

The Australian Department of Foreign Affairs and Trade

APEC Symposium: Towards Regulatory Good Practice in Transport and Logistics Services

Good Practice Report



APEC SYMPOSIUM
GOOD POLICY AND REGULATORY PRACTICES FOR FACILITATING TRADE AND INVESTMENT IN TRANSPORT AND LOGISTICS SERVICES

Hong Kong, China, 15-16 July 2014

Background

The APEC symposium, ‘Good Policy and Regulatory Practices for Facilitating Trade and Investment in Transport and Logistics Services’ was held in Hong Kong, China on 15-16 July 2014. The symposium was hosted by Australia and attended by regulators, trade officials and private sector representatives from eleven APEC economies (Australia; China; Hong Kong, China; Indonesia; Thailand; Vietnam; Papua New Guinea; the Philippines; Chile; Mexico and Peru).

The symposium focussed on policies that affect and/or facilitate international trade and investment in logistics and transport services and sought to identify good regulatory practices as well as the challenges facing APEC economies in regulating these sectors. The approach was to examine policies from the perspective of a supplier of logistics and transport services who wishes to provide similar services to customers in other APEC economies. In this sense, the ability and ease with which a logistics services provider can establish a commercial presence to supply services in another member economy is of paramount importance.

The symposium provided opportunities to share experiences and helped build the capacities of participants in considering possible measures for their respective economies to promote open, accessible trade and investment flows and services provision in the region. It helped strengthen linkages and networking capacities between policy makers, regulators and academics in regional economies and across the region.

This report summarises the key symposium outcomes, including common themes arising from the discussion of good practices to guide policy makers and regulators in adopting and maintaining open and transparent logistics and transport sectors.

Outcomes of the Symposium

To build understanding, participants discussed the role of services trade in global trade, its measurement and definitional concepts, particularly in relation to trade in logistics and transport services. Logistics and transport services span a wide range of activities across core logistics services (such as cargo handling services, storage and warehousing services, freight forwarding services, customs brokerage services and supply chain management services), as well as related freight transport services (maritime, air, road and rail), courier/express delivery services, distribution services and a range of other related services (such as leasing services, equipment repair services, technical testing services). All these services are subject to multiple restrictions and regulations under the responsibility of many different regulatory authorities with varying domestic regulatory objectives (such as economic development, safety, security, and customs revenue).

Participants agreed that logistics services have become increasingly internationally traded services and that a regulatory environment that enables and supports good logistics practices assists the development of modern resilient economies. The development of an economy’s logistics sector and improved logistics performance promotes greater integration into international production networks and global value chains (GVCs). Strong and efficient logistics and transport services lead to improved trade expansion, export diversification and, importantly, the ability to attract foreign investment.

Much of the discussion focused on the benefits of open and transparent logistics and transport services sectors, key impediments to trade and investment in these services and reform priorities. Discussion of markets and performance of logistics and transport services identified the importance of a regulatory framework that included:

- Ease of market entry and exit – barriers to entry (such as foreign equity limitations) could slow trade in services and limit competition.
- Appropriate competition policy – significant monopoly power (particularly across logistics and transport infrastructure) can limit opportunities for other domestic and foreign competitors across the supply chain to enter and compete in the market.
- Transparency and good availability of information – timely, easily available information can assist firms to make effective decisions on their operations in a market.
- Positive international cooperation – can make an important contribution to overcoming domestic resistance to more open and liberal markets.
- Sound public policy objectives – economies should aim to frame regulations so as to satisfy legitimate policy objectives in the least trade and investment-restrictive way. Participants identified this issue as particularly contentious, noting it may be necessary for the governments to intervene in the logistics and transport sectors in certain circumstances to supply the service directly themselves or to apply industry specific regulation and support. This was seen as particularly relevant to supporting the development and growth of SMEs providing logistics and transport services.

Participants reflected on innovations that have forced change on the logistics and transport services sectors. While both sectors have undergone significant unilateral liberalisation in recent decades they remain significantly affected by restrictive measures. In the case of the logistics services supply chain (activities such as cargo handling services, freight forwarding services, customs brokerage services) still face regulatory barriers, which restrict foreign participation in the provision of these services or discriminate against foreign providers, including through complex licensing regimes. Participants did not identify labour restrictions as a major issue facing logistics services providers, although requirements by foreign services providers to employ nationals could be problematic. There was some suggestion that business mobility among APEC economies should be on a reciprocal basis.

