DIALOGUE ON ADVERTISING STANDARDS - PRINCIPLES AND PRACTICE

Hanoi, 7-8 November 2012

Report to the APEC Committee on Trade and Investment

On 7-8 November 2012 a Dialogue was held in Hanoi, Vietnam, amongst delegates from 17 APEC economies to share information, policies and best practice principles regarding advertising standards in order to reduce barriers to trade and investment across APEC member economies. The Dialogue was also intended to foster partnerships between governments and business, advertisers and the media in the advertising sector.

This was the second dialogue held under APEC's Regulatory Cooperation Advancement Mechanism on Trade-Related Standards and Technical Regulations (ARCAM) which was approved by Ministers in November 2010. The goal of ARCAM is to prevent and address unnecessary barriers to trade by creating an institutionalised process for early dialogue among APEC economies on emerging regulatory issues.

Themes covered during the two-day event included: the importance of advertising to the free flow of goods and services; effective advertising regulation; good regulatory governance in advertising; and regulatory and self-regulatory best practices covering advertising content and complaint resolution. The goal of the Dialogue was to affirm the importance of advertising as a driver of economic growth and to explore the application of internationally accepted practices regarding the self-regulation of advertising for possible broader use within APEC.

1. Dialogue Outcomes

1. The Dialogue discussed the critical importance of advertising to consumers and companies, noting that advertising was responsible for 15 percent of GDP growth among the G20 economies and is an important driver of economic growth within APEC[1]. Promoting alignment of regulatory frameworks to recognize a role for self-regulatory organisations (SROs) built upon international best practices will thus promote growth in, and trade amongst, APEC economies by reducing non-tariff barriers to trade or preventing such barriers from arising in the first place.

Reducing and Preventing Non-Tariff Barriers to Trade

2. Delegates discussed the importance of good standards for governance and content; best practices and models of self- regulation as a complement to the regulatory framework, regulatory governance; compliance and enforcement; marketing and advertising codes and

[1] See The McKinsey and Company report, Advertising as an economic-growth engine, March 2012.

principles; stakeholder involvement (government, industry, media, and Self-Regulatory Organisations); and emerging policy issues. The Dialogue noted the mutual benefits to economies, consumers and business of enhanced cooperation between the public and private sectors regarding the regulation of advertising, and encouraged further exploration of those benefits.

3. The Dialogue discussed the benefits of advertising self-regulation in providing an efficient and effective system for resolving complaints about advertising that meets community needs in a manner that minimises costs to business and government. Self-regulation enables the advertising industry to effectively operate while reducing delays caused by government intervention in matters such as: pre approval of advertising, lack of clarity in standards about appropriate advertising, and prescriptive procedures that prevent advertisers from responding quickly and cost effectively to problematic advertising. Self-regulation is generally complementary to legislative or regulatory options in member economies and is widely supported by industry in the economies in which it already operates. This support is manifested through compliance with codes and decisions and via funding.
4. The Dialogue also considered effective advertising self-regulation a useful consumer policy tool that provides an important complement to, but does not substitute for the regulatory framework. Effective self-regulation is an efficient means of preserving consumer trust and confidence in the market-place, empowering consumers by assuring prompt resolution of consumer complaints, stimulating competition, protecting brand integrity and thus market capitalisation, and preventing unnecessary and onerous non-tariff barriers to trade.
5. The Dialogue observed that in considering whether to establish a self-regulatory system, to be effective any such system must reflect the cultural, legal, and economic context of individual APEC economies. Participants noted that there is no 'one-size fits all' approach to setting up a self-regulatory system. Developing an effective self-regulatory system is a process that typically evolves over time and does not necessarily follow a set chronology. As a result, the Dialogue observed that different components of the best practice model are likely to be prioritized to reflect the legal and cultural realities as well as the different levels of economic development in the 21 APEC member economies. The Dialogue agreed that there are several key elements that both foster and characterise effective advertising self-regulation. These include:

    5.1. An effective regulatory framework that acknowledges and promotes the role of industry-led advertising standards in helping to achieve agreed policy objectives.

    5.2. The establishment of an impartial, accountable, accessible and transparent self–regulatory system that is compliant with the law and follows an internationally accepted best practice model.

    5.3. Regardless of the regulatory model adopted by each APEC member economy, there are existing international advertising self-regulatory best practices from which the region could draw. The Dialogue discussed the Perspectives on Advertising Self-Regulation which had been developed by the European Advertising Standards Alliance (EASA) which identifies an agreed set of international best practices for effective advertising self-regulation. These are attached at Annex A.

