



**Asia-Pacific
Economic Cooperation**

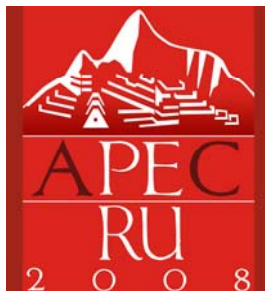
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**Synthesis Report: The APEC-OECD Integrated
Checklist for Regulatory Reform: Results of Self
Assessments, 2006-2007, in Five Economies**

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APEC-OECD CO-OPERATIVE INITIATIVE FOR REGULATORY REFORM

Synthesis Report: The APEC-OECD Checklist for Regulatory Reform: Results of Self-Assessments, 2006-2007, in five Economies

Report presented for information and discussion, Economic Committee I, Lima, Peru, February 2008, and revised for the meeting of the OECD Working Party on Regulatory Management and Reform on 7 April 2008

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Report presented for information and discussion¹ at the Economic Committee I, Lima, Peru, February 2008, and revised for the meeting of the OECD Working Party on Regulatory Management and Reform on 7 April 2008

1. Introduction (extracted from the preamble of the APEC-OECD checklist)

1. Member economies of APEC and the OECD have recognized that regulatory reform is a central element in the promotion of open and competitive markets, and a key driver of economic efficiency and consumer welfare. As a result, agreement for an *APEC-OECD Co-operative Initiative on Regulatory Reform* was reached in June 2000 and was endorsed at the APEC Ministerial Meeting on 12-13 November 2000 in Brunei Darussalam, in order to promote the implementation of the APEC and the OECD principles by building domestic capacities for quality regulation.

2. The first phase of the APEC-OECD initiative was completed in October 2002, at the High level Conference in Jeju, Korea, where economies agreed on the need to elaborate an APEC-OECD Integrated Checklist for self-assessment on regulatory, competition and market openness policies, to implement the APEC and OECD principles. The second phase of the initiative has focused on the development of the Integrated Checklist that has been presented for approval to the respective Executive Bodies of APEC and the OECD in 2005.

3. The Checklist is a voluntary tool that member economies may use to evaluate their respective regulatory reform efforts. Based on the accumulated knowledge of APEC and the OECD, the Checklist highlights key issues that should be considered during the process of development and implementation of regulatory policy, while recognizing that the diversity of economic, social, and political environments and values of member economies require flexibility in the methods through which the checklist shall be applied, and in the uses given to the information compiled.

2. Methodology and Process

4. The checklist is comprised of four sections including 40 specific open questions in total. The first is a horizontal questionnaire on regulatory reform across levels of government that invites reflection on the degree of integration of regulatory, competition and market openness policies across levels of government, and on the accountability and transparency mechanisms needed to ensure their success. The second is regulatory policies which are designed to maximise the efficiency, transparency and accountability of regulations based on an integrated rule-making approach and the application of regulatory tools and institutions. The third is competition policies which promote economic growth and efficiency by eliminating or minimising the distorting impact of laws, regulations and administrative

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policies, practices and procedures on competition; and by preventing and deterring private anti-competitive practices through effective enforcement of competition laws. The fourth is market openness policies which aim to ensure that a country can reap the benefits of globalisation and international competition by eliminating or minimising the distorting effects of border as well as behind-the-border regulations and practices.

5. After the Checklist was approved, five economies have carried out a self-assessment using the APEC-OECD checklist among 44 APEC and OECD member economies. The survey results of the U.S.A., Hong Kong China and Chinese Taipei were submitted at SOM3/EC, Vietnam in 2006, whereas those of Korea and Australia were reported at SOM3/EC, Australia in 2007. As mentioned before, the APEC-OECD checklist consists of four parts: horizontal criteria, regulatory reform, competition policies and market openness policies. Hong Kong China, Chinese Taipei and Australia have done self-assessments using four parts of the Checklist, while the U.S.A. and Korea used only two parts (horizontal criteria and regulatory policy).

3. Major experiences from the survey

6. The detailed results of five countries are in the annex. Annex 1 provides a summary of the results of three countries: the U.S.A., Hong Kong China and Taipei China which submitted their results in 2006. Annex 2 is the summary of two countries: Korea and Australia which submitted their results in 2007. As mentioned above, there are many factors in the Checklist, but for convenience, the major experiences of the five countries were summarized in respect of regulatory authority, transparency, whole of government approach, RIA, the degree of practical competition and market openness with global standards, which can be the essence of the regulatory reform.

3.1. U.S.A.

7. The U.S.A. has done self-assessment using two parts of the Checklist. According to the response of the survey result, the U.S.A. seems to have a well-established regulatory regime, policy and process. The OMB (Office of Management and Budget) plays a key role in leading the reform and management of the regulations under the Executive Order 12866 which contains basic principles governing federal rule-making. The OMB co-operates with several federal agencies when making and reviewing draft regulations. For example, the OMB (OIRA) cooperates with the U.S. Department of Justice's Antitrust Division and the Federal Trade Commission when regulations may affect competition.

Hence, it seems that the U.S. government tries to keep the whole of government approach, which is very important in keeping consistency among diversified government agencies.

8. In the U.S., there are effective public consultation mechanisms and procedures including prior notification to stakeholders. The Administrative Procedure Act requires agencies to proceed openly to all members, both foreign and domestic. All rules are posted on the federal website (www.regulations.gov) and the public can send their opinions electronically to agencies. To evaluate regulations more objectively, regulations which are expected to have an annual effect of \$100 million are subject to RIA under the Executive Order 12866. The U.S. has not analysed competition policies and market openness policies using the Checklist

3.2. Hong Kong China

9. As is widely known, Hong Kong China is strongly influenced by the U.K. Rule of law and the tradition of free trade are core ideas of the Hong Kong China government even though it is now under the umbrella of mainland China. In Hong Kong China, all bills and executive orders are published regularly in the government gazette and on the internet on a bilingual basis, so that most stakeholders are able to send comments before the law and executive orders are implemented.

10. The Economic and Employment Council (EEC) was set up to facilitate business and the Business Facilitation Advisory Committee (BFAC) was set up in 2006 to further the business facilitation efforts of the EEC. The Competition Policy Advisory Group (COMPAG) is in charge of the competition policies and seeks to introduce more competition to enhance economic efficiency and free trade in co-operation with government branches including the public sector. RIA is not compulsory in Hong Kong China. However, it seems that there is a widespread consensus that RIA should be considered for major policy proposals which have a significant regulatory impact.

11. The economic regime of Hong Kong China can be defined as a small open economy. HKC is a free port with no customs tariff and people can visit Hong Kong without a visa for up to 180 days. In this context, HKC endorsed the WTO agreement on technical barriers to trade and tries to adopt global standards.

3.3. Chinese Taipei

12. The Council for Economic Planning and Development (CEPD) takes charge of promoting regulatory reform to improve the efficiency of the economy and government capacity at the same time according to the government reform guidelines. Besides CEPD the Fair Trade Commission is in charge of competition policies as a main competition authority and the Ministry of Economic Affairs (MOEA) and the Ministry of Finance are in charge of the market openness policies.

13. The Administrative Procedure Act states that the regulation draft and decree should be notified in advance in government bulletins or newspapers. To follow the rule of government and make policies and regulations transparent the Chinese Taipei government issues an integrated gazette and provides a website (<http://gazette.nat.gov.tw/>). However, in the field of law enforcement, there exists phenomena such as “strict on legislation, but lenient on law enforcement” because the history of a rule of law is relatively short.

14. In Chinese Taipei, there exist monopolistic enterprises which contributed in the economic development and were guaranteed their status by the statutes. However, the Chinese Taipei government is turning its economic policies to pro-competition and market oriented ways. Chinese Taipei has formal seminars or informal meetings with foreign investor groups such as the American Chamber of Commerce and the Japanese Chamber of Commerce to solicit opinions from them. Chinese Taipei also tries to observe the provisions of the WTO as a member economy.

3.4. Korea

15. There was a financial crisis in 1997. The Korean government had no choice but to resort to the IMF to prevent country default. The financial crisis caused pain and shame to the Koreans. However, the pain and shame also provided an opportunity to look back on the politico-economic regime which was regarded as a useful paradigm to develop the economy. One of the meaningful outputs was that the political leaders decided to root out the regulations which did not match global standards and were the cause of economic and social inefficiency.

16. The Korean government enacted “The Basic Act on Administrative Regulations (BAAR)” to make the Korean regime a more business-friendly and life-enriching environment. BAAR provided the foundation for establishing the Regulatory Reform Committee (RRC) and the basic principles of regulatory reform such as transparency, introduction of RIA and due process, etc. The RRC abolished 5,958 existent regulations and revised 2,981 regulations in 1998 and 1999, which are more than half of a total of 11,125 regulations.

17. According to the response of the Korean government, RRC play a leading role in regulatory reform in cooperation with the Fair Trade Commission (FTC) for competition policies and the Ministry of Foreign Affairs and Trade (MOFAT) for market openness policies to ensure the whole of government approach. The basic principles of regulatory reform are to be found in the BAAR and the Korean government tries to implement the BAAR faithfully.

3.5. *Australia*

18. Australia is a member country of the Commonwealth and appears to have well-established principles, procedures and conventions in the field of regulatory reform. The Australian government has pursued regulatory reform through the Council of Australian Government (COAG) which was established in 1992. COAG is an intergovernmental forum and consists of the Prime Minister, the State Premier, Territory Chief Ministers and the President of the Australian Local Government.

19. One characteristic of Australia is that policy formulation is separated from the application and enforcement of the relevant policy. The Office of Best Practice Regulation (OBPR) plays a key role in ensuring that the government's regulation making and review requirements are carried out and the Cabinet Implementation Unit (CIU) assists OBPR. Australia is committed to maintaining free trade and has concluded FTA with New Zealand, Singapore, Thailand and the U.S.A. The Australian Competition and Consumer Commission (ACCC) is responsible for implementing competition policy through enforcement of the competition provisions of the Trade Practices Act, with the exception of energy and telecommunications sectors which are subject to specific sectoral arrangements. The Australian government seems to consult with multilateral forums such as OECD, WTO and APEC more actively than the above-mentioned four countries.

4. Other developments

20. In the U.S., President Bush issued Executive Order 13422 in 2007 and it emphasises the offer of information rather than the quality of regulation itself. This reflects the importance of transparency, due process and relationship with the public. In 2006, the Office of Management and Budget (OMB) conducted an oversight review of 10 major rules which were social regulations and succeeded in calculating estimates of both monetized costs and the benefits of seven rules.

21. The Chinese Taipei government enacted the Administration Execution Act in 2007 and the Administration Penalty Act in 2006 to ensure that people obey laws and administrative regulations. In 2007, Chinese Taipei issued an additional administrative order in which the government emphasised the importance of offering government information to the public and expanded the coverage of the information.

5. Which key regulatory institutions do the five APEC economies have? What are they missing?

The five economies have slightly different kinds of key regulatory reform authorities.

