

APEC Symposium 'Good Policy and Regulatory Practices for Facilitating Trade and Investment in Mining and Energy Services'

PERTH, AUSTRALIA
16-18 JUNE 2015

REPORT

For the Australian Department of Foreign Affairs and Trade
and the Australian APEC Study Centre, RMIT University



APEC SYMPOSIUM

GOOD POLICY AND REGULATORY PRACTICES FOR FACILITATING TRADE AND INVESTMENT IN MINING AND ENERGY SERVICES

Perth, Australia, 16-18 June 2015

1. Overview

The APEC symposium, 'Good Policy and Regulatory Practices for Facilitating Trade and Investment in Mining and Energy Services' was held in Perth, Australia, on 16-18 June 2015. The symposium was hosted by Australia and included regulators, trade officials and private sector representatives from ten APEC economies (Australia, Chile, China, Indonesia, Mexico, Papua New Guinea, Peru, the Philippines, Thailand and Vietnam). Participants were provided with a baseline study/training manual, prepared by the facilitator and circulated in advance, covering recent developments in mining and services and regulatory policies and practices, to help them to participate actively in the symposium.

Participants acknowledged that mining and energy services are among the most global of services activities and widely traded internationally. In most economies, the sector comprises a diverse range of firms providing specialised support and solutions to the mining and energy industry. Notwithstanding current weakness in commodity and oil markets, over the medium term strong demand for energy and minerals in the APEC region will provide immense opportunities for mining and energy services providers.

Mining and energy services play an increasingly important role in resource-rich economies. They are key connectors between the mining and energy sectors and the rest of the economy, creating benefits through expansion of (micro, small and medium) enterprises, employment and the economic base of remote geographic regions. Many mining and energy services are also rich in knowledge and technology and can activate a second pathway to 'value adding' and enhance mining and energy sector competitiveness. A key to growing mining and energy services is more open trade and investment, which facilitates capital technology transfer and skills formation.

The focus of the symposium was to examine government policy and regulatory measures that impact on companies that trade and invest in mining and energy services. Participants agreed that to trade effectively in overseas markets, mining and energy services suppliers need to be on a level playing field with major domestic suppliers. Participants discussed the various impediments to international trade in services – such as localisation barriers to trade, regulatory uncertainty, availability of data and restrictions on the temporary movement of professionals and specialists across borders. The application of Mutual Recognition Agreements in core professions such as engineering, and requirements related to intellectual property protection and technology transfer, were also considered by symposium participants.

The symposium also considered capacity building needs and implementation issues. Participants put forward a number of ideas for regulatory reform and information sharing in their economies. The symposium's subject matter expert will explore opportunities to take this work forward. APEC's newly established Mining Sub-Fund is likely to be able to assist in meeting specific capacity building needs related to the symposium's outcomes.

Overall, the symposium provided opportunities to share experiences and helped build the capacity 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 networks between policy makers, regulators, industry representatives and academics in participating economies and across the region. Many

economies are seeking to expand mining and energy services trade and investment into new markets. Participants agreed the key challenge to internationalising services will be to frame policy and regulations so they perform a legitimate policy function and not unnecessarily hamper trade and investment, nor erode the benefits of open mining and energy services markets.

2. Key Themes of the Symposium Discussions on Good Practices

The following summarises the good practices that policy makers and regulators can adopt to deliver open and transparent mining and energy services in their economies. They draw on speaker presentations, question-and-answer sessions and panel and break-out discussions. **Annex A** provides a more detailed summary. **Annex B** contains the symposium program as delivered.

2.1. Policy Objectives

Through a number of breakout sessions, participants were asked to present their vision for the development of mining and energy services in their economies and to identify some broad policy objectives against which to frame regulatory principles. At the outset, participants agreed that each economy needs to set its own regulatory path, depending on its individual circumstances. As such, the objectives and regulatory principles set out below are non-binding and voluntary in nature, presented as a basis for good policy, without prejudice to an economy's policy making or its positions in the WTO or regional and bilateral free trade agreement (FTA) negotiations.