5.4. These best practices have already been adopted to varying degrees by self-regulatory organisations (SROs) in 13 APEC economies and might be suitable for adoption within APEC. Effective advertising regulation or self-regulation does not require the simultaneous implementation of all best practice components, particularly when the SRO is in its formative stages. Adoption of a universal and effective code which draws on the International Chamber of Commerce's *Consolidated Code of Advertising and Marketing Practice* would also be a useful first step for APEC economies to consider.

Specific Recommendations

6. Building on discussion at the Advertising Standards Dialogue several recommendations are proposed. These recommendations encourage further APEC support for the alignment of regulatory frameworks in acknowledgement that advertising self-regulation plays an important role in economic growth and in building consumer trust in the market. The recommendations also reflect the importance of reducing and preventing barriers to trade through the development of SROs on the basis of international best practice.

    1. Regulatory Convergence of Advertising Standards: APEC economies should move towards an effective system of regulation consistent with international best practice that acknowledges the role of industry-led advertising standards and complaints resolution frameworks as a mechanism for improving advertising standards, resolving complaints and as a complement to the regulatory framework.

    2. Further Study: The APEC Policy Support Unit should be asked to conduct a stocktake of advertising standards and regulation practice within APEC economies in order to inform further information and capacity-building work.

    3. Information Sharing: Economies should engage in information sharing, including lessons learned to promote the convergence of regulatory frameworks across the APEC region that would stimulate investment in advertising which is legal, decent, honest and truthful in APEC economies. A potential starting point would be the creation of a centralized repository of resources related to self-regulation for access by member economies.

    4. Capacity Building: There is a need for capacity building within the APEC region to promote effective self-regulation of advertising and help economies develop appropriate systems. The Committee on Trade and Investment (CTI) should consider supporting capacity building programs to promote information exchanges regarding the benefits of self-regulation and lessons to be learnt in the development of SROs, recognising institutional differences within APEC. Subject to CTI endorsement of the approach outlined above, two capacity building initiatives could be developed:

        4.1. Regulatory Mentorship Program: A mentoring program would provide guidance for advertising regulators and existing Self-Regulatory Organisations in APEC economies on such issues as advertising standards legislation, regulations and development of industry codes.

        4.2. Self-Regulatory Organisation Workshop: A technical workshop could be held in 2013 for those APEC economies seeking to build capacity for the effective establishment and/or improved operation of an SRO consistent with the best practices as embodied in the International Guide to Developing a SRO (see

Appendix A). Such capacity building could include self-regulatory Code development, including the adaptation and adoption of relevant parts of the ICC Consolidated Code of Advertising and Marketing Practice into relevant, locally applicable codes of practice.

5. Utilisation of Existing Resources: In building capacity, existing resources for regulators should be employed, for example the OECD consumer policy tool kit developed to guide economies in developing and implementing regulatory policy. The toolkit recognises self-regulation as a complement to government regulation.

Appendix A – Perspectives on Effective Advertising Self-Regulation

This document sets out international best practices on effective advertising self-regulation. In 2004, the European Advertising Standards Alliance (EASA) approved a series of ten best practices for self-regulation based on the EASA's Statement of Common Principles and Operating Standards of Best Practice, as well as the EASA Best Practice Action Programme for use in the European Union. In 2007 EASA adapted this document for an international audience and it was subsequently released as Perspectives on Effective Self-Regulation by the World Federation of Advertisers following the Toronto Global Advertising Summit in April 2007. It describes the various component parts of effective self-regulatory systems.

The elements outlined in this document are based on experience in implementing self-regulation in a number of European and other countries. The elements do not necessarily need to be implemented simultaneously, and should not be understood as universally applicable to all local systems. They are, rather, intended to serve as an informal guidance document for stakeholders to evaluate, initiate and develop effective and credible systems in key emerging markets.

1. Universality of the Self-Regulatory System

An effective advertising self-regulatory system should apply without exception to all practitioners – advertisers, agencies and media. To achieve this, there needs to be a general consensus on the need for a self-regulatory system and the practical, active support of all three parts of the industry. Additionally, a self-regulatory organisation (SRO) must be able to depend on the moral support of a large majority of the industry, to lend credibility to its decisions and ensure that they can be applied even to uncooperative advertisers. This can be achieved only if the system covers all significant forms of advertising and has the active participation of practitioners in all areas of commercial communications, including Direct Marketing and new forms of advertising e.g. the so-called New Media.

2. Sustained and Effective Funding

Effective self-regulation is the best means of maintaining the freedom to advertise and freedom has a price. Self-regulation is not a cut-price option: it can function effectively only if it is properly funded. A self-regulatory system requires a robust method of funding involving the commitment of all the parties involved in the various sectors of commercial communications. It is important that such a method is sustainable, i.e. affordable and not extravagant, but it should also be buoyant, i.e. so designed that it cannot be placed in jeopardy by the unilateral action of any company or industry sector. Finally, the funding method should be indexed to ensure that it keeps pace with increased costs and reflects changes in the advertising market. A levy system based on a small percentage of all advertising expenditure has been found to be a very satisfactory way of fulfilling all these criteria.