22. In the U.S., OIRA (Office of Information and Regulatory Affairs) of OMB (Office of Budget and Management) is a key authority. OIRA sometimes cooperates with other government agencies for regulatory reform. For example, SBA (Small Business Administration), DOJ (Department of Justice) and FTC (Federal Trade Commission) for antitrust, Department of Commerce for market openness.

23. In Hong Kong China, the EEC (Economic and Employment Council) and BFAC (Business Facilitation Advisory Committee) are key institutions. COMPAG (Competition Policy Advisory Group) reviews competition related policies.

24. In Chinese Taipei, CEPD (the Council for Economic Planning and Development) is a core government authority which was designated to take charge of promoting regulatory reform. The Fair Trade Commission is the competition authority in charge of competition law and MOEA (the Ministry of Economic Affairs) is in charge of market openness policies.

25. In Korea, RRC (the Regulatory Reform Committee) is a key institution which is in charge of the main part of regulatory reform. It was established under the Basic Act on Administrative Regulations which was enacted after the 1997 financial crisis. RRC belongs to a presidential office, but the Prime Minister's office plays the role of secretariat. The RRC plays a leadership role in setting the direction and coordinating regulatory reform policies. The FTC (Fair Trade Commission) and the MOFAT (Ministry of Foreign Affairs and Trade) have responsibility for competition policy and market openness policy respectively.

26. In Australia, the role of policy formulation is separated from the application and enforcement of the relevant policy. OBPR (the Office of Best Practice Regulation) plays a crucial role in ensuring that the government's regulation-making requirements are effectively carried out. It seems that the Australian government does not have a central independent regulatory reform authority like the RRC in Korea and OIRA in the U.S... However, Australia has COAG (the Council of Australia Government) which is an intergovernmental forum and has pursued regulatory reform. The Department of Foreign Affairs and Trade has overall responsibility for market openness policies.

6. How do they achieve policy coherence between competition, market openness and regulatory quality?

27. In the U.S., Executive Order 12866 requires OIRA to ensure an adequate inter-agency review of draft rules, so that draft rules are coordinated with relevant agencies to avoid inconsistent, incompatible or duplicative policies. When new regulations are developed, federal agencies must also coordinate with state, and local governments by Executive Order 13132 which was issued in 1999.

28. The Hong Kong China government states in the submission paper that "policies, rules and regulations are applied consistently within HKC, and so are the outcomes of regulatory reform." The Business Facilitation Advisory Committee (BFAC) and Competition Policy Review Committee (CPRC) were set up to systematically review government regulations and procedures impacting on business, with a view to eliminating outdated, excessive, repetitive or unnecessary regulations so as to facilitate business operations.

29. In Chinese Taipei, the CEPD (Council for Economic Planning and Development) has been mandated by the law to work together with related government organizations. Chinese Taipei follows rule of law and there are many acts, decrees and guidelines which regulate policies.

30. In Korea, ministers from different ministries deliberate on important matters together to coordinate regulatory, competition and market openness policies. Local governments may enact ordinances, but they should be inside the scope of the authority delegated by the law. A ministry which drafts regulations and legislations is obliged to consult with relevant ministries in accordance with the Administrative Procedures Act and the Rules of Operating Regulation on Legislation. If a regulatory proposal or legislation includes constraints on competition, the ministry concerned must consult with the Fair Trade Commission (FTC). In case a regulatory proposal or legislation is considered to be inconsistent with the WTO agreements, the Ministry of Foreign Affairs and Trade (MOFAT) should review it and notify the ministry of the results of its review.

31. In Australia, in relation to coordinating inter-jurisdictional regulatory reform, there are over 40 Commonwealth State Ministerial Councils and forums that facilitate consultation and cooperation between the Australian Government and state and territory governments in specific regulatory reform areas. Responsible ministers from each government participate in these councils with the councils initiating, developing and monitoring policy reform jointly, and taking joint action in the resolution of issues that arise between governments.

7. What have they done to provide effective/innovative methods of consultation?

32. In the U.S., the APA (Administrative Procedure Act) generally requires agencies to publish notices and comments for all proposed rules in the Federal Register. All proposed rules currently open to public comment are also centrally located on one Federal website (*www.regulations.gov*). The public can use this site to send their comments electronically to agencies on Federal regulations published for comment in the Federal Register. The Small Business Regulatory Enforcement Fairness Act of 1996 requires that the U.S. Environmental Protection Agency (EPA) and the U.S. Department of Labour's Occupational Safety and Health Administration (OSHA) receive input from affected small businesses before proposed rules are published. Stakeholders can request to meet with OIRA during the review period of a draft rule.

33. In Hong Kong China, consultation papers are made available on the website (*www.info.gov.hk*) of relevant bureaux and departments or regulatory authorities, and are usually accompanied by press releases to inform the public.

34. In Chinese Taipei, each government agency should consult with regulated parties and stakeholders when drafting regulations.

35. In Korea, according to the Administrative Procedure Act, each ministry should collect the opinions of the public for at least 20 days through a notification of pending legislation when newly establishing or revising laws and proposed regulations. One of the important regular consultation channels is operated between the RRC and foreign chambers of commerce in Korea in order to reflect the opinions of foreign businesses. For example, in the case of the American Chamber of Commerce, a total of 36 proposals were received and processed through numerous rounds of friendly gatherings since June 2005.

36. The Australian Government has adopted a whole-of-government policy on consultation, which sets out seven principles for best practice consultation that need to be followed by all agencies when developing regulation. Seven principles are continuity, targeting, appropriateness, timeliness, accessibility, transparency, consistency and flexibility and evaluation and review. Related to this policy are three specific consultation mechanisms: Annual Regulatory Plans; a business consultation portal; and the requirement for policy 'green papers' and exposure drafts for matters of major significance.

8. Are there clear and transparent methodologies and criteria used to analyze the regulatory impact when developing new regulations and reviewing existing regulations?

37. In the U.S., regulations that are expected to have an annual effect on the economy of \$100 million or more are considered to be "economically significant" and are subject to the Regulatory Impact Analysis (RIA) requirement of Executive Order 12866. OIRA reviews the draft regulations and can return a draft rule to the agency for consideration. During the first year of the Bush administration, OIRA returned more than 20 draft rules to agencies for reconsideration.

38. In Hong Kong China, while HKC has developed a general framework for how a RIA could be performed, bureaux and departments have the flexibility to incorporate methods and criteria that suit their respective situations. The Economic Analysis and Business Facilitation Unit (EABFU) works closely with government bureaux and departments in conducting RIA studies on proposed regulations impacting on business.

39. In Chinese Taipei, according to the Administrative Procedure Act, the regulation draft which contains the regulatory impact assessment mechanism plan should be announced beforehand unless the situation is so urgent that prior announcement of a legal order to the public is clearly impossible. The prior announcement system is a significant mechanism within the regulatory impact assessment through means of exposure of information and consultation on opinions.

40. In Korea, each ministry must conduct a Regulatory Impact Analysis (RIA) to develop a new regulation or revise existing regulations. The RRC recommends that ministries withdraw or improve the draft regulations if the result of the review does not recognize the justification for such action. Due to the characteristics of the public sector in that it is sometimes difficult to make quantitative measurement, the RIA has been focused on qualitative analysis.

41. In Australia, all proposals are required to undergo a preliminary assessment to establish whether they are likely to have an impact on business and individuals or the economy. If the preliminary assessment shows that a proposal potentially involves medium compliance costs, a full assessment of the compliance cost implications should be carried out using the Australian Government's Business Cost Calculator (BCC). Proposals that have a significant impact on business and individuals or that restrict competition, require more detailed analysis documented in a RIS (Regulation Impact Statement).

9. Are there training and capacity building programmes for rule-makers and regulators?

42. In the U.S., OMB offers a course on regulatory policy for federal regulatory officials. OMB provided extensive training on regulatory agency in 2004 and 2005.

43. The Hong Kong China government has published a booklet to provide civil servants with an overview of the challenges facing the regulators and with examples of good practice. The government provides opportunities to its senior officials to attend external training courses on different topics, which also includes courses on competition policies, e.g. courses held by APEC.

44. In Chinese Taipei, the Committee of Laws and Regulations under the Cabinet hosts a two-month long training program for regulators every year. The program is designed to train regulators' professional regulatory abilities and to ensure the quality of the procedure for enacting laws.

45. In Korea, the Central Officials Training Institute has offered public officials a course on regulatory reform every year since 2004. Every year, about 50 officials receive the training. Since 2005, a three-week course on regulatory reform has been regularly offered on an internet site (<http://cyber.coti.go.kr>). About 700 public officials take the course every year. To foster experts on RIA, the government has offered an advanced-level course on RIA in collaboration with the Korean Institute of Public Administration.

46. In Australia, the Office of Best Practice Regulation (OBPR) provides training and guidance to government officials to assist them in meeting the assessment requirements to justify regulatory proposals, including undertaking adequate cost-benefit analysis and conducting consultation processes.

10. Future work to be done

Box 1. General Trends & Further Progress

- Political leaders support regulatory reform to develop the economy and improve the quality of citizens' lives
- The policy coherence mechanism is stepped up
- The importance of a whole of government approach is realized and strengthened
 - More attention and effort should be made to avoid sectionalism, inconsistency and redundancy
- Economies operate official websites to gather public opinions
 - It is necessary to update the website and respond to stakeholders quickly
- RIA are conducted in various ways
 - The manual for RIA should be developed and elaborated
 - An effort should be made to conduct RIA in a quantitative way instead of a qualitative way
- Training and capacity-building programs are provided
 - Training courses should have substance and be conducted earnestly
 - They should not be used as a reward or as paid leave

47. As of 2008, there are 30 member countries in the OECD and 21 member economies in APEC. Seven countries (Korea, the U.S., Japan, Australia, New Zealand, Canada, and Mexico) belong to both, meaning that there are 44 countries with APEC-OECD membership. In 2006 and 2007, only five have done self-assessment using the APEC-OECD checklist. Nevertheless, it is strongly recommended that the remaining member economies participate in this project more actively for the improvement of regulatory reform.

48. The questionnaires of the Checklist consist of open questions. The advantage is that a respondent can answer the questions relatively freely. The disadvantage may be that it is hard to compare the results of each country. To compare the results more easily, we may need to develop another type of questionnaire which contains multiple choice questions or quantitative methods.

49. APEC and OECD can develop certain indicators similar to the OECD product market regulation indicator or regulatory management capacity indicator and the World Bank doing business indicator. We can compare the relationship between the new indicator (tentatively the checklist indicator) and economic variables such as economic growth and the number of jobs created, *etc.* Also, we can analyse the correlation between the PMR indicator, the World Bank doing business indicator and the Checklist indicator. The consensus of member economies is, of course, needed and the participation of more economies in the project of self-assessment using the Checklist is strongly recommended.