Participants presented a range of policy objectives. Common elements were to:

- Foster strong economic growth and employment through trade and investment;
- Build internationally competitive mining and energy services by facilitating innovative regulatory approaches – promote good practices and act on bad practices;
- Encourage collaboration, commercialisation and international engagement;
- Develop local capacity and human capital by investing in education, local procurement of goods and services, training and skills development, and facilitating technology transfer;
- Support community welfare by ensuring benefits of resource projects are shared equitably, without compromising environmental, social and cultural values;
- Develop strong governance capacity and social license to build trust and acceptance of mining and energy services.

2.2. Regulatory Principles

Participants considered the following regulatory principles as important in guiding mining and energy services policy-making in their economies:

2.2.1 Regulation

- *Regulatory intervention* - should be focussed on meeting national policy objectives in the least trade restrictive way;
- *Regulatory scope/jurisdiction* - when developing regulatory frameworks the various levels of government (national and sub-national) should act in a coherent and complementary manner, ensuring a balance between sector-specific and economy-wide services regulation;
- *Regulatory transparency* - ensure the highest level of transparency and openness by making policies and regulations easily accessible. Third-party tools, such as the APEC Services Trade Access Requirements (STAR) Database, can improve regulatory transparency;
- *Regulatory certainty/predictability* - should be fostered so mining and energy service providers have confidence 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;
- *Regulatory cooperation* - encourage multi-stakeholder consultation on policy and regulatory issues. Where possible, regulations should be aligned with global good practices and international standards;
- *Regulatory approvals/decisions/enforcement* - to build confidence in the regulatory system, approval processes and decisions should be timely, transparent and criteria-based. Regulatory enforcement is essential to safeguard the benefits of good regulation.

2.2.2 Market access and national treatment

- *Open markets* - avoid regulations that unnecessarily restrict foreign equity in mining and energy services, and adopt a regulatory framework that eliminates barriers to new entrants, encourages competition and stimulates innovation;
- *Competitive environment* - ensure fair, equal and non-discriminatory treatment of all market participants. Foreign suppliers of mining and energy services should be able to compete equally with domestic service suppliers and, as far as practicable, not be treated less favourably than like domestic counterparts;
- *Scope of services* - avoid regulations that restrict the provision of some mining and energy services to domestic providers as this can raise costs and discourage investment and innovation, while recognising that voluntary use of local content by foreign suppliers can support efficient supply chains for mining and energy services;
- *Establishment of new services* - adopt measures that give mining and energy services suppliers flexibility to adjust quickly to rapid technological innovation to meet clients’ needs. Timely approval for new services and technology should be granted, including through work permits for international experts, particularly if the service does not require adoption of new laws or changes to existing legislation;
- *Licensing regimes* - should avoid discrimination between foreign and domestic mining and energy service providers. Where licenses are required they should be granted according to established criteria. Administrative costs should be kept to a minimum;
- *Movement of business persons* - rules for temporary entry of business persons should be clear and transparent, and the issue of entry documentation should be timely and efficient. Avoid regulations that require foreign providers to hire local operators or nationals;

- *Mutual Recognition Agreements* - develop policies and programs that facilitate Mutual Recognition Agreements (MRAs) across selected professional services that are core to mining and energy services, starting with information sharing, networking and advocacy with interested APEC members.

2.2.3 Other

- *Empowering women* - governments and industry need to do more to empower women to be more fully engaged in business and economic activities in mining and energy services, including through community engagement processes and merit based employment practices;
- *Consultation* - ongoing consultation between industry, regulators, communities and trade negotiators is vital to ensure stakeholders' interests are properly represented. Work with all interested parties to reduce or remove practical barriers to trade and investment in mining and energy services;
- *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. Access to APEC's Mining Sub-Fund should be promoted as one avenue for sourcing capacity building funds to develop smart regulatory approaches in mining and energy services;
- *Market information* - encourage the free flow of information. If appropriate, conduct analysis and research to collect relevant data, such as precompetitive geological information, market surveys and behind-the-border regulation, so as to build greater understanding and capacity for mining and energy services to contribute to economic development in APEC.