the trade regulatory bodies of the Parties.

## ***The Legal changes on foreign trade and economic Co-operation to support China's WTO Accession***

*Wenhong TANG, Ministry of Foreign Trade and Economic Co-operation, China*

Both of the process and result of China's reform, opening-up and WTO accession require, as a priority, the establishment of a uniform, reasonable and transparent legal system on the administration of foreign trade and economic co-operation. Therefore, Chinese government has been working on the clearance of laws, regulations, bilateral and multilateral agreements on foreign trade and economic co-operation in accordance with the WTO rules and its commitments of WTO accession.

Now, I'm glad to have this honour to present briefly what has occurred in foreign trade law reform in the past two and a half years and further plans to be carried out in China.

### **Part I The Clearance of laws and regulations on foreign trade and economic co-operation**

As the competent authority of Chinese foreign trade and economic co-operation, MOFTEC has carefully carried out the clearance of laws and regulations relating to the WTO agreements and Chinese commitments. Under the uniform guidance of the State Council of PRC, an *ad hoc* "WTO Legal Group" was established in MOFTEC at the beginning of 2000. The head of the group is Minister Shi Guangsheng. This group is in charge of the classification and clearance of massive laws, administrative regulations, ministerial rules and other effective regulatory documents on foreign trade and economic co-operation (hereinafter referred to be as "legal documents").

The process of clearance was carried out in two stages. First-stage work was the sorting-out of legal documents. By the end of 2001, 1413 legal documents had been sorted out, consisting of 6 national laws, 164 regulations and 887 ministerial rules. Second-stage work was the classification of these legal documents in accordance with the WTO agreements for abolishment, amendment and retention. So far, 381 legal documents have been abolished and 51 pieces have been amended. Furthermore, 10 new legal documents have been promulgated in the past two years to satisfy the requirement of WTO entry, and 10 more will come up soon.

The clearance movement in MOFTEC is scheduled to end by the middle of this year. As a result, MOFTEC has resolved to compile all effective legal documents relating to foreign trade, foreign direct investment and intellectual property in China and then publish them in serial volumes. The first volume has come up last month.

### **Part II Introduction to the amendment and formulation of laws and regulations**

The amendment and formulation of laws and regulations in China involved the participation of competent authorities of different sectors. This is a positive display of China's further reform and opening-up policy.

#### **1. Regulations on foreign trade of goods and technology**

Pursuant to Foreign Trade Law of PRC, WTO agreements and China's commitments, with reference to legislations of other WTO members, MOFTEC amended "Regulations on Anti-dumping" and "Regulations on Countervailing" and drafted "Regulations on Safeguards", "Regulations on Import and Export of Goods", "Regulations on Import and Export of Technology", etc. These important regulations, with aim of liberalisation and deregulation of foreign trade, construct a transparent and fair legal framework for the export and import. They have come into forth as of January 1, 2002.

## **2. Foreign direct investment laws and implementing regulations**

In 2000 and 2001, the National People's Congress of China approved amendments to Law of People's Republic of China on Chinese and Foreign Equity Joint Ventures, Law of People's Republic of China on Chinese and Foreign Contractual Co-operative Enterprise and Law of People's Republic of China on Foreign-Capital Enterprises, respectively. These three laws are the pillars of Chinese FDI laws and their amendments were mainly based on the proposals from MOFTEC. In accordance with the three amendments, the relevant implementation regulations and rules of FDI laws were also updated correspondingly. The most notable changes of these laws are the elimination of provisions demanding for foreign exchange balance, local contents and export performance, which were inconsistent with TRIMS agreement.

Another favourite news is the recent promulgation of Industrial Guidance of Foreign Investment in China and Automobile Industry Policy, which I believe provides valuable opportunities to foreign capitals.

The above-mentioned legislative amendments gear China's FDI legal system to WTO rules and materialise the commitments of Chinese government.