ANNEX 1. SUMMARY OF THREE COUNTRIES WHICH HAVE CARRIED OUT A SELF ASSESSMENT IN 2006

	U.S.	Hong Kong China	Chinese Taipei
1. Submission date	12 Sept. 2006	12 Sept. 2006	12 Sept. 2006
2. Results			
2.1. Horizontal criteria			
H1. To what extent is there an integrated policy for regulatory reform?	<p>1. Executive order 12866 “Regulatory Planning and Review” established basic principles governing rule making.</p> <p>2. OMB has initiated public nomination process *17 actionable reforms out of 71 nominations in 2001 *55 actionable reforms out of 316 nominations in 2001 *76 actionable reforms out of 189 nominations in 2001</p>	<p>1. All bills, executive orders and public notices are published regularly in the government gazette and are available free of charge on the internet.</p> <p>2. The Hong Kong China government is committed to ensuring equality for all before the law.</p>	<p>1. According to the <i>Government Reform Guidelines</i> passed by the Cabinet on 2 January, 2000, the CEPD was designated to take charge of promoting regulatory reform to increase economic competitiveness and push forward with government reform at the same time.</p> <p>*CEPD : Council for Economic Planning and Development</p>
H2. How strongly do political leaders and senior officials express support for regulatory reform? How is this support translated in practice into reform and how have related groups reacted?	<p>1. OIRA is leading the U.S. reform effort, consulting with other U.S. agencies. For example, SBA (Small Business Administration), DOJ (Department of Justice) and FTC (Federal Trade Commission) for antitrust, Department of Commerce for market openness.</p>	<p>1. In early 2004, the Economic and Employment Council (EEC) was set up to further the business facilitation efforts.</p> <p>2. The Business Facilitation Advisory Committee (BFAC) was set up in January 2006 to further the business facilitation efforts of the former EEC.</p>	<p>1. The leader of Chinese Taipei and the Cabinet have both initiated the mandate in this regard.</p>
H3. What are the accountability mechanisms that assure the effective implementation of regulatory, competition and market openness policies?	<p>2. Accountability in U.S. is to maximize the net benefits of new regulations.</p> <p>3. OMB reports annually to Congress on the cost and benefits of major Federal rules.</p>	<p>1. Government would take appropriate remedial action.</p> <p>2. The relevant bureaux are responsible to ensure that all statutory bodies under their charge acknowledge and observe the guidelines as stipulated in the Statement on Competition Policy.</p>	<p>1. In respect to the regulatory policies, CEPD has been mandated to work with the Committee of Laws and Regulations (The Cabinet), the Research, Development, and Evaluation Commission (The Cabinet), along with the Ministry of Justice.</p> <p>2. The Fair Trade Commission is the competition authority in charge of the competition laws.</p> <p>3. Regarding market openness policies, the Ministry of</p>

		3. The Competition Policy Advisory Group (COMPAG) provides a dedicated and high-level forum to review competition-related policy issues and examine the extent to which the Government, the wider public sector, as well as the private sector should seek to introduce more competition to enhance economic efficiency and free trade.	Economic Affairs (MOEA) and the Ministry of Finance are in charge of the policy formulation.
H4. To what extent do policies avoid discrimination between like goods whether foreign and domestic?	1. OMB reviews draft agency regulations to prevent inadequate regulations such as price control, production of sales quota.	1. HKC does not have any voluntary export/import restraint arrangements, or operate any state-trading enterprises. 2. HKC only maintains those non-tariff measures which are required to protect public health, safety, security and the environment, and to fulfil its obligations under international agreements.	1. Article 17 of the <i>Statute for Investment by Foreign Nationals</i> , states: "Except as otherwise provided for in other laws, the enterprise in which the investor has invested hereunder shall be accorded the same rights and obligations to which an enterprise operated by local Chinese Taipei nationals is entitled."
H5. To what extent has regulatory reform been encouraged and co-ordinated at all levels of government?	1. Executive order 12866 requires OIRA to ensure adequate inter-agency review of draft rules, so that draft rules are coordinated with relevant agencies to avoid inconsistent, incompatible or duplicative policies. 2. When new regulations are developed, federal agencies must also coordinate with state, local and tribal governments by executive order 13132 which was issued on Aug.4, 1999	1. The multi-level government coordination is not applicable in HKC because policies, rules and regulations are applied consistently in HKC	1. Chinese Taipei follows the rule of law, and how overarching control is concerned with the restriction of people's basic rights. Such control must have its basis in law and the content and procedures must meet requirements, and be under the framework of Chinese Taipei's Basic Law, institutional laws at all levels of government, and individual measures and regulations, and come into being through a coordinated effort. 2. Judicial Yuan Interpretation No. 550 states that all levels of government should consult each other before establishing related policies and laws.

<p>H6. Are the policies, laws, regulations, practices, procedures and decision-making transparent, consistent, comprehensible and accessible to users both inside and outside government, and to domestic as well as foreign parties?</p>	<p>1. The Administrative Procedure Act (APA) requires that agencies go through a notice and comment process open to all members of the public, both foreign and domestic.</p> <p>2. All proposed rules currently open to public comments are also centrally located on one federal website (www.regulation.gov)</p> <p>3. Existent regulations are codified and centrally located in the Code of Federal Regulations, which is updated annually and available on the internet.</p>	<p>Yes.</p> <p>1. Draft bills and executive orders and public notices are published regularly in the HKSAR Gazette. The electronic version of the HKSAR Gazette is available free of charge.</p> <p>2. The office of Ombudsman is an independent authority, established under the Ombudsman Ordinance (Cap 397) since February 1989. Complaints can be lodged directly with the Ombudsman which may initiate direct investigation and extend his jurisdiction to include nearly all Government departments and 14 major statutory bodies.</p>	<p>1. In order to make policies and regulations transparent, Chinese Taipei created the <i>Cabinet Guidelines on Legal Matters</i> in 1977 (These were revised and became the <i>Guidelines on Central Administrative Agencies' Legal Matters</i> in 2004), which is still in use at present.</p> <p>2. The Cabinet has established the <i>Guidelines for Chinese-English Translation of Laws and Regulations</i> and the <i>Guidelines Concerning Computer Disposal Operating Standards of Laws and Regulations</i> to establish a database of Chinese Taipei laws and regulations and have all laws and regulations translated into English.</p> <p>3. The Cabinet has issued an integrated gazette, the <i>Cabinet Gazette</i>, which is published daily (except for holidays) (paper and electronic versions are issued simultaneously. The website is: http://gazette.nat.gov.tw/).</p> <p>→ modified in 2007</p> <p>On 21 May 2007, the Cabinet issued a further administrative order, which stressed the legal obligation of the Cabinet Gazette to publish government information and, at the same time, revised the list of publications as required by Point 4 of the Outlines for the Gazette Publication (as reported previously in the Question B4 for the Checklist).</p>
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<p>H7. Are the forms of regulation, the establishment of regulatory authority and the introduction of competition coherent in timing and sequencing?</p>	<p>Probably yes.</p>	<p>Yes.</p>	<p>Probably not. 1. Due to legislative give-and-take negotiations, the timing of legislation that carried out various regulatory reforms is incoherent and, at times, hard to predict.</p>
<p>H8. To what extent are there effective inter-ministerial mechanisms for managing and coordinating regulatory reform and integrating competition and market openness considerations into regulatory management systems?</p>	<p>1. OMB works closely with the various regulatory agencies when deciding to go forward with particular regulatory reform.</p>	<p>1. To ensure that regulatory and competition policies cater for the present day's circumstances and meet the time constraints, the Business Facilitation Advisory Committee (BFAC) and Competition Policy Review Committee (CPRC) systematically review government regulations and procedures impacting on business, with a view to eliminating outdated, excessive, repetitive or unnecessary regulations so as to facilitate business operations.</p>	<p>1. The CEPD was designated to take charge of promoting regulatory reform to increase competitiveness and, at the same time, push forward with government reform. 2. CEPD has been mandated to work with the Committee of Laws and Regulations (The Cabinet), the Research, Development, and Evaluation Commission (The Cabinet), along with the Ministry of Justice in respect to the regulatory policies. The Fair Trade Commission is the competition authority in charge of the competition laws. Regarding market openness policies, the Ministry of Economic Affairs (MOEA) and the Ministry of Finance are in charge of the policy formulation.</p>
<p>H9. Do the authorities responsible for the quality of regulation and the openness of markets to foreign firms and the competition authorities have adequate human and technical resources, to fulfil their responsibilities in a timely manner?</p>	<p>Yes. OIRA, USTR, DOJ, FTC</p>	<p>Yes. 1. The authorities comprise, where warranted, representatives from the business, academic and professional sectors, legislators and senior government officials from relevant government bureaux.</p>	<p>Yes.</p>

<p>H10. Are there training and capacity building programmes for rule-makers and regulators to ensure that they are aware of high quality regulatory, competition and market openness considerations?</p>	<p>1. U.S. Office of Personnel Management offers a course on regulatory policy for federal regulatory officials.</p> <p>2. OMB provided extensive training on regulatory agencies in 2004 and 2005.</p>	<p>1. The government has published a booklet to provide civil servants whose task it is to regulate HKC's businesses with an overview of the challenges facing the regulators and with examples of good practice.</p> <p>2. The government provides the opportunities to its senior officials to attend external training courses on different topics, which also include courses on competition policies, e.g. courses held by APEC.</p>	<p>1. The Committee of Laws and Regulations under the Cabinet hosts a two-month long training program for regulators every year. The program is designed to improve regulators' professional regulatory abilities and to ensure the quality of the procedure for enacting laws.</p> <p>2. The Ministry of Justice Training Institute for Judges and Prosecutors under the Cabinet has held professional training programs for rule-makers since 1982.</p>
<p>H11. Does the legal framework have in place or strive to establish credible mechanisms to ensure the fundamental due process rights of persons subject to the law?</p>	<p>1. Agency rulemaking is authorized by primary legislation passed by Congress, and agency rulemaking is subject to judicial review by the courts.</p>	<p>Yes.</p> <p>1. HKC has a well-established and trusted legal system based on the common law.</p>	<p>1. The right to engage in litigation assured in Article 16 in Chinese Taipei's Basic Law includes the comprehensive and substantial protection of rights as well as fair trial proceedings.</p>
<p>A. Regulatory Policy</p>			
<p>A1. To what extent are capacities created that ensure consistent and coherent application of principles of quality regulation?</p>	<p>1. OMB (OIRA) ensures adequate inter-agency reviews of draft rules.</p> <p>2. The scope of OMB's regulatory oversight covers many fields such as agriculture, energy, transportation, housing, food safety, etc.</p> <p>3. OMB has provided guidance on regulatory analysis and the assessment of costs and benefits. The latest is OMB's circular No.A-4, guideline for the conduct of regulatory analysis in 2003.</p>	<p>1. The Business Facilitation Advisory Committee (BFAC), together with the Economic Analysis and Business Facilitation Unit (EABFU) and the sector-specific task forces, to a certain extent, functions as a "quality control" mechanism.</p>	<p>1. In order to unify the basic principles of the legal process, the <i>Central Regulation Standard Act</i> was enacted.</p> <p>2. The Cabinet enacted supplementary administrative rules, such as the <i>Guidelines on Central Administrative Agencies' Legal Matters</i>, and the <i>Guidelines for Bills Submitted by Cabinet Agencies for Review</i>, so as to ensure that each institution follows the correct procedure, avoids conflict, and to ensure the consistency and coherence of the enactment of and compliance with laws.</p>