3. Efficient and Resourced Administration

SROs should be managed in a cost-efficient and business-like manner with defined standards of service. To maintain public confidence in the system, an SRO must be – and be seen to be – independent of the industry which funds it. To achieve this, it requires a dedicated secretariat within a structure that provides the necessary independence and external credibility. The number of staff will depend to some extent on the size of the market, but it must be adequate to ensure the efficient functioning of the SRO. Even the smallest SRO is unlikely to be able to function

properly with fewer than two full-time staff and most will need substantially more. Staff numbers should be reviewed regularly to ensure that they are appropriate to the workload and the SRO's budget should be reviewed each year and kept at a level adequate to meet its needs. To maintain impetus, the SRO is encouraged to have a strategic action plan, put in place at its inception and updated on an annual basis. To establish and maintain awareness of its activities, it is also advisable to have a communications plan, conducted on the same basis.

4. Universal and Effective Codes

A key element of any self-regulatory system is an overall code of advertising practice. This should be based on the universally-accepted ICC Codes of Marketing and Advertising Practice; it may subsequently be extended and developed in response to national requirements. It is important that the code should apply to all forms of advertising. It is equally important to establish a procedure for the regular review and updating of the code, ensuring that it keeps abreast of developments in the market place, changes in public concerns and consumer sensitivity, and the advent of new forms of advertising. Finally, the code must be made widely available and advertisers, agencies and media must be familiar with its contents.

5. Advice and Information

One of self-regulation's key roles is to prevent problems before they happen by providing advice to advertising practitioners. The advice provided by an SRO can take several forms: first, copy advice, i.e. confidential, non-binding advice about a specific advertisement or campaign, may be supplied on request before publication. Secondly, the SRO can offer general advice on code interpretation; this advice will also draw on 'case law', i.e. precedents established in previous adjudications. General advice of this kind can also be made available in the form of published guidance notes, which supplement the code and indicate best practice, for example in high-profile or problem areas. Like the code itself, guidance notes can be updated as necessary.

6. Prompt and Efficient Complaint Handling

The public perception of a self-regulatory system will depend to a very large extent on how efficiently it is seen to deal with complaints. One of self-regulation's principal advantages over the judicial process is, precisely, its speed. Consequently it is essential that complaints are seen to be handled promptly. The amount of time required to investigate a complaint will depend on its complexity. Business to business complaints typically may take longer to resolve. SROs however should manage their activities particularly in this area against defined standards of service, including complaint handling targets.

In cases alleging misleadingness, a fundamental principle of self-regulation is that the advertiser must bear the burden of appropriately substantiating his claims. The SRO should ensure that it has the means to evaluate technical evidence produced by advertisers to support their claims, including access to independent, specialist experts. Competitive complainants should be able to show prima facie evidence of a code breach in order to avoid abuse of the system.

7. Independent and impartial adjudication

A self-regulatory system must be able to demonstrate that it can judge cases brought before it efficiently, professionally and above all impartially. Different ways to structure the complaints handling process exist, including alternative dispute resolution systems and formalized

complaints committees. Deliberations in such bodies must be conducted in an independent and unbiased manner.

The adjudication process is incomplete without some provision for the review of decisions in case of appeal. The review process should be thorough but need not be elaborate; it should be so designed that it cannot be used merely as a delaying tactic to postpone the implementation of a decision.

8. Effective Sanctions

Although in most cases self-regulatory systems can count on voluntary compliance (however reluctant) with their decisions, their credibility depends in no small measure on an ability to enforce them. The so-called 'name and shame' principle, involving routine publication of adjudications, with full details of the complaint and the name of the brand and the advertiser, has proved to be a powerful deterrent. It can, where necessary, be reinforced by deliberately publicising a case where voluntary compliance with a decision is not forthcoming. However, perhaps the most effective means of enforcing a disputed decision is media refusal of the offending advertisement. This requires a commitment on the part of the media as a whole to uphold the decisions of the SRO and is likely to depend on the adoption of a standard 'responsibility clause' in all advertising contracts, by which both parties agree to be bound by such decisions.

9. Efficient Compliance and Monitoring

To be truly effective, an SRO cannot afford to restrict its activities to responding to complaints: if it does so, its interventions will inevitably be haphazard and lack consistency or thoroughness. To proceed effectively against violations of the code, it will need to put in place a planned programme of systematic monitoring, based on specific product sectors or problem areas. This allows the SRO both to institute cases on its own initiative and to evaluate levels of code compliance. This, in its turn, enables potential problems to be discussed with the industry and eliminated before they become too serious; regular dialogue with the industry should be a routine part of the SRO's activities. Monitoring and compliance surveys will also indicate areas where the code may need to be strengthened or changed.