## **3. Laws and regulations on Intellectual Property Rights**

The protection of intellectual property rights is a consistent policy of Chinese government. In accordance with the TRIPs agreements and China's commitments of WTO entry, the pillar laws and regulations concerning IPR protection were revised, such as Trademark Law, Copyright Law, Patent Law, Implementation rules of Patent Law and Regulation on Computer Software Protection. Furthermore, new regulations, including Regulation on Integrate Circuit Typography Protection and Regulation on New Foliage Variety Protection, were approved in the past years to expand the range of IPR protections. These regulations, together with the established ones, show us a new picture of IPRs protection and make our IPRs system consistent with TRIPs requirements.

Note-worthily, our government reinforces the implementation of IPRs laws and regulations to maintain a fair and competitive domestic market.

## **4. Regulations concerning trade in services**

MOFTEC, along with other competent authorities in various sectors, made dramatic efforts to amend and formulate regulations regarding market access and ministerial rules thereof. Taking the general principles of GATS and our commitments of WTO accession into consideration, we amended and enacted a series of regulations on domestic market openness.

Following are some important regulations coming into effect recently:

1. Regulation on the representative office of foreign law firm in China;
2. Amendment to Regulation on the financial institutions with foreign capital;
3. Regulation on the insurance institutions with foreign capital;
4. Amendment to Regulation on audio and video products;
5. Amendment to Regulation on Movies;
6. Amendment to Regulation on tourism service institutes;

7. Regulations on foreign investment in telecom enterprises;
8. Provisional rule on Sino-foreign joint venture and co-operative medical institutions;
9. Regulations on international sea transportation.

Furthermore, regulations on Sino-foreign joint venture Securities Company and on the Business Qualification of Foreign Trade are in process of formulation. Besides the above mentioned amendment and formulations of laws and regulations on foreign trade, foreign investment, intellectual property right and trade in service, MOFTEC is carefully engaged in research on the amendment of “PRC Foreign Trade Law” in according to the commitments that China has made.

### **Part III The clearance of regional regulations and rules in China**

At present, the clearance of national laws, regulations and ministerial rules has almost been completed and the amendment and formulation are proceeding. As a special work, the clearance at national level will be finished by June this year. Now, the key legal task of MOFTEC this year is to boost the finish of clearance movement of regional regulations and rules on foreign trade and economic Cupertino, and reinforce the instruction of and supervision over the local work. In addition, MOFTEC will enhance the advocating and training of WTO rules and international practices. Such work is an integral part of legal compatibility with WTO rules and, undoubtedly, will contribute to the establishment of a uniform and transparent legal system on foreign trade in the whole country.

### **Conclusion**

Laws and regulations at both national and regional levels are the foundation of China’s foreign trade and economic Cupertino system. The ongoing legal reform movement is just a part of the whole project. With the development of national economy, China will gradually establish a uniform, reasonable and transparent legal system pursuant to WTO agreements. China is a responsible player in international arena. We Chinese have the capacity to realise our commitments to other WTO members, cultivate fair trade environment and thus boost the liberalisation of world trade in turns.

With the completion of the amendment and formulation of laws and regulations and the further proceedings of “rule of law” in respect of foreign trade and economic Cupertino, the approach of Chinese government’s administration will take on a new look. Confidence on the environment of China’s foreign trade and investment will be improved considerably.

Thank you for attention.

## *Motivating Public Sector Workers: Using regulatory impact assessment as a consultation and communication tool*

*Mike Waghorne, Public services international*

### **Context**

I am representing TUAC – the Trade Union Advisory Committee to the OECD. TUAC's members are the national trade union federations in the OECD member states. TUAC also works closely with what are called global unions: in my case, for example, I come from Public Services International (PSI), the global union federation for public sector workers. PSI often represents TUAC's interests on regulatory reform work. We have over 600 trade unions in 146 countries. These unions organise some 20 million public sector workers.

Whilst all of TUAC's national affiliates are potentially involved in discussions about regulatory reform, including RIA, the bulk of the work done in this area affects or is done by public sector workers. I would like to say that all such workers in OECD and APEC members are part of PSI. That is not the case, however, because some of the countries concerned deny their public servants the right to join trade unions and/or deny unions which do exist the right to join PSI. But, where we represent these workers, it is our view that motivating these workers to support and promote regulatory reform and regulatory quality is an important element in the success or failure of such programmes. Very often that is going to mean mechanisms to involve their unions in the process.