<p>A2. Are the legal basis and the economic and social impacts of drafts of new regulations reviewed? What performance measurements are being envisaged for reviewing the economic and social impacts of new regulations?</p>	<p>1. Executive order 12866 states that agencies should assess both the costs and the benefits of the intended regulation.</p> <p>2. Major rules, expected to have an annual effect on the economy of \$100 million or more, are subject to additional external oversight as a result of the Congressional Review Act.</p> <p>3. The U.S. has been measuring and reporting the aggregate costs and benefits of major rules for over 20 years.</p>	<p>1. Prior to presentation to the legislature, the final draft (the Bill) and its explanatory memorandum will be published in the Gazette for public scrutiny.</p> <p>2. While regulatory impact assessment (RIA) is not a compulsory requirement for new regulatory proposals, departments/bureaux concerned will normally consider conducting RIA for major policy proposals with a significant regulatory impact.</p>	<p>1. According to Article 154 in the <i>Administrative Procedure Act</i>, when drafting a regulation and decree, the draft should be announced publicly in government bulletins or newspapers, as a preview of the draft for the regulation and decree.</p> <p>2. Chinese Taipei has fully comprehended the meaning and essence of Regulatory Impact Analysis as it exists in OECD and advanced countries.</p>
<p>A3. Are the legal basis and economic and social impacts of existing regulations reviewed, and if so, what use is made of performance measurements?</p>	<p>1. The U.S. examines the performance of existing regulation through the Program Assessment Rating Tool (PART)</p> <p>2. PART is a questionnaire of approximately 30 questions and OMB completes the questionnaire, assessing the program against a set of criteria and providing recommendations to improve program results.</p> <p>3. Results of PART evaluations are publicly available on the website www.expectmore.gov/.</p>	<p>1. HKC has established the Business Facilitation Advisory Committee (BFAC) to systematically review government regulations and procedures impacting on business, with a view to eliminating outdated, excessive, repetitive or unnecessary regulations so as to facilitate business operations.</p> <p>2. Measurements may include the necessity of regulation, the cost of compliance, alternative methods and the legal basis.</p>	<p>1. According to the <i>Guidelines on Central Administrative Agencies' Legal Matters</i>, each agency should post the name of the regulation established, amended, or revoked on its website and to instruct the Law and Regulations Database of Chinese Taipei to update their data. The agencies should plan the establishment, amendment, and revocation of regulations in advance and issue an announcement concerning the regulation within 6 months of its establishment</p> <p>2. As for the performance measurement, different standards are to be executed depending on the differences of agenda and the character of the industry. Therefore, it is impossible to enumerate in detail or to generalize upon this matter.</p>

<p>A4. To what extent are rules, regulatory institutions, and the regulatory management process itself transparent, clear and predictable to users both inside and outside the government?</p>	<p>1. Administrative Procedure Act (APA) provides the foundation for regulatory transparency and accountability</p> <p>2. Agencies must publish proposed rules in the Federal Register and solicit public comment.</p> <p>3. Federal agencies are required by Executive Order 12866 to provide an annual plan of the most important regulatory actions in the coming year in the Federal Register.</p>	<p>1. All rules and regulations are accessible to the public via the internet either on the relevant regulatory institution's website, or at the Bilingual Laws Information System (BLIS). All primary and subsidiary legislation (and amendments of them) of the relevant regulations (the Ordinances) are published in the Government Gazette and in the Laws of Hong Kong China.</p>	<p>1. The <i>Freedom of Government Information Act</i> was enacted to establish the institution for the publication of government information, to make it easy for people to share and have fair access to government information, protect people's right to know, further people's understanding, trust, and oversight of public affairs, and encourage public participation in democracy.</p> <p>2. The cabinet gazette is published daily and the electronic version is posted on the Cabinet Gazette Online website daily, except for Saturday, Sunday, and public holidays</p> <p>3. In addition to the Cabinet Gazette, the Laws and Regulations Database of Chinese Taipei (http://law.moj.gov.tw/) provides the public with a convenient and prompt regulatory search method through a single Internet website to make regulations and information known to the public and establish a rule of law society.</p>
<p>A5. Are there effective public consultation mechanisms and procedures including prior notification open to regulated parties and other stakeholders, non-governmental organisations, the private sector, advisory bodies, accreditation bodies, standards-development organisations and other governments?</p>	<p>1. The APA generally requires agencies to publish notices and comments for all proposed rules in the <i>Federal Register</i>. All proposed rules currently open to public comment are also centrally located on one Federal website (www.regulations.gov/). The public can use this site to send their comments electronically to agencies on Federal regulations published for comment in the <i>Federal Register</i>.</p>	<p>1. Consultation papers are made available on the website of relevant bureaux and departments or regulatory authorities, and are usually accompanied by press release to inform the public.</p>	<p>1. When drafting regulations, each government agency should consult with regulated parties and other stakeholders</p>

	<p>2. The Small Business Regulatory Enforcement Fairness Act of 1996 requires that the U.S. Environmental Protection Agency (EPA) and the U.S. Department of Labor’s Occupational Safety and Health Administration (OSHA) receive input from affected small businesses before proposed rules are published.</p> <p>3. Stakeholders can request to meet with OIRA during the review of a draft rule.</p>		
<p>A6. To what extents are clear and transparent methodologies and criteria used to analyze the regulatory impact when developing new regulations and reviewing existing regulations?</p>	<p>1. Regulations that are expected to have an annual effect on the economy of \$100 million or more, or adversely affect in a material way the economy, are considered to be “economically significant” and are subject to the Regulatory Impact Analysis (RIA) requirement in Executive Order 12866.</p> <p>2. OIRA reviews the draft regulations and can return a draft rule to the agency for consideration</p> <p>3. During the first year of the Bush administration, OIRA returned more than 20 draft rules to agencies for reconsideration.</p>	<p>1. While HKC has developed a general framework for how a RIA could be performed, bureaux and departments have the flexibility to incorporate methods and criteria that suit their respective situations.</p> <p>2. The Economic Analysis and Business Facilitation Unit (EABFU) is working closely with government bureaux and departments in conducting RIA studies on proposed regulations impacting on business.</p>	<p>The prior announcement system is a significant mechanism within the regulatory impact assessment through means of exposure of information and consultation on opinions.</p>
<p>A7. How are alternatives to regulation assessed?</p>	<p>1. OMB’s review of agency draft rules includes an assessment of regulatory alternatives, as well as a consideration of whether regulation at the Federal level is the best way to solve the problem.</p>	<p>1. The assessment of alternatives to regulation is best done through regulatory impact assessments (RIAs).</p>	<p>1. When the alternatives to regulation are assessed, the general legal process shall examine and consider regarding a concrete standard for content and the necessity to adopt various possible juridical and extrajudicial alternatives.</p>

<p>A8. To what extent have measures been taken to assure compliance with and enforcement of regulations?</p>	<p>1. The U.S. attempts to provide incentives for compliance with regulations rather than focusing on enforcement.</p>	<p>1. During the regulation formulation process, the cost of compliance and cost of enforcement and the ease of implementation are taken into full consideration.</p> <p>2. This should ensure that the regulated parties are able to comply with regulations at justified costs, and the regulators are able to enforce the regulations with justified efforts. Moreover, specific Ordinances are detailed in the legislation to empower the regulators with the authority of enforcement.</p>	<p>1. The history of the establishment of a rule-of-law country in Chinese Taipei is short</p> <p>2. The establishment of the Administrative Execution Act and Administrative Penalty Act procedural mechanisms is to ensure that people obey laws and to make it easier for administrative agencies to enact laws in order to implement and show people's obligation in administrative regulations.</p> <p>→ modified in 2007</p> <p>3. The establishment of the <i>Administrative Execution Act</i> (2007 amendment) and <i>Administrative Penalty Act</i> (2006) procedural mechanisms is to ensure that people obey laws and to make it easier for administrative agencies to enact laws in order to implement and show people's obligation in administrative regulations.</p>
<p>B. Competition and Law</p>	<p>Not done</p>		
<p>B.1 To what extent has a policy been embraced in the jurisdiction that is directed towards promoting efficiency and eliminating or minimising the material competition distorting aspects of all regulations that have an impact upon markets?</p>		<p>1. HKC has an overarching competition policy framework, as promulgated in the "Statement on Competition Policy" dated May 1998.</p> <p>2. When a business practice limits market accessibility or market contestability and impairs economic efficiency or free trade, to the detriment of the overall interest of HKC, the Government will take appropriate remedial action.</p>	<p>1. Since Chinese Taipei Fair Trade Commission's (FTC's) establishment on 27 January 1992, it has been charged with proposing competition policy and enforcing the <i>Fair Trade Act</i>. The <i>Fair Trade Act</i> was enacted by the Parliament on 4 February 1991 and went into effect on the same date one year later.</p>

<p>B2. To what extent do the objectives of the competition law and policy include promoting and protecting the competitive process and enhancing economic efficiency including consumer surplus?</p>		<p>1 The Statement on Competition Policy states that the Government will not interfere with market forces simply on the basis of the number of operations, scale of operations or normal commercial constraints faced by new entrants, and would take action only when market imperfections or distortions limit market accessibility or market contestability, and impair economic efficiency or free trade, to the detriment of the overall interest of HKC.</p>	<p>1. To ensure fair competition and to promote economic stability and prosperity are the legislative purposes of the Fair Trade Act.</p> <p>2. The FTC may investigate and handle, upon complaints or <i>ex officio</i>, any violation of the provisions of this Law that harms the public interest.</p>
<p>B3. To what extent does the Competition Authority or another body have (i) a clear mandate to advocate actively in order to promote competition and efficiency throughout the economy and raise general awareness of the benefits of competition, and (ii) sufficient resources to carry out any advocacy functions included in its mandate?</p>		<p>1. The Competition Policy Advisory Group (COMPAG), which was established in 1997, provides a dedicated and high-level forum to review competition-related policy issues and examine the extent to which the Government, the wider public sector, as well as the private sector should seek to introduce more competition to enhance economic efficiency and free trade.</p> <p>2. To ensure that the Government's competition policy caters for present day circumstances and meets the needs of time to enable HKC to maintain its competitive edge, the Government announced on 1 June 2005 the appointment of a Competition Policy Review Committee (the CPRC) by COMPAG to review the existing competition policy and the composition, terms of reference and operations</p>	<p>1. To ensure an environment of fair competition, the FTC in coordination with the Cabinet, enacted the "<i>Green Silicon Island Vision and Promotion Strategy</i>" and established a Committee for the review of its enforcement in July 2001.</p> <p>2. In August 2003, the results were reported to the Cabinet. by the Project, a thorough review of all relevant laws and regulations had been completed or mechanisms had been established, as explained below.</p>