10. Effective Industry and Consumer Awareness

An effective self-regulatory system should maintain a high profile: consumers should be aware of where and how to complain and the industry should be aware of the codes and procedures by which it regulates itself. To achieve this, the SRO will need to undertake regular publicity campaigns to create and maintain awareness of the system among consumers. It can be assisted by the provision of free media space, both in traditional media and the increasingly important electronic media. It should be simple and straightforward for consumers to complain, both on- and offline. Simultaneously, an ongoing programme of promoting its codes and procedures to the advertising industry – paying particular attention to those joining the business – will enable the SRO to establish practical awareness at working level.

Finally, the SRO will need to be able to produce information and evidence of its activities, in the form of published surveys, case histories and statistics (for example, numbers of complaints handled or copy advice requests). Information of this kind is essential to demonstrate the effectiveness of self-regulation.

Appendix B. Summary of Dialogue Sessions

Opening comments

Mr Ian Alwill, Chairman, Advertising Standards Bureau, Australia, opened the Dialogue welcoming all participants and reminding participants that the purpose of the dialogue is to address the issue of self-regulation in advertising and how self-regulation itself can be successful in reducing technical barriers to trade, specifically through consistent standards for advertising content, and models for the least interventionist regulation for advertising. He also noted that the purpose of the Dialogue is to enable APEC economies to share information, policies and best practice principles regarding advertising standards.

Keynote Address

Ms Dang Thi Bich Lien, Vice Minister of Ministry of Culture, Sport and Tourism, Vietnam, opened the dialogue. She stated that the Ministry will actively participate in this dialogue, exchanging the latest information of advertising development policy in Vietnam. The Vice Minister expressed her hope that the outcomes of this dialogue will provide the government bodies responsible for the advertising industry in Vietnam with the latest international good practices and experience in effective advertising convergence and regulatory cooperation which would set forth a favorable environment for the advertising industry to develop and contribute to the overall social-economic development of Vietnam.

Session 1: Advertising – Macro and Micro-Perspectives

Session 1 provided an overview of the economic; social, and cultural importance of advertising and the essential role that advertising standards play both from the perspective of the global marketing industry and from the world's biggest marketer, Procter and Gamble.

Mr Will Gilroy, Director of Communications, World Federation of Advertisers, based in Singapore, highlighted to delegates the critical role of advertising in driving economic growth, and its benefits to consumers, society and business. Drawing on the findings of the recent McKinsey and Company study, Mr Gilroy stated that advertising fuelled about 15% of growth in GDP for the major G20 countries over the past decade through new business generation.

He underlined how advertising creates value for consumers by driving down prices and pushing up quality, how it pays for sport and culture, informs consumer choice and funds media content. Overall, advertising plays a key role in a consumer society. But it is equally important that standards are put in place to ensure that advertising is responsible and properly reflects societal expectations. Advertising standards (or industry-led advertising self-regulation) provides an important additional layer of protection for citizens that complements, not substitutes, the law and helps build trust in the consumer economy.

Mr Gilroy stated that advertising standards help provide legal certainty for companies as well as fast and flexible complaint resolution between companies. By dealing with the vast majority of cases about advertising, it can expose rogue traders allowing the government to go after those companies breaking the law. It thus reduces barriers to trade and helps build trust in the consumer economy. He also stated that advertising self-regulation is faster, more efficient and less costly than government regulation.

Mr Joris Pollet, Director, Government Affairs & Public Policy Asia, Procter & Gamble explained how advertising has played a key role in the growth of Procter and Gamble as a company and as a driver of economic growth. Mr Pollet also reiterated the positive experience his company has had with APEC which is an ideal forum to share best practices and promote standards.

Sessions 2 and 3: Principles of Self-Regulation and Good Regulatory Governance and What is Self-Regulation for Advertising

Session 2 and 3 provided participants with an understanding of what advertising self-regulation is and what are the key elements for successful advertising self-regulation.

Mr. Oliver Gray, Director General, European Advertising Standards Alliance (EASA), explained the development of advertising self-regulation in Europe and outlined the key ingredients for effective self-regulation that underpin the self-regulatory systems within EASA. These principles have become increasingly recognized by national governments and the European Union as core to effective self-regulation.

The key elements of an effective system identified by EASA are: Funding, Independence, Effective and universal codes, Compliance advice – guidance notes and pre vetting, Prompt and efficient complaint handling, Independent and impartial adjudication, Effective sanctions, Awareness and transparency and Government recognition.