I want to make it clear, however, that TUAC and PSI do not see workers and their unions having some privileged access to this process; simply, we believe that a full range of stakeholders need to be involved in regulatory management and RIA but that three elements of that are

- How one involves workers who will be instrumental in drafting, evaluating and ensuring compliance with regulations;
- How one involves unions, which are going to have to convince their members that a regulation or some other standard or measure aimed at quality services or achievement of some other outcome is not a threat to their job but a means of improving the quality of life for all;
- Many of these processes impinge on the nature and role of the state. Therefore, trade unions, amongst others, believe that they must be consulted, especially on more fundamental reforms.

### **People in the forests**

I want to start with a story from the New Zealand reforms of 15 years ago. As well as substantial economic reforms, there was also large-scale restructuring of the public services. Whilst some of this produced some very sensible new structures to fulfil the functions of the state more effectively, it was also used to cut budgets very severely. In the Department of Conservation (DOC), this resulted in cuts to the wages bill. The DOC management proposed to deal with this by prohibiting all overtime and weekend work. Weekend work was more expensive because it attracted a penalty premium.

The DOC workers who worked in the national parks and forests were upset by the proposals but not for the obvious reasons. In fact they accepted that the pay constraint was a real time-limited problem and were prepared to live with it. Their concern was that the weekend was when people went to the forests for recreation – walking, tramping, picnicking and nature observation. The DOC staff felt that it was during weekends that they had the most interaction with people, educating them about nature conservation, answering questions about plant and animal/bird life and so on. They felt that this was the time when the core job of making conservation real for people was done. They proposed that weekend work be allowed, at ordinary rates of pay, and they would take weekdays off instead. Result: the wage targets could be met but the basic aims of the DOC could be satisfied.

Lesson number one: the workers and their union had a better understanding of the full cost and benefit assessment of the proposed new rules than did management. Lesson number two: this could only happen in a country which had a tradition of freedom of association and collective bargaining, because the workers actually felt that they owned the outcome and so were committed to a good outcome.

In other words, RIA should open the process up to the possibility of competing or alternative ideas. RIA is not just a technocratic exercise but an intensely political one – in the best sense of the word.

### **Consultation**

RIA presents a good opportunity to engage in sound consultative behaviour. We believe that this process presents so many chances to produce good outcomes for all stakeholders that it makes little sense to do it badly. Obviously, we believe that all relevant stakeholders should be involved as far as is possible. I will concentrate here on consulting with the workforce, which must implement whatever measures result from the process.

RIA first of all invites all staff who are involved in the operation concerned to examine their current work practices. Few workers actually enjoy work, which is pure red tape. People would much rather feel that their work has contributed to making the world a better place. A good RIA process should therefore encourage staff to look at the way the current rules constrain or support their work and their ability to meet better the needs of their users. Do the current rules force them to spend time on rigid compliance, without reference to the desired outcome? How many times have we all heard an official say to us: *Sorry. I know this is a stupid form and you have already given us this information but I am required to get you to fill this in before I can submit your application?* Workers very often know where the waste in an organisation is and are more than ready to identify how to get rid of it, even if their motivation is that it might free up resources for better wages. Good RIA should optimise this knowledge.

Will the proposed changes allow work to be done differently? I know that where I work, the state has, until recently, required a number of pay and working time records to be kept in hand-written form, even although technology exists which speeds this work up and allows for fewer errors. Workers can often identify such areas where work methods or current regulations are less than efficient. Old rules which used to require that clients/users were not allowed to sit on the same side of official counters as the staff during ‘front-desk’ interviews meant that computer-based transactions and interviews all had to be read out to the client; simply relaxing that rule has meant that a client can sit with the worker and see the screen at the same time, reducing both errors and time and often making for a less confrontational approach, as well.