		<p>of COMPAG.</p> <p>3. The CPRC reported the results of the review to COMPAG in June 2006. Briefly, the CPRC recommended that the Government should introduce a cross-sector competition law targeting specific types of anti-competitive conduct to be enforced by a Competition Commission operating outside the normal government structure.</p>	
<p>B4. To what extent are measures taken to neutralise the advantages accruing to government business activities as a consequence of their public ownership?</p>		<p>Government businesses are set up to provide worthwhile public services for meeting important policy objectives, only when the private sector is unable or unwilling to provide.</p>	<p>1. In July 1989, the Cabinet established the <i>Task Force for Promoting Privatization of State-owned Enterprises</i> to allow steps toward the privatization of state-owned or state-managed enterprises to move forward.</p> <p>2. The Group consequently drafted the <i>Act of Privatization of State-owned Enterprises</i> which was passed by the Parliament and promulgated in June 1991.</p> <p>3. Paragraph 2, Article 46 of the <i>Fair Trade Act</i> thus provided a five-year grace period for specific state-owned enterprise activities on the condition that it was approved by the highest administrative authority, but the conducts that were entitled to that exemption were rather few in number. Since the expiry of the transition period on 4 February 1996, the state-owned enterprises in question have been subject to the Fair Trade Act and are on equal footing with private firms.</p>

<p>B5. To what extent does the agency responsible for the administration and enforcement of the competition law (the “Competition Authority”) operate autonomously, and to what extent are its human and financial resources sufficient to enable it to do its job?</p>		<p>1. The Competition Policy Advisory Group (COMPAG), which was established in 1997, provides a dedicated and high-level forum to review competition-related policy issues and examine the extent to which the Government, the wider public sector, as well as the private sector should seek to introduce more competition to enhance economic efficiency and free trade.</p>	<p>1. The FTC is a ministerial level agency, responsible for policy and legislation as well as enforcement.</p> <p>2. The <i>Fair Trade Act</i> and the Organic Statute contain recitals supporting the FTC’s independence. FTC actions are not to be scrutinized by the Cabinet or other agencies.</p> <p>3. Most staff members of the FTC have majored in law, economics or both. Among the total employees, 215, as of the end of 2005, 29.03% have a background in law, 19.82% have a background in economics and 51.15% have a background in various other fields, such as business administration, information technology, human resources and accounting.</p> <p>→ modified in 2007</p> <p><i>3. Most staff members of the FTC have majored in law, economics or both. Among the total of 212 employees, as of the end of 2006, 28% have a background in law, 17% have a background in economics and 55% have a background in various other fields, such as business administration, information technology, human resources and accounting.</i></p>
<p>B6. To what extent is the role of enforcement decision-makers transparent, especially when there are multiple government bodies involved in decision-making, for example, regarding who the decision-maker was, factors taken into account by such a decision-maker, and their relative weighting?</p>		<p>1. The Statement on Competition Policy promulgated in 1998 (available at www.compag.gov.hk/about/) calls upon all businesses to cease existing, and refrain from introducing restrictive practices that impair economic efficiency or free trade. Where justified, the Government will take appropriate sector-specific measures, including administrative or legal steps to remove such practices as necessary.</p>	<p>1. Article 46 of Fair Trade Act now states, “Where there is any other law governing the conduct of enterprises in respect of competition, such another law shall govern; provided that it does not conflict with the legislative purposes of this Law.”</p>

<p>B7. To what extent is there a transparent policy and practice that addresses the relationship between the Competition Authority and sectoral regulatory authorities?</p>		<p>1. While the Competition Policy Advisory Group (COMPAG) provides a dedicated and high-level forum to review competition-related policy issues, there are two existing sectional regulators with enforcement power on competition affairs. They are namely the Telecommunications Authority and the Broadcasting Authority. The respective jurisdictions of these two authorities have been clearly articulated in the statutory provisions of the relevant Ordinances, and both have been carrying out their responsibilities independently in accordance with the relevant provisions.</p>	<p>1. Before 1999, Article 46 of the Fair Trade Act set out the principle that if there was a “conflict” between the <i>Fair Trade Act</i> and other laws, then the <i>Fair Trade Act</i> would not apply.</p> <p>2. In February 1999, Article 46 was revised and affirmed the status of the <i>Fair Trade Act</i> as the fundamental economic law that serves as the basis for harmonizing competition and industrial policies.</p>
<p>B8. To what extent does the competition law contain provisions to deter effectively and prevent hard-core cartel conduct, abuses of dominant position or unlawful monopolistic conduct, and contain provisions to address anti-competitive mergers effectively? To what extent does the broader competition policy strive to ensure that this type of conduct is not facilitated by government regulation?</p>		<p>1. The Statement on Competition Policy promulgated in 1998 calls upon all businesses to refrain from introducing, and at the same time, cease all existing restrictive practices that impair economic efficiency or free trade.</p> <p>2. To ensure that the Government’s competition policy caters for the present day’s circumstances and meets the needs of time to enable HKC to maintain its competitive edge, the Government announced on 1 June 2005 the appointment of a Competition Policy Review Committee (the CPRC) by COMPAG to review the existing competition policy and the composition, terms of reference and operations of COMPAG.</p> <p>3. The CPRC reported the results of the review to COMPAG in June 2006.</p>	<p>1. The hard-core cartel conduct is prohibited by Article 14 of the Fair Trade Act.</p> <p>2. In Chinese Taipei’s own experience, most monopolistic enterprises were statutory monopolies which contributed significantly to Chinese Taipei’s early economic development. Since the mid-1980s, a huge trade surplus caused serious macroeconomic unbalance. Chinese Taipei decided to turn its economic policy to a pro-competition one and adopted a series of economic reforms to make its economy more market-oriented.</p> <p>3. According to Article 12 of the <i>Fair Trade Act</i>, the FTC may not prohibit any merger filed if the overall economic benefits of the merger outweigh the disadvantages resulting from the competition restraints that this would cause.</p>

<p>B9. To what extent does the competition law apply broadly to all activities in the economy, including both goods and services, as well as to both public and private activities, except for those excluded?</p>		<p>1. The Government takes a wide range of sector-specific legislative and non-legislative measures ranging from licensing conditions, codes of practice, administrative means, public censure, to anti-competition provisions in specific legislation to deal with anti-competitive acts in various markets.</p>	<p>1. The competition law applies to a company, a partnership, a sole proprietor, a trade association, or in general “any other person or organization engaging in transactions through the provision of goods or services.”</p>
<p>B10. To what extent does the competition law provide for effective investigative powers and sanctions to detect, investigate, punish and deter anti-competitive behaviour?</p>		<p>1. The Competition Policy Advisory Group (COMPAG), which was established in 1997, provides a dedicated and high-level forum to review competition-related policy issues and examine the extent to which the Government, the wider public sector, as well as the private sector should seek to introduce more competition to enhance economic efficiency and free trade.</p>	<p>1. Upon finding substantive evidence and reasonable suspicion that the respondent has violated the <i>Fair Trade Act</i>, a proposal is drafted pursuant to administrative procedures and submitted for deliberation at the Commissioners’ Meeting.</p> <p>2. The FTC employs a collegiate system, and its resolutions can only be passed with over half of all Commissioners in attendance and an affirmative vote from over half of those in attendance.</p>
<p>B11. To what extent do firms and individuals have access to (i) the Competition Authority to become apprised of the case against them and to make their views known, and (ii) to the relevant court(s) or tribunal(s) to appeal decisions of the Competition Authority or seek compensation for damages suffered as a result of conduct contrary to the domestic competition law?</p>		<p>1. All parties subject to action against anti-competitive practices by the Government may appeal to the COMPAG for review of the action concerned.</p>	<p>1. Subparagraph 1, Article 27 provides for the notification of parties and any related third party to appear and make statements.</p> <p>2. Should the parties be dissatisfied with the decision of the FTC, they have the right to petition to the Appeal and Petition Committee under the Cabinet within 30 days.</p> <p>3. If they are still dissatisfied with the decision of the Committee, they have the right to bring the suit to the administrative court within two months of the day after receiving the disposition letter.</p>

<p>B12. In the absence of a competition law, to what extent is there an effective framework or mechanism for deterring and addressing private anti-competitive conduct?</p>		<p>1. The Statement on Competition Policy promulgated in 1998 calls upon all businesses to refrain from introducing, and at the same time, ceases all existing restrictive practices that impair economic efficiency or free trade.</p>	<p>1. Chinese Taipei has competition law.</p>
<p>C. Market Openness Policies</p>			
<p>C1. To what extent are there mechanisms in regulatory decision-making to foster awareness of trade and investment implications?</p>		<p>1. Trade and investment are the key pillars of HKC's economy, and our regulators are fully aware of the importance of providing a free and open trade and investment environment.</p>	<p>1. Chinese Taipei's investment regime is highly liberalized and transparent, and embraces earnestly the goal of trade facilitation. As of 2005, 99% of our manufacturing industries and 95% of our service industries were fully open to foreign investment</p>
<p>C2. To what extent does the government promote approaches to regulation and its implementation that are trade-friendly and avoid unnecessary burdens on economic actors?</p>		<p>1. HKC is fully committed to the promotion of free trade and competition. Our open economy, which exposes its traders and producers to acute international competition, is a good illustration of this policy.</p>	<p>1. The Ministry of Economic Affairs convenes seminars with foreign investors on a regular basis to exchange opinions with them on laws and regulations with which they are concerned. 2. DOIS of the Ministry of Economic Affairs also coordinates with other government agencies to make improvements being suggested by foreign investors.</p>
<p>C3. To what extent are customs and border procedures designed and implemented to provide consistency, predictability, simplicity and transparency so as to avoid unnecessary burdens on the flow of goods? To what extent are migration procedures related to the temporary movement of people to supply services transparent and consistent with the market access offered?</p>		<p>1. HKC is a free port with no customs tariff. 2. People from about 170 countries and territories may come to HKC visa-free for visits ranging from seven to 180 days.</p>	<p>1. Chinese Taipei's Customs has implemented a transaction value system since 1986, which is in full compliance with the WTO Valuation Agreement. 2. In order to expedite cargo clearance while ensuring the compliance of traders, Chinese Taipei's Customs has implemented a post-clearance audit since May 2002. 3. Chinese Taipei offers visas to four categories of natural persons wishing entry in order to provide a service: business visitors; intra-corporate transferees; natural persons employed by business entities in Chinese Taipei; and employees of a contractor outside Chinese Taipei which offers services to a business inside Chinese Taipei.</p>

