

**APEC Subcommittee on Standards and Conformance**  
**6<sup>th</sup> Conference on Good Regulatory Practice (GRP)**  
**Report to the Sub-Committee on Standards and Conformance (SCSC)**  
**March 5, 2011**

*The United States provides the following report.*

The APEC SCSC held the 6<sup>th</sup> Conference on Good Regulatory Practice (GRP) March 1-2, 2011 in Washington D.C. during the Senior Officials Meeting (SOM) I. The conference, which was led by the United States and co-sponsored by Chile, Japan, Malaysia, New Zealand, Peru, and Singapore, brought together experts from governments, business, and international organizations to discuss the critical regulatory issues facing the APEC community. Specifically, APEC economies need to be able to achieve effective regulatory outcomes while promoting a regulatory environment that is conducive to trade, investment and job creation in the region. Speakers over the two-day conference were nearly unanimous on the role of greater transparency and public consultation in promoting better regulatory outcomes while avoiding needless barriers to trade. Several participants, including those from the business community, conveyed a sense of urgency about the need for greater transparency and alignment of regulatory approaches in the region in order to have a greater quality in the overall regulatory environment.

*Day One*

Ambassador Demetrios Marantis, Deputy U.S. Trade Representative, welcomed conference delegates. Ambassador Marantis emphasized that the United States will prioritize outcomes on regulatory coherence and convergence during 2011. He emphasized the critical nexus between the quality of the regulatory environment in APEC economies and the openness to trade and investment, and ultimately with the vibrancy of economic growth and quality of life in the region. He noted that cooperative work to advance good regulatory practices in the region is a concrete and proactive way to prevent needless obstacles to trade. He challenged conference participants to review the record on implementing good regulatory practice and regulatory cooperation by APEC economies and assess what next steps are necessary to make the next push to strengthening GRP and cooperation among APEC members. He also tasked participants to make the connection between good regulatory cooperation to a seamless regional economy.

In Session 1, experts from the World Bank, the World Trade Organization (WTO) and the firm of Jacobs & Associates emphasized the critical linkages between the use of good regulatory practices in advancing trade and growth, as well as in achieving better quality in regulatory outcomes. All experts stressed the importance of achieving greater regulatory alignment to promoting trade and investment in the region. Mr. John Wilson of the World Bank noted in particular that trade expansion supports new job creation, and that regulatory reforms can help achieve these goals. He noted that recent World Bank research supported the conclusion that the ability of developing country exporters to demonstrate conformance to international standards has positive effects on exports. Mr. Wilson also noted the need to strengthen regulatory cooperation in the region, and observed that new and concrete commitments for projects on the ground could help catalyze this cooperation. In this regard, joint work with private sector is important, including by leveraging public-private partnerships.

Mr. Scott Jacobs of Jacobs & Associates stressed that the microeconomic effects of a poor regulatory environment have corrosive effects on day-to-day life in markets and employment. He noted Mr. Wilson's observation on the connection between trade and better regulation, and expressed his view that

the positive correlation between regulatory reforms and improved trade was not simply complimentary, but that the relationship was logarithmic. It was his view that regulatory reform has the ability to act as “rocket fuel” in catalyzing trade and investment. He observed that an impact assessment of an initiative to institute regulatory impact assessment (RIA) in Vietnam showed that the implementation of the RIA initiative would result in the creation of 100,000 jobs in Vietnam. He noted that, in many APEC economies, the regulatory state has been under development for over a century, and that several have “lost control” of their regulatory systems, as there was no quality control or management systems overseeing the proliferation of regulation. Mr. Jacobs expressed his view that systemic solutions were needed, including with respect to how governments think about rules. He stressed the need to implement regulatory management systems, to build institutions to carry out good regulations, to improve quality of new regulations, and to upgrade quality of existing regulations. He also noted his view that regulatory reforms are pro-democratic.

Mr. Erik Wijkstrom noted that the WTO promotes regulatory transparency through the WTO obligation to notify draft technical regulations, and to take comments from other WTO members into account in developing the final rule. He also noted the WTO requirement that the technical regulations adopted by WTO members not create unnecessary barriers to trade. He emphasized that effective implementation of the WTO Agreement on Technical Barriers to Trade by each Member is an important way to prevent regulatory requirements that act as unnecessary barriers to trade. Lastly, he stressed that trade concerns caused by regulatory measures have increased dramatically in recent years.

In response to a request for recommendations on actions that APEC could undertake to address the issues raised in Session 1, the panelists provided the following: First, the greatest added value comes in building capacities for implementation of RIA and public consultation as they compliment each other. Capacity building and advisory services can also act to reduce transaction costs. Sufficient capacity and authority is required for promoting and overseeing the regulatory agenda across government. Oversight must, however, be flexible so focus should be on functions rather than construction of mechanisms. This also requires commitment from high levels to improve the quality control mechanisms in the center of government. Concrete investments in openness and transparency are required, such as web based strategies for disseminating and collecting information. Better domestic internal coordination is often needed to address requirements under the WTO TBT Committee, given the broad remit of issues under the TBT Agreement. Some governments are doing internal coordination well, others are not. The WTO TBT Committee is working on list of mechanisms, and potentially guidance could be provided there, in particular for developing economies.