Mr Glen Wiggs from the Foundation for Advertising Research, New Zealand outlined the different types of regulation (full government regulation, co-regulation, self-regulation and no regulation) and how they each work. Mr Wiggs discussed the theory that the more government involvement then the more convoluted and slower the processes in a system. For this reason, he argued best practice self-regulation within a regulatory framework is the best method for managing the advertising industry in a quick, cost-effective and beneficial manner (beneficial to both advertisers and consumers). In addition he outlined that self-regulation can be quick, adaptable and versatile, cross border, consumer focused, cheap to enforce, no cost to government. The objective of best practice regulation is to obtain the desired response from those who are regulated. The most cost-effective way of achieving that objective is for the Government regulator and the self-regulator to work in a coordinated manner with the Government regulator dealing with the relatively few serious cases and the self-regulator dealing with the large number of ordinary complaints.

Session 4: Panel Discussion on Regulation, Self-Regulation, Co-Regulation – The Options and the Experiences

Building on the information provided in sessions 1, 2 and 3, session 4 was a panel discussion Chaired by Dr Oliver Gray (EASA), which enabled three APEC economies to discuss how they have each adopted approaches to advertising regulation, and also provided further perspective from the EASA.

Mr Tran Hung gave an overview of advertising in Vietnam and stated that advertising is an important economic sector in Vietnam with an annual turnover in excess of US$ 1 billion. Mr Hung stated that the growth of advertising has in turn stimulated the growth of the communication sector. The Vietnam Ministry of Culture, Sports and Tourism is responsible for

governing advertising activity. A new advertising law will come in to effect from 1 January 2013 and advertisers must develop a Code. Mr Hung stated that Vietnam lacked the experience and financial and organisational resources with which to guide them in this process. Mr Hung said he recognised that international and regional good practice models are available to provide information and general guidance.

Mr Ricardo Maguina, CONAR Peru, highlighted the role of the advertising standards body being to improve the advertising industry in the most efficient manner which benefits all and it is important for the advertising standards bodies to be proactive in broadcasting a message about what they can do for industry and government.

Ms Ildiko Fazekas, Chairman of EASA, highlighted the experience of advertising self-regulation development in the European Community. She highlighted the similarities and differences between the SROs (self-regulatory organisations.) She said that cultural differences mean there are different ways to regulate advertising industries within EASA member countries. It was important to cooperate and share information so that members could learn from one another. She emphasized that amongst European members there were important similarities and this focus on similarities enabled a positive and cooperative approach. All members are committed to improving and enlarging the self-regulatory system, and are working on basic advertising standards principles.

Mr Lee Peeler, President and CEO of the Advertising Self-Regulatory Council and Executive Vice President of the Better Business Bureau of the USA, thanked everyone for the opportunity to share US knowledge in this field. Mr Peeler briefly described the different parts of the US self-regulation system and described the four characteristics of the US system: meaningful standards; independence; transparency and accountability. He also noted that in the USA there is no formal relationship between self-regulation and the government but that there is a high level of communication and respect.

Questions from the floor concerned: whether it would be possible to have a code which could be used by many countries in ASEAN rather than each country developing its own code and what is the definition of co-regulation. Other questions concerned who is responsible for ensuring cooperation from the major advertisers in countries where self-regulation is being set up.

Panelists discussed the meaning of co-regulation (being a mix of government legislation and advertising standards) and expressed some concern that co-regulation can be not as effective as self-regulation. Panelists highlighted that getting major advertisers involved is key to the success of the self-regulation of advertising and that identifying a lead company (usually a large company CEO) who will discuss the issue with their peers is one way of getting support. Dr Gray highlighted that self-regulation is not one size fits all and does not need to be. Each country has to build a system that reflects local culture.

Session 5: Enforcement & Compliance

The issue of enforcement of self-regulatory decisions and compliance by industry is critical to the success of advertising self-regulation. This session focused on the American experience in this area.

Mr Bill MacLeod, Vice Chair of the OECD BIAC Task Force on Consumer Policy presented on behalf of himself and Mr Keith Fentonmiller, Senior Attorney, Federal Trade Commission.

Mr MacLeod discussed the Consumer Policy Toolkit developed by the Organisation for Economic Co-operation and Development (OECD) and the helpfulness of using the Consumer Policy Toolkit in deciding on the appropriate regulatory response to consumer problems.

Mr MacLeod emphasized that using the toolkit leaves room for complementary mechanisms to operate. So for example in the USA the industry led self-regulation resoles more advertising disputes and complaints than does the Federal trade Commission. However an important fact here is that the work of the self-regulatory system frees up government time and resources to concentrate on, in the USA, significant fraud issues and leaves industry to resolve less serious advertising issues.