Can current or proposed rules undermine or improve relations with users? Many people now complain that rules which force people into computer-based processes may appear to have reduced costs but often at the expense of turning users into ciphers and atomising workers from one another and their users. Do managers always understand the social interactions, which are cemented by current procedures? Do some physical site visits for inspections allow for other informal information exchange, which assists both parties? Can staff estimate whether there is a potential to replicate or improve that with changed rules?

Apart from the content of the consultation, the process is also important. Is the RIA structured to give the impression that speed rather than a quality outcome is the desired goal? Is it possible to allow time for some dummy trials before proceeding any further with a proposal? Is this a good idea, which will work wonders in the head office but cause chaos in a small field office? Is the capacity and political autonomy of sub-national levels of government being taken into account in the process?

Consultation fatigue needs to be watched. If too many changes are coming down the track such that people are trying to do their current job but are being asked to consider and respond to a plethora of changes month after month, people will eventually begin to resist change. This is not to suggest that consultation should be less but that it needs to be thought through. If the proposed changes will impact on collective contracts/agreements, a union may need time for democratic discussion before being able to agree to the proposal. This goes beyond unions, of course – many community groups and NGOs complain of consultation fatigue. It is somewhat similar to the rule, which has been set by many central statistics offices – that people should not be subject to too many official questionnaires on an uncontrolled basis.

Many of these are simple things but they are often the time wasters, which annoy users. Some of them are major issues, which call for care in designing RIA processes for all stakeholders.

However, it should also be remembered that consultation is only that. It is not a commitment by the authorities to take on board everything, which has been discussed. It is extremely important for a government to be quite clear about the expectations before it starts consulting with stakeholders. If the government has some issues, which are not negotiable, these should be identified from the outset. That does not remove the right of stakeholders to contest the proposals (including, in the case of unions representing their members, the right to take appropriate action) but at least they know whether they want to spend their time on it.

It is also legitimate for a government to insist that, if it consults with a body whose recommendations it accepts, there should be some understanding that that body will advocate the agreed position to its own members/constituency. Of course, that only goes for agreed positions.

## **Communication**

A good RIA should generate useful data about potential costs and benefits. Can this be used in negotiations with a union to identify areas where both management and the union can capture the benefits of a new regulation to the advantage of both the service users and the workers?

Even if no change occurs, an RIA may simply have the effect of identifying to workers the costs of processes they currently use – costs for them and for users - and alerting management to other changes which can be made to save costs.

Good RIA will often clarify the objectives of the current or proposed legislation/regulation – objectives which, have not been specified before. In itself, that may suggest new means of evaluating the work being done or of gathering data on the impact of any change. Workers will often say that: *Oh. You can always tell when clients are getting upset out there because we often get an increase in X* – some indicator which management had not been aware of but which could be monitored. ‘X’ might include higher rates of harassment of staff, more incorrectly filled-out forms, an increase in claims for entitlements which people usually ignore, an increase in requests for meetings/interviews with more senior staff.

The experience in many countries is that better communication between ordinary staff and senior policy makers itself becomes the trigger for flattening the management structure or turning supervisors or middle-level managers into professional support staff who can respond to the needs of front-line staff as they organise their own work but need expert advice on tricky problems. This is especially the case when 'end-of-pipe' rules get replaced with process and outcome standards which require that front-line staff be empowered to use their discretion in achieving the desired outcomes.

In itself, this last phenomenon could be a problem for unions. In the past, the result would often have been that middle-level management either gets fired or alienated – both of which become union-management conflicts. But our experience in PSI is that, when unions have been asked to contribute to a complete change in work methods and work structures, this can have very positive outcomes. In Sweden, we have two union-owned companies, Komanco and Arbetslust, which sell their services to public (and some private) employers as change agents in taking the entire workforce through these kinds of changes in a union friendly way. The deal is that, if the employer does not get an agreed level of savings in a specified period, they get their money back. In both cases, the companies work on the basis that communication processes have to be opened completely and management structures flattened. Arbetslust is owned by a union of middle managers so it can be seen that there is a clear perception of win-win solutions here since no union is going to own a company which makes its own members unemployed!