During Session 2, Mr. Sean Heather of the U.S. Chamber of Commerce led a panel to look back at where APEC economies stand after 15+ years of work on good regulatory practices. Panelists from the International Finance Corporation (IFC), the Treasury Board of Canada and New Zealand’s Ministry of Economic Development presented. Many economies are working to strengthen their regulatory systems, referring to the APEC/OECD GRP Checklist and utilizing RIAs. Challenges were noted in assessing the impact of new GRP tools on policy-making and applying GRP practices across economies and sectors.

Mr. Peter Mumford with the New Zealand Ministry of Economic Development, provided lessons learned for how to create a responsive regulatory system, including how to anticipate issues. He noted that high profile incidents and other crisis events tend to create more rules and more enforcement mechanisms. However, the goal should be more effective rules that allow governments to be responsive and adapt quickly to crisis. Mr. Mumford recommended that economies find ways to moderate regulatory systems so that law does not have to react to crisis events. He stressed that there is no dearth of GRP checklists

available. He encouraged governments to come up with short codified principles and identify indicators to measure implementation, so that regulators can report against audit standards.

Mr. Peter Ladegaard of the IFC, gave a presentation on the “Top 8 Lessons of Reformers.” The lessons included: 1) Get the incentives right. In instituting reforms, a great deal of consideration must be given to the incentives of the various actors, including the government agencies involved and the various stakeholders from the public. 2) See the forest from the trees. Do not overly focus on specific elements at the expense of the entirety of the regulatory governance structure. 3) “Plug-and-play” systems don’t work. While all reformers can benefit from others’ experiences, governments must develop tools and processes that are consistent with their own needs and capacities. 4) Have realistic time horizons. 5) Focus on implementation, as the success of any tools and processes will depend critically on their use. 6) Early and constant assessment of results. Good regulatory tools and systems evolve and adapt to successes and challenges in their use. 7) Link regulatory governance reform to other government priorities. Regulatory reform is a means to greater competition and openness, both domestically and internationally, and these lead to stronger economic growth. 8) Mix governmental efforts to achieve one-time cost reductions (e.g., the regulatory guillotine) with larger, more systematic initiatives to demonstrate success. Mr. Ladegaard also stressed the need to undertake more research on the linkages between regulatory reforms and economic outcomes, as such studies can help make the case for policy makers to undertake these efforts.

Ms. Allison Miranda provided an overview of Canada’s regulatory system and current state of compliance with the APEC Checklist. With the goals of supporting growth, investment, innovation and market openness, Canada regulatory reform efforts are based on the lifecycle approach and use international OECD principles. Canada’s regulatory efforts also take into account trade and WTO considerations, including international alignment and harmonization. Ms. Miranda also highlighted Canada’s Red Tape Commission and the bilateral regulatory cooperation between the United States and Canada. She emphasized the importance of transparency and early engagement initiatives – for example, a requirement to publish all regulations in the *Canada Gazette* to facilitate notification and comments.

A question from the audience asked how well GRP principles have been integrated into legislative or parliamentary actions, as opposed to executive processes. Mr. Mumford noted that for New Zealand, Parliament has been more part of the solution than a problem. While there can be a tension between politicians and regulators, he recommended considering ways of providing legislators more tools to respond without taking away their ability to legislate.

#### *Keynote Address*

Mr. Cass Sunstein, Administrator, Office of Information and Regulatory Affairs, United States Office of Management and Budget, was the keynote luncheon speaker. He reviewed the United States’ approach in using good regulatory practices to promote economic growth and to ensure public protection. Mr. Sunstein discussed challenges and opportunities in meeting these goals and specifically echoed President Obama’s objective to use the U.S. year in APEC to promote and sustain good regulatory practices – practices that will support economic growth, job creation, innovation, and regional trade and investment, while also protecting public health and welfare. Considering the differences within APEC economies, their cultures and histories, he noted that one must ask the question: “How best can we safeguard our citizens while also laying secure foundations for economic growth?” For purposes of regulatory cooperation, the following two answers and overall themes are to 1) build capacity to create and strengthen appropriate institutions, with the best processes and mechanisms for making sound regulatory choices – ensuring that we look before we leap – and 2) move toward greater alignment of economies’

technical requirements, consistent with priorities. In short, economies must work toward building regulatory capacity and greater regulatory alignment.