On behalf of Mr Fentonmiller, Mr MacLeod discussed the importance of the self-regulation in complementing law enforcement. In particular he stated that self-regulatory organisations can complement law enforcement by: preventing a 'race to the bottom' in a market; preserving government enforcement resources; responding more quickly than government; and providing consumer education. He also noted that government law works with self-regulation by being able to act on industry referrals of any non-compliant advertisers. Among factors relevant to a self-regulatory organisation's legitimacy, Mr Macleod listed: broad industry buy-in and mandatory compliance with the codes; enforcement mechanism with a range of sanctions and/or referral to law enforcement; and periodic re-evaluation of the system's effectiveness based on clearly defined performance indicators.

Session 6: Case Study

Session 6 provided a case study of where a government regulator and a self-regulatory organization work cooperatively to achieve positives outcomes for consumers. Dr Alain Musende, Manager, Regulatory Advertising Section, Marketed Health Products Directorate, Health Canada highlighted the work of Health Canada in overseeing health product advertising in Canada in particular the two part process of preclearance and complaint handling and the close working relationship between Health Canada and Advertising Standards Canada. Specifically Health Canada provides a policy framework and the legal rules for marketing health products, while Advertising Standards Canada provides pre-clearance of advertisements and handles complaints about any such advertising.

Linda Nagel, President and CEO, Advertising Standards Canada, explained the structure and role of Advertising Standards Canada. While much of their work is in the area of administering complaints against self-regulatory codes, they have an important role in preclearing and managing complaints against legislation in some areas. In particular their role with Health Canada in relation to Health Products reduces the need for Health Canada intervention regarding non-compliant advertising.

Ms Nagel also briefly introduced to dialogue participants recent Consumer Research identifying that Canadian consumers place real value on advertising being truthful, will vote with their wallets if they find advertising unacceptable and consider that advertisers have the most responsibility for advertising standards.

Questions from the floor concerned whether the Advertising Standards Canada charges fees for pre-clearance function and how the Canadian agency manages complaints in a dual language country. Ms Nagel indicated that Advertising Standards Canada charges a fee for pre-clearance to recover the costs of providing this service, in both official languages - English and French.

Session 7: Case Study

Session 7 provided another example of an advertising regulatory system and the way in which the self –regulatory organisation and government worked together. Mr Audie Orleans, Advertising Standards Council, Philippines, described the Philippine system that has been in place since the 1970s when the government issued a law that serves as the mandate for the self-regulation of advertising. He gave an overview of the Philippines' situation which is a preclearance process that is guided by an industry Code of Ethics. Integrated in the process are the requirements of government regulatory agencies prior to advertising. Self-regulation remains effective because of the commitment of stakeholders to comply.

Ms Zenaida Cuison Maglaya, Under Secretary, Department of Trade and Industries, Philippines, discussed the importance of the self-regulation system in protecting the interests of consumers. In the Philippines this role is expressed as a requirement that products must comply with specific regulations before they can be advertised. Most of the restrictions on advertising come from Government legislation and mostly are aimed at helping to avoid ads that include information that may be misleading or fraudulent.

Questions from the floor included asking whether, as the system has been in place since 1970s, is there any suggestion that this would be removed and move to a more complaint handling system. Ms Maglaya and Mr Audie considered that industry is comfortable with the current system - big companies have their own internal self-imposed rules and they believe that preclearance prevents smaller advertisers and competitors from making untrue claims and therefore creates a fair system.

Session 8: Workshop

Day 1 concluded with a workshop on advertising self-regulation. Facilitated by Mr Bill Macleod, participants discussed the principles for effective self-regulation and ranked them in order of importance or less importance for particular economies. Providing much discussion among participants the workshop generally supported the use of the EASA principles and recognized the interrelations between the principles. Participants regarded some principles as especially important, while others were regarded as more discretionary.

<u>Especially Important Principles</u>

The most important principle:

4 – Universal and effective codes should apply to communications. Guiding self-regulation should be an overarching standard to which advertising should conform. The Consolidated Code of the Advertising and Marketing Communications Practice of International Chamber of Commerce is the most popular example that many SROs have found to be a valuable basis for their own rules.

The next most important principle, and reasonably close to the first:

3 – Having a Self-Regulatory Organization (SRO). This simply means an organization to administer the program. While it is industry led, the body should have credible independence of the industry in which it operates.

Several other principles received numerous high rankings, but not quite as many as the first two:

1 – Universality of participation and coverage. This means that (1) practitioners participate - advertisers, agencies and the media, (2) industries across the economy support, and (3) all forms of advertising be covered. Considered in more measured terms - this principle stands for the proposition that all could support – that self-regulation requires a critical mass to gain credibility and recognition.

2 - Sustained and effective funding. It goes without saying that any system needs the resources to sustain an ongoing, independent organization. An organization can start small and build scale. The broader the participation, the more affordable individual contributions can be.