## **Conclusion**

Very briefly, an RIA process which maximises its consultation and communication elements can be a powerful way of motivating public sector workers, with the support of their trade unions, to welcome and promote a constant search for better quality regulations and the quality outcomes they seek to achieve.

## *Trade facilitation: the UK experience*

*Peter Wilmott, Non-executive Director, SITPRO*

**Introduction of SITPRO:** SITPRO is a UK government sponsored organisation solely focused on the removal of barriers to international trade through the simplification and harmonisation of trade procedures.

Founded thirty years ago, it has played a key role, both in the UK and internationally, in devising standards for use in international trade and in promoting simpler ways of doing business across borders.

UK successes include the unification of port documentation and the introduction of the United Nations Layout Key, which has become a standard for almost all UK documents used for international transactions.

SITPRO is now heavily engaged in managing the transition from paper to electronic documents and ensuring that gains from document standardisation are not lost.

**The UK trading context:** The EU is the largest customs union of sovereign states, with a total population of 370 million and around a fifth of the world's imports and exports (a figure that excludes internal EU trade).

Its single body of customs law covers most areas to do with foreign trade, although implementation is the responsibility of the fifteen independent customs administrations, with inevitable variations in practice (and quality).

Tax differences between Member States and the continuing failure to complete the harmonisation of key trade-related legal provisions (customs, tax, financial services, transport, etc) mean that the EU does not enjoy the full range of trade facilitation that one would expect from such a large integrated unit, and businesses suffer from internal inefficiencies that do not afflict large unitary economies like the United States. Nevertheless, the final removal of internal customs barriers in 1993 and the subsequent simplification of trading processes within the EU and between it and the rest of the world have brought significant benefits to its businesses and consumers.

### **Business Needs:**

#### **Transparency**

All customs procedures and documentary requirements should be clearly and unambiguously publicised so that traders and Customs Officers are in no doubt of the law.

#### **Predictability**

The inability to accurately predict the costs associated with the import or export of goods is a huge disincentive to international trade. It also encourages traders to increase their costs to a level that will cover all eventualities. Transparency and simplicity both assist predictability.

## **Trust**

Government authorities should treat the majority of traders as trustworthy citizens unless they know otherwise. Customs and other Government Authorities have to assess the risks related to trade and to trust those traders that are known to have a good track record. Business that is committed to long-term survival and prosperity has also to be committed just as much as Customs Authorities to trading within the law. It is not in their interest to defraud Customs or to aid illicit trade. Illegal transactions by companies are a cost to law-abiding companies. Industry welcomes strict rules and effective enforcement but they do not need to go hand in hand with a bureaucratic approach and the need for constant Customs surveillance of all goods crossing borders.

## **Documentation**

The massive increase in the volume and variety of international trade has led to a proliferation of documentary and information requirements. The data required differs depending on the type of goods, the mode of transport and local Customs requirements. Data requirements for exports are different to those for imports. If a single data element is slightly wrong, or if there is a small discrepancy in the paperwork it leads to significant delays. Demurrage, especially on a ship, is not cheap.

We need internationally standardised data requirements and documentation. The data requirements should be kept to an absolute minimum and should be valid for both importing and exporting and what is wrong with the use of commercial data and documentation? This is an area currently being examined by the G7 countries but we hope that it will be broadened to include all countries as soon as possible.

It would be a real success if we establish an international electronic document standard to cover the transition from paper to electronic documentation before each country and company design and start to use their own documents. Most of the information requirements by countries are the same so why do we need our own country specific documents? Just think of the costs and confusion that would be avoided if we do not have to electronically translate each document between each country. There has to be a more sensible way forward.

## **Harmonisation of procedures**

The lack of harmonisation of procedures unnecessarily complicates the process of trading internationally. As I mentioned earlier this is something that the European Union still has to achieve in quite a number of respects related to international transactions.

The revised Kyoto Convention was drafted to establish standards for Customs procedures. Whilst implementing the convention in full is rather daunting, there are elements of it that could be selected and used as a basis for a harmonised approach to customs issues.