Mr. Sunstein also introduced the audience to the U.S. Executive Order (E.O. 13563) on *Improving Regulation and Regulatory Review*, issued on January 18, 2011. E.O. 13563 directs Federal agencies to design cost-effective, evidence-based regulations that are compatible with economic growth, job creation, and competitiveness. Mr. Sunstein reviewed its governing principles, including its emphasis on the need for the best available science, for public participation, for use of the least burdensome tools with considerations of alternatives and flexibility, to consider and measure costs and benefits and to seek to improve actual results with retrospective analyses. Mr. Sunstein also placed value of having an open exchange with state, local, and tribal officials; experts in relevant disciplines; affected stakeholders; and the public in general. Mr. Sunstein concluded his keynote with the challenge to promote free and open trade and investment in the region through greater regulatory cooperation within APEC.

In Session 3, panelists reported on cooperation within APEC, including in the toy, food, and telecommunications sectors and spoke to the importance of regulatory cooperation in removing unnecessary burdens and reducing transaction costs. The APEC Telecommunications Mutual Recognition Arrangement (TEL MRA) facilitates trade by setting a framework for mutual recognition of testing laboratories, test results and certification bodies that encourages competition, reducing producer costs, and shortening the time to get products into the market. Work is underway to deepen regulatory alignment in the telecom sector through the development of the APEC TEL MRA on Equivalence of Technical Regulation.

The Food Safety Cooperation Forum (FSCF) is a forum for regulators to work together to build robust food safety systems, and provides a mechanism to coordinate food safety capacity building, to promote harmonization of food safety standards to international standards, and to encourage food safety systems consistent with the WTO TBT and SPS Agreements. The FSCF draws on the expertise of industry and academic experts through the Partnership Training Institute Network (PTIN), a public-private partnership dedicated to strengthening food safety systems through the development and delivery of food safety curricula in key priority areas. Lastly, the APEC *Toy Safety Initiative* resulted in key successes, including greater transparency and a commitment to greater alignment of toy safety standards. While work to align key toy safety standards met with challenges on emerging hazards related to cadmium in children's jewelry, important mechanisms have been established for greater coordination among regulators, standards developers and industry.

Mr. Christian Turegano of Mexico's Ministry of Economy presented on the economy's efforts to improve regulations through regulatory cooperation and better harmonization to international standards, leading to the removal of unnecessary regulatory burdens, facilitation of trade, and improved consumer confidence and protection. The presentations highlighted that regulatory cooperation can take different models. To be effective, the approach chosen should be appropriate to the situation and the specific objectives sought. There are however some common themes, including ensuring the right people are around the table; enabling open dialogue and establishing clear objectives for regulatory cooperation.

In Session 4, representatives of Chile, the United States and the OECD highlighted common challenges of promoting greater transparency and identified overall best practices in implementing greater transparency. These economies all realize that it is critical to gain high-level policy support; encourage an evolving process for transparency initiatives and good regulatory practices; and expand participation from legislators, regulatory bodies and stakeholders. Chile reported on its national regulations and structure for

supporting compliance with WTO TBT Agreement principles and regulatory transparency. The United States reported on its Open Government Initiative and mission to promote transparency, participation and collaboration. The United States also reviewed its latest achievement in improving the regulatory process by highlighting its new policy “Improving Regulation and Regulatory Review,” which promotes public participation, establishes harmonization and coordination, considers flexible approaches to reduce burden and maintain freedom of consumer choice, emphasizes scientific integrity and improves regulations with retrospective reviews and analyses. The OECD reported on challenges in transparent rulemaking, including availability of information, consultation mechanisms and identifying when international standards are referenced in regulation.

In Session 5, leaders from the standards developing organizations (SDOs), ASTM International, IEC-EE, ISO and IEEE, concluded the day with a roundtable discussion which explaining the advantages of engaging regulators in voluntary standardization activities. When asked about challenges in engaging regulators, the SDO representatives did not feel that attracting regulator engagement was an issue, particularly in cases where standards work is directly relevant to regulator needs. SDOs take pride in administering open, transparent, consensus-based processes and in maintaining the integrity of their processes and the resulting standards. They clearly recognized the “bright line” between standards and regulation and the different roles of regulators and standards bodies. SDO’s also realized the important need for greater communication and information sharing within APEC about the value of standards as a tool of regulators, and regulator participation can advance consistency in regulatory requirements across markets and best utilize scarce resources for effective standards development.

### *Day Two*

Panelists in Session 6 kicked-off day two with a discussion on how to lower costs and improve regulatory outcomes. A representative of Panasonic Corporation addressed how harmonization of product certification requirements for regulated products, coordination in market surveillance activities and greater consistency in the national transposition of international standards can lower producer costs. A representative from the Health Supplements Industry Association of Singapore (HSIAS) explained how good regulatory practices such as harmonization of regulations and stakeholder participation are important in a dynamic, emerging industry such as health supplements. A representative of the U.S. Grocery Manufacturers Association (GMA) demonstrated how GMA seeks to add value through participation in the regulatory process through the provision of information about market costs, innovation, trade and practical experiences in the marketplace. This engagement is most effective when it is begun as early as possible and is consistent throughout the phases of development, assessment and implementation. Other speakers noted that regulator dialogue with consumers and other stakeholders can contribute to development of rules and guidance that reduce market confusion and lead to the placing of safer products into the marketplace.