<u>More Discretionary Principles</u>

9 – Efficient Compliance and Monitoring. Compliance with self-regulation is important. The Dialogue recognized that the participants in self-regulation can be quite effective in bringing monitoring one another's compliance with the standards of the body.

5 – Advice and Information. Some SROs provide advice to participants before ads are placed. Likewise, some provide more general information on the applications of their standards to specific types of advertisements. Established and respected SROs do not offer such services.

10 – Effective Industry and Consumer Awareness. It is helpful when industry and consumers are aware of the program, but the benefits of effective self-regulation can be realized even when its role is not well known. Moreover, an effective SRO will create incentives for participants to make competitors and consumers aware of the program.

Participants also identified major factors needed in various economies in order to move towards effective self-regulation:

- Support and strong emphasis from government for putting in place a self-regulation program. This needs to be followed by strong industry commitment.
- Involvement of all stakeholders is essential (government, consumers and industry)
- Information from countries with SROs needs to be adapted to be relevant to other countries
- Industry (advertisers, advertising agencies and media) need to understand the threats to business from increased regulation in order to appreciate the relevance of self-regulation to their own business (international threats or local threats.)

DAY 2

Session 11: Funding an Effective Self-Regulation Model

To complete discussion about the structure and functioning of a self-regulatory organization, Ms Hilary Souter, Chief Executive, Advertising Standards Authority, New Zealand, presented information about how self-regulatory organisations can be funded. Ms Souter outlined the New Zealand complaints handling system and how the NZ system is funded. Specifically, in New Zealand there is a fixed funding model – advertiser levy and media members both contribute based on a traditional media environment.

Ms Souter also described the EASA Best Practice principles for funding which set out information about various funding models: membership model; levy model and fee for service model.

Ms Souter concluded stressing that a sustainable level of industry funding is essential for credible self-regulation.

Questions and comments from the floor included a concern that industry funding must be through a method that ensures impartiality when assessing consumer complaints. It was also noted that many SROs do more than just complaint handling and so a levy or membership fee should not just be based on advertisers contributing to the number of complaints they have as there is other work done in guidance notes and training etc.

Session 9: International Chamber of Commerce

Session 9 moved the Dialogue from a discussion about the structure and operation of self-regulation and a self-regulatory organization into a more detailed discussion about industry codes, and their development and content.

Ms Elizabeth Thomas-Raynaud, Senior Policy Executive, from the International Chamber of Commerce (ICC) gave an overview of ICC and its history developing self-regulation to facilitate trade, including its recent role with APEC on cross border data transfers. Ms Thomas-Raynaud also introduced participants to some of the key concepts of the ICC Code, in particular the scope of the Code which applies to all marketing communications in any media. In terms of provisions of the ICC Code, Ms Thomas-Raynaud briefly outlined important clauses relating to truth and accuracy of advertising and restrictions on discrimination (appearance or gender as examples). She concluded by explaining ICC's role in developing tools that interpret how existing Code provisions apply to emerging international concerns in advertising such as environmental claims in advertising or food and beverage advertising. Participants were referred to extensive ICC material and information on local and sectoral codes for self-regulation of advertising available online at www.codescentre.com.

Mr Brent Sanders, Chair, Advertising and Marketing Commission, ICC and Legal Counsel for Microsoft, discussed how corporations use the regulatory codes to inform their advertising standards to ensure compliance with these codes. Mr Sanders also spoke about how companies use knowledge of codes globally to inform their international branches of the company, and how they interact with regulatory organisations to ensure that their advertisements are in keeping with

the provisions of the various codes. Mr Sanders shared with participants examples of some advertisements that had caused internal company discussion and described the thought processes and decisions a large company makes in considering an advertisement's impact and alignment with community standards and values.

Questions and comments from the floor reiterated Mr Sander's point that members need to interact with their SROs to ensure that self-regulation is managed in a swift and cooperative manner which benefits all parties including the consumers. In addition Mr Sanders was asked whether advertisers try and generate consumer interest by airing controversial adverts which they know will be challenged. Mr Sanders considered advertisers are mindful of staying within the provisions of the codes to ensure that whilst confronting, their ads are not willfully in breach of the codes. Participants also asked about how to start setting up a code. The Panel indicated that both resources available through the ICC and EASA will be of great assistance to economies wishing to start work on establishing self-regulation.

Session 10: Ethics, Taste and Decency

Turning to another specific area of the ICC Code, Ms Fiona Jolly, Chief Executive Officer, Advertising Standards Bureau, Australia introduced the Australian Advertising Standards Bureau and some detail about the Australian system. Ms Jolly advised that the Australian system is unique in that it does not look at truth and accuracy (other than in relation to food advertising) but instead focuses on issues of decency and community standards. Ms Jolly emphasized that the ICC Code provides a framework and provisions which allow economies to made decisions about advertising that reflect their own community values and standards.