## **Modernisation**

Technological advances have given us huge opportunities to make fundamental changes and improve the processes and procedures related to international trade. We should take this opportunity to modernise our trade processes and procedures. We should not just take what we are doing now and use information technology to speed the process but where possible and appropriate we should fundamentally re-engineer the process, simplifying it and eliminating unnecessary stages. Once again Customs processes should be similar country to country. We should not all have to reinvent the wheel individually.

## **Measurement**

We need to establish a measure for the efficiency in the management of international transactions. This would be valuable for both industry and government. At the very minimum the measures should cover the revenue collected, illicit trade intercepted, the average release time for goods and a cost benefit analysis of these activities.

## **Open discussion**

It is difficult to keep trade facilitation at the forefront of people's minds. They get enthusiastic, then others issues take priority and facilitation is forgotten. One way for businesses to remedy this is to support organisations that will speak for them and encourage administrations and regulators to remember the economic benefits of choosing simple solutions and implementing them in a straightforward way.

## **UK facilitation Priorities:**

### **WTO**

The agreement at Doha to put trade facilitation on the table and to negotiate a binding agreement gives trade facilitators a major boost. The challenge now is to turn political intent into something tangible that will work, and that will deliver real benefits to businesses and governments alike.

A new facilitation agreement must be enforceable, clear and unambiguous. It must not impose unfair or unjustified burdens on less developed economies, and must not be seen as a 'rich man's tool' to prise open other countries' markets. This is not true, but could become a damaging criticism of the whole initiative if steps are not taken to deal with the issue. The answer is to provide an asymmetrical agreement which requires degrees of trade facilitation commensurate with countries' ability to provide them, and which encourages all WTO members, for reasons of enlightened self-interest, to raise the standard of their own performance in facilitation matters.

### **E-business**

The risk with such a new area is that its growth will be disorderly and uncoordinated. Although this is good in economic terms – entrepreneurial activity is restricted to the least possible degree – it may create problems with the management of essential trade documentation across borders. It is not enough for documents to be in electronic form; they must be compatible with the different systems that handle them, and sadly administrative systems are often most inflexible in their management of data input (many European customs computer systems, for example, are old-fashioned and require information to be supplied in particular formats). There is a lot to be done to create appropriate standards and practices to avoid repeating the facilitation mistakes of the past.

### **In the meantime...**

It would be wrong to think that paper is on the way out. It's often the most reliable and cost-effective solution for certain trading environments, and must be taken into account in any facilitation or deregulatory strategy. It would be foolish to stake everything on an electronic future that may take decades to appear, and to neglect the 'here and now' of the ways in which real businesses carry out real transactions.

**Conclusions:** Although this session is about customs – and customs is certainly a key player in international trade – facilitation is really about everything to do with helping goods to cross borders in one direction and money to flow back in the other. It embraces all official regulatory requirements connected with crossing frontiers – health rules and technical specifications; political and economic embargoes; statistical requirements; tax formalities; banking and other financial rules; contract matters and terms of trade; etc – and not all fall under the aegis of customs administrations. If an overall and integrated view is not taken of all these issues, any facilitation measures are likely to be less effective than they should or could be.

The European experience shows that large-scale integration can bring major economic benefits. But the regulatory problems are magnified, and complicated by questions of different national administrative cultures and clashes between priorities at local, national and supranational levels.

Much can and should be done, in any country and at any time, to improve the ways in which regulatory activities impinge on legitimate cross-border trade. Without constant pressure from concerned interest groups, the tendency of the regulators is to back-slide, introducing increasing numbers of uncoordinated and complicated measures, often ‘temporary’, and to meet short term crises. This behaviour, if not checked, undoes any good work that may have been accomplished in simplifying and harmonising procedures, or eliminating unnecessary bureaucracy.

In the end, the business community gets the trade regime it deserves. Complacency or passivity allow costs to multiply and compliance difficulties to increase. Only a vigilant business community can stop this happening. And the UK experience is that the regulators understand and appreciate this. Theirs is a difficult job. They need a bit of help sometimes from outside to do it in the right way. That’s why organisations like SITPRO exist, and thrive.



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