

The United States

1. In which areas of structural reforms have the most significant progress been made in your economy in the past five years? Please describe in what way you think the progress has been significant? Any structural reform activity can be included here, and does not necessarily need to be restricted to the five LAISR themes.

Of the five priority areas set out in the LAISR (i.e. Regulatory Reform, Corporate Governance, Public Sector Governance, Competition Policy, and Strengthening Economic Legal Infrastructure (SELI)), regulatory reform has probably seen the most prominent progress in the United States. U.S. objectives for regulatory reform are to (1) ensure that the American people have a regulatory system that protects their health, safety, environment and well-being and improves the performance of the economy without imposing unacceptable or unreasonable costs on society; (2) develop regulatory policies that recognize that the private sector and private markets are the best engines for economic growth; (3) develop regulatory approaches that respect the role of State, local and tribal governments; and (4) write regulations that are effective, consistent, sensible and understandable. We have noted increasing disclosure and transparency on regulatory actions, greater public participation in regulatory processes including through advent of e-Rulemaking, greater identification of regulations with international impacts, and more reform activities, particularly in the manufacturing sector, traditionally one of the most heavily regulated sectors of the US economy.

2. Describe examples of successful reforms and lessons learned in your economy in implementing structural reforms in the five LAISR areas. Please indicate relevant websites or other reference material, preferably those written in English.

One key lesson learned by the United States is the importance of government accountability and public consultation. On 21 January 2009, President Obama issued a Memorandum on “Transparency and Open Government.” The memorandum reaffirmed the Administration’s commitment to innovation in government, and called for the development of recommendations for a directive to be issued by the Office of Management and Budget (OMB). After soliciting recommendations from agencies and the public, OMB issued its Open Government Directive on 8 December 2009 (http://www.whitehouse.gov/omb/assets/memoranda_2010/m10-06.pdf).

Among other things, the Directive requires agencies to take prompt steps to publish government information online. It requires them to consult with the public and open-government experts during the formation of open government plans, to solicit input from the public about which information to prioritize for publication, and to maintain an ongoing dialogue with the public during the entire process. The Obama administration believes that regulatory analysis should be developed and designed in a way that supports the commitment to open government. Modern technologies should be enlisted to promote that goal. Existing websites – <http://www.regulations.gov> and <http://www.reginfo.gov> – have been improved to increase transparency, participation, and collaboration.

3. What in your economy's experience are the keys to the success of reform? (e.g. leadership, institutional framework, communication strategy, consultation process) What are the factors, if any, that impeded reform? What lessons can we learn from your experience?

In the US, there are three key aspects to our approach to regulatory policy, all of which are necessary to achieve good regulatory outcomes: (1) leadership, (2) rigorous analysis, and (3) regulatory transparency.

First, for three decades, the Executive Office of the President has provided centralized management and leadership of Federal rulemaking. Since the Nixon Administration, six succeeding Presidents from both political parties oversaw their administrations' regulations by increasing transparency and analytical rigor. This has allowed OMB to emphasize the importance of and adherence to regulatory principles and procedures.

Second, OMB has stressed the need for high quality regulatory impact analysis. OMB coordinates interagency review of draft, "significant" regulations, and oversees the regulatory impact analyses (RIAs) agencies prepare for their economically significant regulations. RIAs can help ensure that we maximize net benefits to society, or at least know that the benefits of rules justify their costs. They promote economic efficiency by regulating only where markets fail and, when regulating, by using cost-effective and market-based approaches instead of command and control remedies. Strong analysis contributes to more informed policy decisions and promotes economic efficiency, and RIAs also increase transparency by, for example, stating key assumptions and showing the sensitivity of the estimates to changes in those assumptions.

Third, the US program provides for a transparent rulemaking process that makes government officials accountable to the public. Transparency and accountability help address concerns about undue influence and allow all interested parties to be heard. Regulations that are transparent and accountable, and based on an understanding of likely consequences, are more likely to be effective at achieving desired goals and minimizing adverse impacts. In the US, the Administrative Procedure Act (APA) of 1946 provides the foundation for our approach to developing regulation. Most importantly, the Act requires that agencies go through a notice and comment process open to all members of the public, both US and foreign. Final regulations must be a logical out-growth of the proposal and the public record, and not arbitrary or capricious. The information in the public record, and agencies' use of this information, is used by the courts in settling any challenges to regulations brought by the affected public.

More recently, the rapid expansion of E-Government in the US has further enhanced the public's ability to participate in the rulemaking process. A visitor to Regulations.gov can find regulations on a particular subject, determine whether they are open for comment, access important supporting documents, file comments on proposals, and even read comments filed by others. We also provide advanced notice of upcoming regulations through our annual Unified Agenda of Federal Regulations, and have recently required agencies to identify upcoming regulations that may have an international trade or investment effect.

One of the lessons of the US experience is the difficulty of quantifying all of the likely impacts of regulations. This is particularly true with respect to certain benefits and the effect of regulations on human behavior. The United States therefore approaches regulatory problems not with dogma or guesswork, but with the best available evidence of how people actually behave. It uses cost-benefit analysis not as a way of reducing difficult questions to problems of arithmetic, but as a pragmatic tool for cataloguing, assessing, reassessing, and publicizing the

human consequences of regulation. Finally, cost-benefit analysis is viewed as a central part of the United States' broader effort to promote open government.

4. What are the impacts, both positive and negative, of the reform on the economy and the flow of trade and investment? Please provide data or statistics where available.

In its recent annual Reports to Congress on the Benefits and Costs of Federal Regulations, OMB has reported on trends in *ex ante* cost and benefit estimates. For data on the years 1981 to 2007, see Chapter II of the 2008 Report:

http://www.whitehouse.gov/omb/assets/information_and_regulatory_affairs/2008_cb_final.pdf

5. In what ways can APEC better promote structural reform in the region? What would be some possible next steps beyond 2010 based on the achievement of the LAISR process?

In the field of regulatory management, strengthening engagement with the public has become an increasingly important aspect. First, the global financial and economic crisis has intensified legitimate demands for greater transparency and open government, and many governments are looking to well-established legal and administrative procedures to engage the public in the rulemaking process. Second, "Web 2.0" technologies that make the internet far more interactive are now commonplace in commercial applications and are ready for use by governments that want to promote citizen participation.

APEC may want to consider how open government and e-rulemaking activity, including the use of Web 2.0 technologies, can make the regulatory process more accessible, comprehensible, and participatory. A key focus could be how new web-based tools can provide convenient, citizen-centered ways of obtaining public input throughout the rulemaking process. Engaging the public with these technologies will allow more people to participate in rulemaking and allow governments to learn more from them when considering new regulations. Ultimately, this will make regulations more beneficial and less costly. In this context, we believe the APEC Workshop on Public Consultation in the rulemaking Process in Indonesia on October 2009 contributed to deepen understanding of the benefit of utilization of technologies in rulemaking.

Concerning possible next steps beyond 2010 on structural reform in general, there is a need to shape the Post-LAISR agenda to better fulfill our Leaders' goal for structural reforms and their instruction to plan strategically for the next phase of structural reform to support new growth strategies. Ministers have also instructed us to design a Post-LAISR work program to respond to medium-term challenges, such as the need to foster more inclusive growth, and Finance Ministers directed the senior finance officials to identify priority areas for structural reform in economies. In view of this, one option would be to make priority areas on structural reforms in LAISR more explicitly linked to achieving inclusive growth. In addition, more thought should be given in the post-LASIR agenda to encouraging and assisting economies to implement reforms they identify as beneficial.