Session 7 panelists discussed ways of reducing barriers associated with testing and conformance. Malaysia, which is developing a regulatory structure for medical devices, has looked to the work of the Global Harmonization Task Force and the work of regulators in other economies in order to harmonize its system with others. In addition to the work on medical devices, other participants provided important information on ASEAN efforts to harmonize technical regulations for cosmetics and electrical and electronic equipment and to develop MRAs for high volume traded products. Promotion of GRP is now an integral part of ASEAN harmonization efforts in these areas. The APEC Specialist Regional Bodies have been working to reduce barriers through mutual recognition of measurement capabilities, test reports and certificates, testing bodies and accreditation systems as well and furthering information exchange

through training programs and workshops. New Zealand also explained prior work in the WTO TBT Committee in developing its indicative list of trade facilitating conformity assessment approaches and reported on New Zealand's leadership in current efforts in the TBT Committee to develop guidelines that can provide practical guidance on how to choose and design effective mechanisms that facilitate the acceptance of conformity assessment results. New Zealand noted that once completed, the guidelines would be a valuable resource tool for regulators and trade policy officials seeking to improve regulatory quality and facilitate trade. In this context, New Zealand encouraged economies' participation in the development of the guidelines.

Representatives from Underwriters Laboratories, IEC-EE, International Laboratory Accreditation Cooperation (ILAC), and Peru's national accreditation body, INDECOPI concluded the conference during Session 8 with presentations focused on the use of conformity assessment practices to support better regulatory outcomes and to facilitate trade. Economies believed that accreditation of testing bodies and certification bodies can help to ensure safety and consistency in performance and that the use of internationally-recognized conformity assessment and accreditation schemes can help to avoid duplication and reduce costs. Mr. Keith Mowry of Underwriters Laboratories presented on the use of conformity assessment to demonstrate fulfillment of regulatory requirements in a cost-effective manner. ILAC Chair, Mr. Peter Unger, presented on the ILAC MRA and described the value of accredited testing bodies in assuring safety and consistency in performance. Internationally recognized conformity assessment and accreditation schemes can be used by economies, thereby avoiding testing duplication, reducing trade costs, and promoting work toward upholding the commitments of the WTO TBT agreement. Ms. Rocío Barreda Santos of INDECOPI presented a case study on the role of inter-institutional cooperation for accreditation capacity building in developing a natural gas regulation system in Peru. Finally, Mr. Pierre de Ruvo of IECEE presented on the IEC-CB Scheme as a way to accelerate acceptance in a market and facilitate trade.

In the APEC region, there is a vibrant and well developed technical infrastructure of conformity assessment. Regulators should consider using the existing and competent technical infrastructure to help them ensure compliance with regulatory requirements. This would free up resources in regulatory agencies to devote to other activities.

## **Key Outcomes**

The conference provided a forum for regulators, policy officials and representatives of the private sector and international organizations to discuss the benefits and challenges of implementing good regulatory practices. There was considerable agreement among conference participants that GRP produces significant economic and social benefits, and contributes to an environment more conducive to trade and investment. In addition, participants were of the view that regulatory cooperation can effectively advance greater alignment of technical requirements and build the capacity of regulatory institutions to efficiently and effectively address policy goals. However, participants also noted significant challenges to greater implementation of GRP, and to achieving greater alignment through regulatory cooperation.

To address these challenges, the following recommendations are offered for consideration by SCSC members:

- Regarding the project's commitment to update and revise the key SCSC documents, the discussions in the conference indicated that additional documents are not necessary in the effort to promote greater implantation of good regulatory practices. However, a greater understanding of the how GRP can strengthen implementation of the TBT Agreement is needed. We recommend that the project look

at the elements of the TBT agreement and map GRP documents and information that can be used to help understand how good regulatory practices contribute to the specific obligations and goals of the agreement.

- On advancing regulatory cooperation, the discussions indicate that one size does not fit all, but that there are common themes and objectives of regulatory cooperation, including relating to greater alignment of technical requirements and capacity building. The SCSC experience in the various models of regulatory cooperation can enable it to serve as a focal point for expertise in this area.
- The internal mechanisms to improve transparency, consultation and internal coordination in the regulatory processes within APEC economies should be strengthened. Here again, the discussions indicated that one size does not fit all on the structure and functioning of those mechanisms. However, a consistent requirement is strong support for such mechanisms at the center of government.