Questions from the floor concerned specific issues about how the Australian Advertising Standard Board is selected and how they remain impartial and also about whether or not the Australian system includes copy advice. Ms Jolly advised that the Australian Standards Board is made up solely of members of the community (no industry or consumer lobby group representatives) who make decisions solely based on the Codes with no influence from advertisers. She also advised that copy advice is not a feature of the Australian system.

Session 12: Panel Discussion on Emerging Policy Issues

Session 12 moved to a discussion of emerging policy issues that will affect advertisers in the APEC region starting with the areas of food and alcohol advertising.

Mr Will Gilroy, Director of Communications, World Federation of Advertisers, discussed the role of an SRO in marketing and used food marketing as an example as it is a pertinent issue in the media at the moment with regards to marketing unhealthy food to children. He emphasized that self-regulation can deliver in controlling advertising and ensuring it is in keeping with community expectations and standards particularly around emerging areas of community concern.

Mr Michael McShane, Managing Director Asia Pacific, Brown-Forman, provided an overview of the responsible advertising of alcohol and how self-regulatory codes assist the alcohol industry in advertising in a manner which promotes the responsible use of alcohol. Self-regulation requires training, complaints handling process which has sanctions and is transparent, accountability and involves non-industry stakeholders.

Ms Karla Avila Jimenez, Executive Director, CONAR Mexico, discussed the set up and guiding principles of CONAR Mexico and stated that compliance with codes governing advertising to children has jumped from 9 per cent in 2008 to 91 per cent in 2011 – a very pleasing achievement.

There were various comments from the floor regarding self-regulatory codes with in particular one comment that it is important that content is not restricted and that competition is not stifled by codes which restrict an advertiser's ability to promote their product or service – basically that codes are not too stifling and restrictive. The panel agreed.

Session 13: Panel Discussion on Emerging Policy Issues

Session 13 turned to more emerging policy issues around digital advertising and the use of and standards for advertising on social media. Ms Linda Nagel chaired the session and introduced speakers.

Mr Andrey Kashevarov, Deputy Head, Federal Antimonopoly Service, Russia, began with an overview about co-regulation being introduced as the first step to self-regulation in Advertising in Russia with significant cooperation between government and advertising through bodies such as The Expert Council on the Enforcement of Advertising (formed in 2004 with 52 members) and the Coordinating Council for Advertising at the International Centre of Alcohol Policy.

Mr Fyodor Borisov, Director, Russian Association of Advertisers, then provided a view from the advertiser perspective in relation to alcohol, tobacco and the food industry advertising.

Mr Brian Gordon, Operations Manager, Advertising Standards Bureau Australia, outlined the Australian approach to online advertising. He provided some statistics and overview about the challenges and gradually increasing number of complaints and concerns related to advertising in the online environment. He confirmed that now Facebook and social media is defined/captured as advertising and/or marketing communications.

Ms Nagel and Mr Gordon then showed a number of examples of advertisements in social media that have been considered by the self-regulatory organisations and that are now considered to be part of new and emerging issues in advertising. Mr Gordon emphasized that there is not a separate set of rules for social media and Facebook pages in New Zealand or Australia – rather the overarching Code can apply the same basic principles and standards to all advertising regardless of the media.

Questions from the floor asked about different considerations by SROs about of advertisements within the same campaign appearing in different mediums and also concerned the role of the third party publisher. The Panel confirmed that SROs will usually work with the involved advertiser or, if need be, the company that placed the ad.

Session 14: Workshop and Wrap-up

To conclude the Dialogue, Ms Jolly first presented, for discussion by participants, a summary of considerations from the two days. The participants reviewed the key themes from the event including: the different models of advertising standards regulation; the essential principles of effective advertising regulation; the numerous beneficiaries of self-regulation including consumers, governments, the advertising industry and small and medium sized enterprises

(SMEs); the key factors that are necessary to move towards advertising self-regulation; the existence of international best practices which can be tailored to cultural, legal and regulatory variations in each APEC economy; the importance of advertising to trade and investment flows; and possible additional next steps.

Conclusion

Mr Alwill thanked participants for their attention and participation. He outlined the need for freedom of commercial speech and the importance of removing or reducing technical barriers to trade to improve trade and advertising and hence consumer choice and information in the APEC Region. Mr Alwill expressed his thanks to APEC and the Australian Department of Foreign Affairs and Trade for supporting this important Dialogue. He also thanked the many sponsors and speakers who provided financial and in-kind support to ensure the Dialogue's success and to ensure that participants had a worthwhile and beneficial experience from attending. Finally Mr Alwill thanked the staff of the Advertising Standards Bureau Australia for organizing what had turned out to be a very successful event.