Generally, participants agreed there was no single model for effective domestic regulation of the transport and logistics sectors, given its complexity and diversity - different approaches would be required depending on the individual circumstance of APEC economies. The challenge for governments is to frame regulatory settings so they perform a legitimate policy function without unnecessarily hampering trade and investment and eroding the benefits of open and competitive logistics and transport services markets.

The good practices and themes identified from the discussions are summarised below. These are non-binding and voluntary in nature, presented as a basis for good policy, without prejudice to economies' positions in the WTO, free trade, and other regional and bilateral negotiations.

Identification of Restrictions to Trade and Investment in Logistics and Transport Services

Participants discussed specific restrictions to trade in logistics and transport services. The presentation on the APEC Services Trade Access Requirements (STAR) database and circulation in advance of a baseline study about the sectors were particularly useful inputs. Identification of restrictions was grouped into three areas of regulatory practice.

- Classical market access and national treatment issues, such as foreign equity limitations, discriminatory licensing, nationality requirements (traditionally the focus of trade negotiations).
- Non-discriminatory, but potentially trade restrictive domestic regulatory issues that can impact adversely on logistics and transport services (such as complex but non-discriminatory licensing procedures, transparency, timeliness in regulation and decision making, approval processes, enforcement of regulations).
- Access to and use of critical transport infrastructure to provide logistics services. The perspectives presented by business and the case studies, in particular, highlighted the importance of a level playing field and access to critical transport infrastructure on reasonable and non-discriminatory terms. Participants highlighted a range of positive approaches in their economies – privately owned transport infrastructure (Hong Kong sea port, air cargo handling facilities), infrastructure owned by public authorities but licensed to private operators on a concessionary basis (Mexico), and publically owned or in public-private partnership (Vietnam).

APEC's Supply-Chain Connectivity Agenda

Participants recalled work underway in APEC on supply-chain connectivity. The symposium was briefed by the Convenor of the APEC Group on Services (GOS) and the Lead Shepherd of the Transportation Working Group on transport and logistics related activities. The APEC Supply-Chain Connectivity Framework Action Plan and 'systematic approach' to improve the smooth flow of goods, services and business people through choke points, as well as targeted capacity building, were seen as important contributors to overcoming logistics impediments. Participants agreed there needs to be greater internal coordination and awareness of initiatives that APEC is undertaking on supply chain, logistics, customs procedures and transport issues.

Women in Logistics

Participants acknowledged APEC's work directed at empowering women and fully engaging them in the business and economic sectors of their economies. Participants examined some of the institutional and other factors that limit women's participation in the workforce in APEC economies. Discussion focused on the balance between raising families and work, but at the same time recognising the vital role women play in SMEs, including in the logistics services industry across APEC economies. Discussion identified women's access to education and training, finance and access to networks as factors in developing successful businesses. There was general agreement that more could be done to bridge the skills gap and narrow gender diversity in transport and logistics services, with a need to develop a more diverse workforce with greater opportunities for women to participate fully in the broad range of the sector's activities.

Need for Closer Coordination

More needs to be done to improve coordination between business, regulators and trade negotiators. Greater cooperation could strengthen the ability of regulators to identify, design and implement pro-competitive market oriented policies that facilitate trade and investment in logistics and transport services. Institutional fragmentation, lack of policy coordination, uncertainty in regulation and supervision can stand in the way of formulating coherent logistics and transport policies.

Multimodal interface

There is now an increasing reliance on multimodal transport infrastructure – the interaction and linkages between road, rail and sea/air transport. A poor interface between sea/air on the one hand and road, rail on the other, can undermine the efficiency of the supply chain as a whole. Regulatory differences can raise costs and affect participation in multimodal activities.

Trade Negotiations

Trade negotiations can play an important role in improving the regulatory environment under which the logistics and transport services providers operate, not least through encouraging economies to take stock of existing regulations and to identify unnecessary trade inhibiting measures.