<p>C4. To what extent has the government established effective public consultation mechanisms and procedures (including prior notification, as appropriate) and do such mechanisms allow sufficient access for all interested parties, including foreign stakeholders?</p>		<p>Same as C5.</p>	<p>1. The Ministry of Economic Affairs convenes seminars as well as formal or informal meetings with foreign investors (in particular, via the American Chamber of Commerce, the European Chamber of Commerce, and the Japanese Chamber of Commerce) on a regular basis to solicit opinions from them on laws and regulations with which they are concerned, and on the possible improvements in terms of their implementation.</p>
<p>C5. To what extent are government procurement processes open and transparent to potential suppliers, both domestic and foreign?</p>		<p>1. The homepage maintained by the Financial Services and the Treasury Bureau (The Treasury Branch) at www.fstb.gov.hk/tb/eng/procurement/content.html currently serves as the common entry point for government procurement information of HKC on the Internet.</p> <p>2. All information required for suppliers to prepare a responsive offer is set out in tender documents. All tenderers are given the same information.</p> <p>3. HKC has established an independent Review Body on Bid Challenges to handle complaints of alleged breaches of the WTO Agreement on Government Procurement (GPA).</p>	<p>1. Since the enactment of the Government Procurement Act in 1999, the government procurement system of Chinese Taipei has conformed to international norms.</p> <p>2. Chinese Taipei has established the Complaint Review Board for Government Procurement (CRBGP), an impartial and independent mechanism for suppliers to seek resolution of their complaints, with a view to providing a non-discriminatory, timely, transparent, and effective bid challenge system.</p>

<p>C6. Do regulatory requirements discriminate against or otherwise impede foreign investment and foreign ownership or foreign supply of services? If elements of discrimination exist, what is their rationale? What consideration has been given to eliminating or minimising them, to ensure equivalent treatment with domestic investors?</p>		<p>1. HKC has one of the world's most open and liberal investment regimes and maintains a level playing field for foreign and local investors alike.</p> <p>2. The only national treatment exception applies to a narrow segment of the broadcasting services sector.</p>	<p>1. At present, there are only very few industrial sectors for which our governing agencies apply restrictions or prohibitions on investment by foreign nationals, based on the need to maintain security and public order.</p> <p>2. Chinese Taipei is now a member of WTO, and the related managements are pursuant to the WTO regulations.</p>
<p>C7. To what extent are harmonised international standards being used as the basis for primary and secondary domestic regulation?</p>		<p>1. HKC submitted in January 1996 a statement regarding the implementation and administration of the World Trade Organization (WTO) Agreement on Technical Barriers to Trade. In line with the Agreement, the policy of HKC is to adopt international standards wherever possible.</p>	<p>1. Chinese Taipei's policy on technical regulations observes the provisions of the WTO TBT Agreement.</p> <p>2. The rates of harmonized international standards being used as the basis for technical regulations in sectors of electrical/electronic products, chemical products, measuring instruments are 100%, 84% and 81% respectively.</p> <p>→ modified in 2007</p> <p>3. The rates of harmonized international standards being used as the basis for technical regulations in sectors of electrical/electronic products, chemical products, measuring instruments are 100%, 89% and 81% respectively.</p>

<p>C8.To what extent are measures implemented in other countries accepted as being equivalent to domestic measures?</p>		<p>1. Since 1996, HKC has participated in five APEC MRAs (Mutual Recognition Arrangements) and some other recognition arrangements of conformity assessment in the voluntary sector.</p>	<p>1. Chinese Taipei has not yet implemented the concept of equivalency in practice.</p> <p>2. The mutual recognition agreements (MRAs) that Chinese Taipei has concluded with its trading partners are mainly on the acceptance of conformity assessment results. For electrical and electronic products, Chinese Taipei has concluded MRAs with the United States, Canada, Australia, New Zealand and Singapore.</p>
<p>C9. To what extent are procedures to ensure conformity developed in a transparent manner and with due consideration as to whether they are effective, feasible and implemented in ways that do not create unnecessary barriers to the free flow of goods or provision of services?</p>		<p>1. HKC has been participating in the development and implementation of the Mutual Recognition Arrangement (MRA) for Conformity Assessment.</p> <p>2. To keep abreast of the development of international standards, and to facilitate the use of such standards, HKC participates in the International Organization for Standardization (ISO).</p>	<p>1. Conformity assessment procedures are developed by following the provisions of the TBT Agreement in terms of transparency</p> <p>2. In the future, an APEC Engineer whose home country has a mutual recognition agreement with Chinese Taipei and whose qualifications are recognized by the Chinese Taipei APEC Engineer Monitoring Committee will be able to apply for practice registration in a due procedure</p>
<p>Other developments</p> <p>-some major developments and changes since September 2006</p> <p>-submitted in June 2007</p> <p>EC meeting, Australia</p>	<p>1. President Bush issued Executive Order 13422 on 18 Jan. 2007, which made several amendments to E.O.12866 on regulatory planning and review. The most important aspects of the amendments relate to the guidance that federal agencies develop and provide to the public</p> <p>2. From Oct. in 2005 to Sept. 2006, OMB concluded an oversight review of the major rules so that social regulators and federal agencies could present estimates of both monetized costs and benefits for seven rules.</p>	<p>1. November 2006, HKC launched the “Be the Smart Regulator Programme,” which aims to develop a model of best practices that can be replicated across licenses and departments.</p>	<p>1. Some modifications on the answers of 2006</p>

ANNEX 2. SUMMARY OF TWO COUNTRIES WHICH HAVE CARRIED OUT A SELF-ASSESSMENT IN 2007

	Korea	Australia
1. Submission date	June, 2007	June, 2007
2. Results		
2.1.Horizontal criteria		
H1. To what extent is there an integrated policy for regulatory reform?	<p>1. In 1998, Korea initiated its full-scale regulatory reform to overcome the financial crisis. It enacted the Basic Act on Administrative Regulations (BAAR) which provides regulatory principles such as the transparency of regulations and competition, etc. It also established the Regulatory Reform Committee (RRC) in April 1998 and introduced procedures for reviewing regulatory proposals such as Regulatory Impact Analysis (RIA).</p> <p>2. The Korean government abolished 5,958 regulations and revised 2,981 regulations in 1998 and 1999. This means that more than half of the total of 11,125 regulations were eliminated or rationalized during two years</p> <p>3. The government established the Regulatory Reform Task Force (RRTF) and the Business Difficulties Resolution Center (BDRC). The RRTF, a group of public officials and private-sector experts, has carried out plans to rationalize 57 bundle regulations which involve multiple ministries and have great impact on the life of the general public</p>	<p>1. The Australian Government has well-established principles, conventions and procedures by which its regulation-making and review systems operate, designed to ensure that these processes operate in a co-ordinated and consistent manner, and include consideration of all relevant factors, including regulatory, competition and market openness policies.</p>
H2. How strongly do political leaders and senior officials express support for regulatory reform? How is the support translated in practice into reform and how have related groups reacted?	<p>1. To make an efficient government, President Kim directed that more than half of regulations should be abolished or rationalized. As a result, in 1998 and 1999, out of 11,125 regulations, 5,958 were eliminated and 2,981 were revised.</p> <p>2. His successor, President Roh Moo-hyun, too, has a strong commitment to regulatory reform. He once said that “We will put all resources to reform regulations lagging behind market changes.”</p>	<p>1. Regulatory reform is promoted and supported at the highest level of the Australian Government, with both the Prime Minister and the Treasurer publicly recognizing the importance of eliminating inefficient and ineffective regulation and committing to initiatives to reduce burdens on business, individuals and the economy.</p> <p>2. One of the most successful regulatory reforms introduced was the National Competition Policy (NCP) in 1995. The NCP established for the first time, a consistent national economic regulatory framework directed at maintaining and promoting competition in all forms of business activity.</p>

	3. As a result, the government eliminated or updated some 18% of the registered regulations in 2006 alone.	3. Though varying in size, the benefits of NCP and related reforms have been spread across the community, including rural and regional Australia. The Productivity Commission found that in the majority of the regional areas, regional output and thus regional income increased.
H3. What are the accountability mechanisms that assure the effective implementation of regulatory, competition and market openness policies?	1. The Regulatory Reform Committee (RRC) plays a leadership role in implementing and co-ordinating the nation's regulatory reform policies. The Fair Trade Commission (FTC) and the Ministry of Foreign Affairs and Trade (MOFAT) have responsibility for applying policies on competition and market openness, respectively.	1. One key accountability mechanism that the Australian Government has adopted is the separation of policy formulation from the application and enforcement of the relevant policy. 2. In relation to the implementation of regulatory quality policies, the Australian Government has established an independent body called the Office of Best Practice Regulation (OBPR), which plays a crucial role in ensuring that the Government's regulation making requirements are effectively carried out. 3. To assist in ensuring that all government policies are effectively implemented, the Cabinet Implementation Unit (CIU) has been established within the Department of the Prime Minister and Cabinet to ensure that policies prepared for consideration by the Prime Minister and Cabinet have clear objectives, a robust assessment of costs and benefits, and are clear regarding how they will be implemented. 4. The Department of Foreign Affairs and Trade has overall responsibility for Australia's trade policy.
H4. To what extent do policies avoid discrimination between like goods whether foreign and domestic?	1. The Korean government prohibits discrimination against foreign suppliers in accordance with a WTO agreement. 2. The ministries announce new legislations under the Administrative Procedures Act to collect opinions from interested parties including foreign business people, thereby eliminating discriminatory factors in the first place 3. The Regulatory Reform Committee (RRC) and ministries established consultation mechanisms with foreign business organizations such as the American Chamber of Commerce.	1. The Australian Government seeks to ensure that policies in general do not discriminate against goods, services and providers based on their origin. 2. While Australia does not have any sectors that are closed to foreign investment, it does impose 49 per cent foreign equity ceilings in three sectors: international aviation, federally-leased airports and domestic shipping.

<p>H5. To what extent has regulatory reform been encouraged and co-ordinated at all levels of government?</p>	<p>1. At central government level, ministries work together to co-ordinate regulatory policy, competition and market openness policies.</p> <p>2. The central government introduces regulations on the principle that a regulation must be based on law, and local governments may enact some ordinances only within the scope of authority delegated by law.</p>	<p>1. Historically, Australian government has pursued regulatory reform through COAG (Council of Australia Government). Established in 1992, COAG is the most significant intergovernmental forum in Australia. Membership of COAG comprises the Prime Minister, State Premiers, Territory Chief Ministers and the President of the Australian Local Government Association.</p> <p>2. Recently, COAG has reviewed National Competition Policy and the recommendations from this review have resulted in the introduction of the National Reform Agenda (NRA)</p>
<p>H6. Are the policies, laws, regulations, practices, procedures and decision making transparent, consistent, comprehensible and accessible to users both inside and outside government, and to domestic as well as foreign parties?</p>	<p>1. Pursuant to Article 3 of the Act on Disclosure of Information by Public Agencies, all people have the right to ask for the disclosure of information that the public agency possesses and manages.</p> <p>2. In accordance with the Administrative Procedures Act, ministries must announce new regulatory proposals and legislations for a minimum of 20 days in the government gazette or on their internet homepages.</p> <p>3. All laws and ordinances, and regulations are available on the internet homepages of the Ministry of Government Legislation (http://www.moleg.go.kr).</p>	<p>1. The Australian Government recognizes that in order to ensure that existing policies, laws, regulations, practices, and decision-making systems and processes remain relevant and appropriate over time, it is important that they be reviewed on a regular basis.</p> <p>2. The Australian Government publishes all of its laws and regulations on <i>Comlaw</i>, the legal information retrieval system administered by the Australian Attorney-General's Department (www.comlaw.gov.au).</p>
<p>H7. Are the forms of regulation, the establishment of regulatory authority and the introduction of competition coherent in timing and sequencing?</p>	<p>1. At the early stage of regulatory reform, Korea focused on reducing the number of regulations. Subsequent regulatory reform, however, was shifted towards a stage of regulatory quality improvement and regulatory management.</p> <p>2. To substantively implement qualitative regulatory reform, the RRC has increased the number of its private-sector members and the effectiveness of Regulatory Impact Analysis. The new institutions, the Business Difficulties Resolution Center (BDRC) and the Regulatory Reform Task Force (RRTF), were launched in August 2004.</p>	<p>1. The Australian Government recognizes the importance of ensuring that the timing and sequencing of regulatory reforms are appropriate in order to deliver comprehensive regulatory reforms.</p>

<p>H8. To what extent are there effective inter-ministerial mechanisms for managing and co-ordinating regulatory reform and integrating competition and market openness considerations into regulatory management systems?</p>	<p>1. A ministry, which drafts regulations and legislations, is obliged to consult with relevant ministries in accordance with the Administrative Procedures Act and the Rules of Operating Regulation on Legislation.</p> <p>2. If a regulatory proposal or legislation includes constraints on competition, the ministry concerned must consult with the Fair Trade Commission (FTC).</p> <p>3. In case a regulatory proposal or legislation is considered inconsistent with the WTO agreements, the Ministry of Foreign Affairs and Trade (MOFAT) should review it and notify the ministry of the results of its review.</p>	<p>1. In relation to co-ordinating inter-jurisdictional regulatory reform in Australia, there are over 40 Commonwealth-State Ministerial Councils and forums that facilitate consultation and co-operation between the Australian Government and state and territory governments in specific regulatory reform areas.</p> <p>2. Responsible ministers from each government participate in these councils with the councils initiating, developing and monitoring policy reform jointly, and taking joint action in the resolution of issues that arise between governments.</p>
<p>H9. Do the authorities responsible for the quality of regulation and the openness of markets to foreign firms and the competition authorities have adequate human and technical resources, to fulfil their responsibilities in a timely manner?</p>	<p>1. The Regulatory Reform Committee (RRC) is comprised of 7 government members and 18 private-sector members and is co-headed by the Prime Minister and a private-sector expert.</p> <p>2. The Regulatory Reform Bureau in the Prime Minister’s Office, the Secretariat of the RRC, is staffed by 43 members including officials from ministries and local government organizations and private-sector experts in finance, housing and environment.</p> <p>3. The Regulatory Reform Task Force (RRTF), which focuses on the strategic task of developing “user-oriented regulations,” consists of 21 government officials and 16 private-sector experts from companies, economic organizations and research institutes. The 37 staff members focus on improving “bundle regulations” that involve multiple ministries.</p>	<p>1. Significant resources are allocated to Commonwealth Departments and statutory bodies responsible for the development and enforcement of regulation quality, competition and market openness policies.</p> <p>2. In the past ten years, funding for the ACCC has increased significantly, rising by 156% in real terms from the 1996-97 Budget to the 2006-07 Budget.</p>
<p>H10. Are there training and capacity building programmes for rule-makers and regulators to ensure that they are aware of high quality regulatory, competition and market openness considerations?</p>	<p>1. The Central Officials Training Institute has offered public officials a course on regulatory reform every year since 2004. Every year, about 50 officials receive the education.</p> <p>2. Since 2005, a three-week course on regulatory reform has been regularly offered on an internet site (http://cyber.coti.go.kr). About 700 public officials take the course every year.</p> <p>3. To foster experts in RIA, the government has offered an advanced-level course on RIA in collaboration with the Korea Institute of Public Administration.</p>	<p>1. The OBPR provides training and guidance to government officials to assist them in meeting the assessment requirements to justify regulatory proposals, including undertaking adequate cost-benefit analysis and conducting consultation processes.</p>

<p>H11. Does the legal framework have in place or strive to establish credible mechanism to ensure the fundamental due process rights of persons subject to the law?</p>	<p>1. Article 21 of the Administrative Procedures Act (APA) provides that if administrative agencies take measures to impose obligations on a person or to impose restrictions on his/her rights or interests, they shall inform him/her of the contents and legal basis</p> <p>2. Article 27 of the APA provides that the person concerned may make statements, either written, oral or through the internet.</p>	<p>1. The Australian legal system is a well-established system based on the common law with legislative power reposed in parliaments at the Commonwealth (or federal) level as well as in each of the States and Territories.</p>
<p>A. Regulatory Policy</p>		
<p>A1. To what extent are capacities created that ensure consistent and coherent application of principles of quality regulation?</p>	<p>1. The RRC (Regulatory reform committee) is in charge of setting the general direction of the regulatory policies and researching the development direction of systems.</p> <p>2. The Regulatory Reform Task Force (RRTF), a joint private-public body, selects and improves strategic tasks such as major bundle regulations that are interrelated among a number of ministries and have large ripple effects on people's lives.</p> <p>3. The Business Difficulties Regulation Center (BDRC) receives the general public's suggestions and business difficulties and resolves these issues in a one-step manner by visiting problem sites, related ministries and collecting the opinions of related stakeholders.</p>	<p>1. The Australian Government has systems, processes and structures in place to ensure that 6 good regulation principles are adhered to, including establishing the independent OBPR as an operating unit within the Productivity Commission and providing the OBPR with a central role in delivering the Government's best practice regulation requirements.</p>
<p>A2. Are the legal basis and the economic and social impacts of drafts of new regulations reviewed? What performance measurements are being envisaged for reviewing the economic and social impacts of new regulations?</p>	<p>1. The Regulatory Reform Committee (RRC) reviews the feasibility of a draft regulation based on the RIA results and recommends a repeal or improvement if the draft regulation is unreasonable. Stakeholders may participate in the whole review processes and may make suggestions.</p> <p>2. With the July 2006 amendment of the Basic Act on Administrative Regulation, it has become compulsory to open to the public the RIA when making a notice of pending legislation through either the government gazette or the internet.</p>	<p>1. The Australian Government's regulation-making requirements necessitate consideration and assessment of the impact of proposed regulation, including identifying and categorizing the expected economic, social and environmental impact of the proposed options as likely benefits and costs.</p>

<p>A3. Are the legal basis and economic and social impacts of existing regulations reviewed, and if so, what use is made of performance measurements?</p>	<p>1. Existing regulations are largely reviewed.</p> <p>2. Although legal basis, also the economic and social impacts are being reviewed for existing regulations, performance measurement to the level of Impact Analysis on new regulations is not demanded.</p>	<p>1. The Productivity Commission, the Government's principal independent review and advisory body on microeconomic policy and regulation, is undertaking an annual regulation review process, to examine the existing stock of Australian Government regulation and identify inefficient regulation that is unnecessarily burdensome, complex or redundant, or duplicates regulations in other jurisdictions.</p> <p>2. To ensure that all industry sectors are examined by the Productivity Commission, and to provide certainty for businesses, the reviews will be conducted according to a five year cycle.</p>
<p>A4. To what extent are rules, regulatory institutions, and the regulatory management process itself transparent, clear and predictable to users both inside and outside the government?</p>	<p>1. According to the Administrative Procedure Act, ministries must announce new regulatory proposals and legislations in the government gazette or on their internet homepage for a minimum of 20 days when enacting or amending related laws and regulations.</p> <p>2. According the Basic Act on Administrative Regulations, the Regulatory Reform Committee (RRC) makes public the bills it reviews, the review results and other regulatory review process through the homepage.</p>	<p>1. The Australian Government's regulation-making requirements and process are publicly available, with all relevant process and guidance documentation available on the website of the OBPR, including the <i>Best Practice Regulation Handbook</i> and related guidance material. (www.obpr.gov.au/bestpractice/index.htm)</p>
<p>A5. Are there effective public consultation mechanisms and procedures including prior notification open to regulated parties and other stakeholders, non-governmental organisations, the private sector, advisory bodies, accreditation bodies, standards-development organisations and other governments?</p>	<p>1. According to the Administrative Procedure Act, each ministry should collect the opinions of the public for 20 days through a notification of pending legislation when newly establishing or revising laws and proposed regulations.</p> <p>2. A regular consultation channel is operated between the RRC and foreign chambers of commerce in Korea in order to reflect the opinions of foreign businesses. Especially in the case of the American Chamber of Commerce, a total of 36 proposals were received and processed through numerous rounds of friendly gatherings since June 2005.</p>	<p>1. The Australian Government has adopted a whole-of-government policy on consultation, which sets out seven principles for best practice consultation that need to be followed by all agencies when developing regulation.</p> <p>2. Seven principles are: continuity, targeting, appropriate timeliness, accessibility, transparency, consistency and flexibility; and evaluation and review.</p> <p>3. Related to this policy are three specific consultation mechanisms: Annual Regulatory Plans; a business consultation portal; and the requirement for policy 'green papers' and exposure drafts for matters of major significance.</p>

<p>A6. To what extent are clear and transparent methodologies and criteria used to analyze the regulatory impact when developing new regulations and reviewing existing regulations?</p>	<p>1. In order to develop a new regulation or reinforce an existing regulation, regardless of the type of legal form, be it law, enforcement decree or rules, each ministry must conduct a Regulatory Impact Analysis (RIA).</p> <p>2. The RRC recommends that ministries withdraw or improve the draft regulations if the result of the review does not recognize the justification for such action.</p> <p>3. Due to the characteristics of the public sector in that it is difficult to make quantitative measurement; the RIA has been focused on qualitative analysis.</p>	<p>1. All proposals are required to undergo a preliminary assessment to establish whether they are likely to involve an impact on business and individuals or the economy.</p> <p>2. If the preliminary assessment shows that a proposal potentially involves medium compliance costs, a full assessment of the compliance cost implications should be carried out using the Australian Government's <i>Business Cost Calculator</i> (BCC)</p> <p>3. Proposals that have a significant impact on business and individuals or that restrict competition, require more detailed analysis documented in a RIS (Regulation Impact Statements) If the impacts include medium or significant compliance costs, the BCC report forms part of the RIS.</p>
<p>A7. How are alternatives to regulation assessed?</p>	<p>1. The ministry that drafts the regulations must consider a practicable regulatory alternative from the early initial stages where the introduction of a regulation is reviewed. It is because one of the Regulatory Impact Analysis (RIA) review criteria is whether there exists an alternative to regulation and whether there are overlaps with existing regulations.</p>	<p>1. It is a requirement that an impact assessment of a regulatory proposal should test the effectiveness and appropriateness of alternative - non-regulatory as well as regulatory - options for achieving the stated objectives, to help decision makers select the most effective and efficient approach. The option adopted should be targeted at the identified problem so that it does not lead to unintentional impacts.</p>
<p>A8. To what extent have measures been taken to assure compliance with and enforcement of regulations?</p>	<p>1. Those regulations with low compliance should be abolished or a new alternative to the regulation should be presented.</p> <p>2. Since 2006, 'Regulatory Reform Monitoring Agents' have been selected for each sector and monitoring has been conducted on regulatory reform achievements. A total of 30 monitoring agents who have been selected in 10 areas such as construction and transportation, environment, health and welfare, have been monitoring the regulatory reform efforts and achievements, the effects and side effects of regulatory reform and others.</p>	<p>1. The Australian Government requires that as part of the regulation-making process, it is necessary to consider how the proposed option will be implemented and enforced, including an assessment of practical implementation considerations.</p>
<p>B. Competition and Law</p>	<p>Not done</p>	