Key Themes of the Symposium Discussions on Good Practices

- *Open markets* - allowing competition from the best suppliers (domestic and foreign) at the best prices, in both the core logistics services and transport and other related services, can promote efficiencies and enable economic growth.
 - Foreign equity limits – regulations that limit foreign equity can be a disincentive for foreign investment. Parent companies often provide a greater degree of corporate commitment in branches and subsidiaries where they hold greater levels of foreign equity. Local logistics services providers can benefit from the transfer of capability and intellectual property, capacity building and the training of local staff.
 - Joint ventures and local partners – joint venture (JV) investment or the involvement of a local partner can greatly facilitate market entry and boost the transfer of knowledge, skills and technologies. While not a barrier per se, mandatory requirements to operate as a JV may discourage investment because the investor may not wish to assume the risk of operating in tandem with a partner that may not share the same vision or culture.
- *Scope of logistics services* – businesses must be able to supply a broad range of logistics services, so that they can genuinely offer their customers a point-to-point product. Government regulations that require the use of domestic logistics services providers for certain parts of the supply chain can raise costs and affect the provision of efficient logistics services.
- *Movement of persons* – mobility of logistics services personnel across borders can make a valuable contribution to the efficient supply of services. Regulations that require foreign logistics services providers to hire local operators or nationals to provide such services may be problematic as they can break the supply chain and prevent full integration of logistics services operations.
- *Competitive environment* – foreign market participants should have the opportunity to compete equally with domestic market participants and, as far as practicable, not be treated less favourably than like domestic counterparts. Logistic service providers need to be able to access critical infrastructure-related services, at ports, airports, and road and rail terminals on reasonable and non-discriminatory terms.
- *Regulatory transparency* – positive government action is needed to ensure that regulation and formalities are transparent and that they do not unnecessarily impede either the flow of freight, or the flow of businesses into the market.
 - Publication – relevant information must be easily accessible. Third-party tools, such as the APEC Services Trade Access Requirements (STAR) Database can improve regulatory transparency
 - Certainty – licenses should be granted according to established criteria. Logistics services providers are more likely to invest or trade in services if they can be sure that regulatory settings will not become more restrictive. Commitments under the WTO General Agreement on Trade in Services (GATS) and in free trade agreements can “lock in” certain existing regulatory settings and reassure investors

- Cooperation - where possible, regulations should be aligned with global good practices and international standards. Communication and cooperation among regulators, relevant government ministries and agencies, both domestic and regional, can promote regulatory consistency and coherence, and can help build the necessary confidence to develop cross-border logistics services capabilities.
- *Licensing regimes* – should avoid discrimination between foreign and domestic logistics and transport services providers; be independent of the operators being licensed; be transparent; clearly define the licensed activities and keep administrative cost to a minimum.
- *Regulatory approvals/decisions* – should be timely and transparent. Decisions should be criteria-based and where discretion is used the regulator should explain the decision. Unnecessary delays in regulatory decisions impose costs on business. Decisions should be finalised within established and transparent time frames. Such an approach builds confidence in the regulatory system and acts as a strong incentive for investment in these sectors.
- *Establishment of new services* – businesses need flexibility to adjust quickly to the rapid technological innovation in logistics provision and to meet clients' needs. Timely approval for new services should be granted if the service does not require adoption of new laws or changes to existing legislation.
- *Regulatory enforcement* – consistent and uniform enforcement of regulations is essential in order to give effect to those rules necessary for maintaining confidence and integrity in the logistics and transport sectors. The benefits of good regulations can be eroded by poor enforcement and uncertainty as a result of inconsistency and differing levels of enforcement.
- *Consultation* – Ongoing consultation with industry, regulators and trade negotiators is vital, both to ensure stakeholders' interests are properly represented, but also to seek to stay relevant in the very fast moving logistics and transport services industries.
- *Capacity building for developing economy regulators* – Capacity building is essential to enhance the capability of policy makers and regulators from developing APEC economies to implement good regulatory practices and policies. Lack of capacity and knowledge can impede the process of opening up logistics services markets. APEC can play a strong role in regional capacity building.