<p>B.1 To what extent has a policy been embraced in the jurisdiction that is directed towards promoting efficiency and eliminating or minimising the material competition distorting aspects of all regulations that have an impact upon markets?</p>		<p>1. The Australian Government's regulation-making process includes a practical approach for considering the impacts on business and individuals and on competition potentially flowing from regulatory proposals through a set of threshold questions (a competition checklist) followed by a competition assessment.</p>
<p>B2. To what extent do the objectives of the competition law and policy include promoting and protecting the competitive process and enhancing economic efficiency including consumer surplus?</p>		<p>1. Section 2 of the <i>Trade Practices Act 1974</i> (TPA) states that 'the object of this Act is to enhance the welfare of Australians through the promotion of competition and fair trading and provision for consumer protection.'</p> <p>2. The 2003 <i>Review of the Competition Provisions of the Trade Practices Act</i> (Dawson Review) stated that the ultimate goal of competition law is the achievement of economic efficiency, and competition is the means to that end.</p>
<p>B3. To what extent does the Competition Authority or another body have (i) a clear mandate to advocate actively in order to promote competition and efficiency throughout the economy and raise general awareness of the benefits of competition, and (ii) sufficient resources to carry out any advocacy functions included in its mandate?</p>		<p>1. The ACCC (Australia Competition and Consumer Commission) has broad responsibilities for administering the TPA and associated legislation.</p> <p>2. The ACCC also has a clear mandate to raise awareness of the benefits of competition. Section 28(1) of the TPA provides that the ACCC has the function of making the public aware of matters affecting the interests of consumers, and making known for the guidance of consumers the rights and obligations of persons under the laws that are designed to protect consumer interests.</p> <p>3. Significant resources are allocated to the ACCC to enable it to carry out its functions under the TPA. Funding is allocated to the ACCC in the Australian Government budget measures.</p>
<p>B4. To what extent are measures taken to neutralise the advantages accruing to government business activities as a consequence of their public ownership?</p>		<p>1. The <i>Competition Principles Agreement (CPA)</i>, signed by the Australian and all State and Territory governments on 11 April 1995, committed them to apply competitive neutrality principles to government activities.</p> <p>2. The Australian Government and each State and Territory must report in its National Competition Policy Annual Report on compliance with competitive neutrality policy, including handling of complaints received.</p>

<p>B5. To what extent does the agency responsible for the administration and enforcement of the competition law (the “Competition Authority”) operate autonomously, and to what extent are its human and financial resources sufficient to enable it to do its job?</p>		<p>1. The ACCC is an independent statutory authority. Therefore, while it is a government organization, it acts independently in enforcing the law. The ACCC consists of a chairperson, deputy and five full-time members (commissioners). Commission members are appointed by the Governor-General for terms of up to five years.</p> <p>2. The ACCC has been allocated substantial funding in the Australian Government Budget measures.</p>
<p>B6. To what extent is the role of enforcement decision-makers transparent, especially when there are multiple government bodies involved in decision-making, for example, regarding who the decision-maker was, factors taken into account by such a decision-maker, and their relative weighting?</p>		<p>1. The ACCC is the only agency dealing generally with competition matters and the only agency with responsibility for enforcing the TPA.</p> <p>2. The ACCC’s decision making process for merger clearances and authorizations provides transparency and certainty. The ACCC has issued detailed guidelines which outline its administration and enforcement of mergers, including the factors it will take into account in applying the competition tests under the Act.</p>
<p>B7. To what extent is there a transparent policy and practice that addresses the relationship between the Competition Authority and sectoral regulatory authorities?</p>		<p>1. In general, the ACCC has responsibility for competition matters at the economy-wide level. However, the energy and telecommunications sectors are subject to specific sectoral arrangements.</p>
<p>B8. To what extent does the competition law contain provisions to deter effectively and prevent hard-core cartel conduct, abuses of dominant position or unlawful monopolistic conduct, and contain provisions to address anti-competitive mergers effectively? To what extent does the broader competition policy strive to ensure that this type of conduct is not facilitated by government regulation?</p>		<p>1. The competition provisions are set out in Part IV of the TPA. Section 45 prohibits certain anticompetitive agreements, section 46 prohibits a corporation with a substantial degree of market power from misusing its power for a prescribed purpose, and section 50 prohibits acquisitions that have the effect or likely effect of substantially lessening competition in a market.</p> <p>2. Contravention of these prohibitions carries a maximum civil penalty of, for individuals, \$500,000, and for corporations, the greater of \$10 million or three times the value of the benefit from the cartel.</p>

<p>B9. To what extent does the competition law apply broadly to all activities in the economy, including both goods and services, as well as to both public and private activities, except for those excluded?</p>		<p>1. In response to the National Competition Policy reforms, the competition provisions now apply as broadly as is possible within constitutional limitations, to all business activities within the economy.</p>
<p>B10. To what extent does the competition law provide for effective investigative powers and sanctions to detect, investigate, punish and deter anti-competitive behaviour?</p>		<p>1. Part XII of the TPA contains significant powers for the ACCC to investigate possible breaches of the TPA.</p> <p>2. New search and seizure provisions in Part XID commenced on 1 January 2007, which enable the ACCC to determine whether there has been a contravention of the TPA.</p> <p>3. Part VI of the TPA provides a broad range of sanctions for contravening conduct.</p>
<p>B11. To what extent do firms and individuals have access to (i) the Competition Authority to become apprised of the case against them and to make their views known, and (ii) to the relevant court(s) or tribunal(s) to appeal decisions of the Competition Authority or seek compensation for damages suffered as a result of conduct contrary to the domestic competition law?</p>		<p>1. The ACCC generally informs firms or individuals if they are being investigated for a possible contravention of the TPA, and seeks their views on the allegations made against them.</p> <p>2. The Australian Competition Tribunal is an independent body with the primary function of hearing appeals from decisions made by the ACCC in relation to authorizations, notifications and access to essential facilities.</p>
<p>B12. In the absence of a competition law, to what extent is there an effective framework or mechanism for deterring and addressing private anti-competitive conduct?</p>		<p>1. Australia has extensive competition laws.</p>
<p>C. Market Openness Policies</p>		
<p>C1. To what extent are there mechanisms in regulatory decision-making to foster awareness of trade and investment implications?</p>		<p>1. The Australian Government's best practice regulation requirements provide for the consideration of all feasible options to achieve particular government objectives, regulatory and non-regulatory, including consideration of the trade and investment implications of proposed regulation.</p>

		2. Where a proposed regulation is likely to have an effect on trade, a Trade Impact Statement is required to be incorporated into the RIS to assess the overall impact on Australia's international trade.
C2. To what extent does the government promote approaches to regulation and its implementation that are trade-friendly and avoid unnecessary burdens on economic actors?		<p>1. Australia is committed to maintaining open markets and continues to work for genuine trade liberalization.</p> <p>2. Australia has concluded agreements with New Zealand, Singapore, Thailand and the United States of America. Australia ensures that all FTAs are fully consistent with WTO commitments.</p>
C3. To what extent are customs and border procedures designed and implemented to provide consistency, predictability, simplicity and transparency so as to avoid unnecessary burdens on the flow of goods? To what extent are migration procedures related to the temporary movement of people to supply services transparent and consistent with the market access offered?		<p>1. Australia implemented a new IT system in 2005, the Integrated Cargo System (ICS), to replace outdated reporting and processing measures. The ICS pulls together border, commercial and profiling applications, streamlining the flow of information relating to Cargo in order to provide better facilitation to the movement of legitimate trade.</p> <p>2. On-line access to Australian Customs laws, regulations, procedures and administrative rulings is available, together with a wide variety of Customs information, through the Australian Customs website, www.customs.gov.au.</p> <p>3. Australian business entry arrangements allow for short stay business travel to Australia. The business short stay visa provides bona fide business people with single or multiple entries to Australia. The visa may be granted for multiple entries for a stay of up to three months on each occasion with a maximum validity of ten years.</p>
C4. To what extent has the government established effective public consultation mechanisms and procedures (including prior notification, as appropriate) and do such mechanisms allow sufficient access for all interested parties, including foreign stakeholders?		<p>1. The Australian Government has adopted a whole-of-government policy on consultation, which sets out best practice principles that need to be followed by all agencies when developing regulation.</p> <p>2. Australia consults with multilateral forums such as the OECD, WTO and APEC, and members of those forums, to influence multilateral work on trade and investment liberalization.</p>

<p>C5. To what extent are government procurement processes open and transparent to potential suppliers, both domestic and foreign?</p>		<p>1. The Australian Government procurement market is open to, and does not discriminate between, potential products or suppliers of domestic or foreign countries.</p> <p>2. The centre-piece of the Australian Government's procurement framework is the <i>Commonwealth Procurement Guidelines</i> (CPGs).</p> <p>3. Full information on all the laws, regulations and policies governing procurement in the Australian Government is available through a series of publications, all of which are available through the website at www.finance.gov.au</p>
<p>C6. Do regulatory requirements discriminate against or otherwise impede foreign investment and foreign ownership or foreign supply of services? If elements of discrimination exist, what is their rationale? What consideration has been given to eliminating or minimising them, to ensure equivalent treatment with domestic investors?</p>		<p>1. While Australia does not have any sectors that are closed to foreign investment, it does impose 49 per cent foreign equity ceilings in three sectors: international aviation, federally-leased airports and domestic shipping.</p> <p>2. The purpose of these restrictions is to allow the Australian Government to preserve majority Australian involvement in key sectors of the economy.</p>
<p>C7. To what extent are harmonised international standards being used as the basis for primary and secondary domestic regulation?</p>		<p>1. Australia's general approach to international standards is that, where such standards exist and are judged to be relevant, effective and appropriate in the Australian context to achieving regulatory objectives, Australia may consider adopting them.</p>
<p>C8. To what extent are measures implemented in other countries accepted as being equivalent to domestic measures?</p>		<p>1. The Trans-Tasman Mutual Recognition Arrangement (TTMRA) between Australia and New Zealand is a leading edge mechanism for the implementation of equivalence. The TTMRA provides that goods (with some exemptions) that may legally be sold in Australia may be sold in New Zealand, and vice versa.</p>
<p>C9. To what extent are procedures to ensure conformity developed in a transparent manner and with due consideration as to whether they are effective, feasible and implemented in ways that do not create unnecessary barriers to the free flow of goods or provision of services?</p>		<p>1. Australian regulators use a range of conformity assessment measures including reliance on supplier declaration of compliance, pre-market certification/approvals and post market surveillance.</p> <p>2. Australia has played a leading role in the development of mutual recognition agreements (MRAs) on conformity assessment at both the government-to-government and voluntary level.</p>