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Good regulatory practices and co-operation in trade agreements: A historical perspective and stocktaking

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Good regulatory practices and co-operation in trade agreements: a historical perspective and stocktaking

Céline Kauffmann*, Camila Saffirio*

ABSTRACT

In recent decades, regulatory and trade policy have become increasingly interconnected. Indeed, various good regulatory practices are often inserted in trade agreements either in existing transversal or sectoral chapters or, more recently, as part of standalone chapters. This paper documents this recent trend by presenting a stocktaking of standalone chapters in trade agreements dedicated to good regulatory practices and international regulatory co-operation. By comparing the main substantive and structural features in these chapters, this stocktaking aims to inform the development of similar chapters in future trade agreements. While standalone regulatory policy chapters in trade agreements remain a new development, they signal countries' increasing interest in elevating the visibility and ambition of regulatory policy in line with their commitments as set out in the *2012 OECD Recommendation of the Council on Regulatory Policy and Governance* and the *2005 APEC-OECD Integrated Checklist on Regulatory Reform*. Still, how ambitious these chapters are depends on the state of play of regulatory policy in trading partners, which explains their variety. Overall, these chapters build on and complement existing rulemaking practices; the question is whether they will be effective at leveraging and strengthening good regulatory practices already in place.

JEL Classification: F10, K2, K33, H11

Key words: Regulatory policy, good regulatory practices, international regulatory co-operation, trade agreements, CPTPP, CETA, USMCA, Pacific Alliance

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Good Regulatory Practices and Co-operation in Trade Agreements

Introduction

In recent decades, trade agreements have been increasingly used as a vehicle to promote the effectiveness and efficiency of regulations through provisions that embed good regulatory practices (GRPs). The OECD has produced a number of reports on the nexus of regulatory and trade policy and the different GRP-related approaches in trade instruments that address transparency in rulemaking and the adoption of international standards in technical regulations, and that encourage the use of mutual recognition and equivalence [including through chapters on Technical Barriers to Trade (TBT) and Sanitary and Phyto Sanitary (SPS)]. This work has been developed in the OECD by the Regulatory Policy (see for example (OECD/WTO, 2019[1])) and its Trade Committees (see for example (Disdier, Stone and van Tongeren, 2019[2]), as well as jointly (OECD, 2017[3]).

More recently, as trade agreements have become increasingly detailed and ambitious, they have included standalone chapters focused on specific policy areas. As part of this trend, a number of trade agreements have incorporated horizontal chapters on GRPs, international regulatory co-operation (IRC) or both. This development correlates with an increased commitment by countries to regulatory quality and coherence, as highlighted in OECD's most recent *Regulatory Policy Outlook* (OECD, 2018[4]). While these chapters themselves have various names, they generally seek to promote a minimum level of GRPs and/or IRC among partners.

This paper examines the main characteristics of the GRP and IRC chapters embedded in eight trade agreements (signed or in force) that are known to contain such standalone instruments as of June 2020. The list of these trade agreements follows. Their key features are summarised in Table 1 and are further explored in the paper. The full set of information on the chapters under review is available in Annex A.

- the Agreement between New Zealand–Singapore on a Closer Economic Partnership (NZ– Singapore CEP Upgrade), signed in May 2019 and in force since January 2020;
- the Agreement between the EU and Japan for an Economic Partnership (EU–Japan EPA), signed in July 2018 and in force since February 2019;
- the Brazil–Chile Trade Agreement, signed in November 2018 and not yet in force;
- the Canada-EU Comprehensive Economic and Trade Agreement (CETA), signed in October 2016 and provisionally applied since September 2017;
- the Chile–Uruguay Trade Agreement, signed in October 2016 and in force since December 2018;
- the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), signed in March 2018 and in force since December 2018;
- the First Amendment to the Additional Protocol of the Pacific Alliance Framework Agreement (Pacific Alliance) , signed in February 2015 and in force since May 2016; and

- the United States-Mexico-Canada Agreement (USMCA), signed in November 2018 and in force since July 2020.

The paper *de facto* covers agreements among countries with varying levels of economic development and located in different regions. Canada, Chile, the European Union, Japan, New Zealand and Singapore lead in terms of number of agreements featuring these horizontal chapters; they each are signatories of three or more trade agreements that include such chapters.

This paper provides a stocktaking at one point in time in an evolving environment. At the time of writing, new chapters are under consideration or negotiation in other trade agreements, for instance, the Modernisation of the Trade part of the EU-Mexico Global Agreement, the text of which was agreed in principle in April 2018 and is pending signature and ratification. The agreed text includes a chapter on Good Regulatory Practices that focuses on promoting a minimum level of regulatory management tools across parties.[1] Similarly, the UK–Japan Comprehensive Economic Partnership Agreement (CEPA), agreed in principle in September 2020, includes a chapter on Good Regulatory Practices and Regulatory Cooperation.[2] This stocktaking also leaves out certain broader intra-regional agreements that may promote GRPs, such as the Agreement on the European Economic Area (EEA), which responds to a unique process of economic and political integration that does not rely on standalone chapters on GRPs or IRC. Similarly, the Agreement on Good Regulatory Practices and Regulatory Coherence adopted by a Decision of the Council of the Common Market of the South (MERCOSUR) [3] in December 2018 encourages GRPs and regulatory coherence among Argentina, Brazil, Paraguay, Uruguay, Venezuela and Bolivia through a legal act of MERCOSUR's highest organ.[4]

This stocktaking exercise first addresses the focus and scope of these horizontal chapters in an effort to understand the rationale behind them. It then examines the substantive provisions that promote GRPs and IRC, building on the *2005 APEC-OECD Integrated Checklist on Regulatory Reform* and on the *2012 OECD Recommendation of the Council on Regulatory Policy and Governance* (2012 Recommendation). These two instruments highlight the tools and principles that can help policy makers develop, implement and review regulations that meet public policy goals (Annex B). They provide a useful guide to the substantive GRP and IRC-related features of these horizontal chapters. The stocktaking also covers a range of structural elements designed to secure the effectiveness of these chapters, including special standing GRP/IRC bodies and tools to monitor their implementation, support engagement with stakeholders and promote their revision.

The incorporation of standalone regulatory policy chapters in trade agreements remains a relatively new development. Most of these chapters have entered into force only recently and there is limited information on their implementation. As a result, this stocktaking is mainly focused on the *de jure* characteristics of these instruments. It nevertheless sheds light on this noteworthy new development, draws comparisons across approaches, identifies the strong alignment of these provisions with the international commitments

[1] The full text of the agreement in principle announced in April 2018 is available for information purposes only at https://trade.ec.europa.eu/doclib/docs/2018/april/tradoc_156824.pdf.

[2] The full text of the agreement is available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/929181/CS_Japan_1.2020_UK_Japan_Agreement_Comprehensive_Economic_Partnership__v1.pdf.

[3] *Acuerdo de Buenas Prácticas Regulatorias y Coherencia Regulatoria del MERCOSUR*, adopted by Decision No 20/18 of the Council of the Common Market.

[4] MERCOSUR, an acronym for the *Mercado Común del Sur* (Southern Common Market), is a sub-regional trading bloc created in 1991 with Argentina, Brazil, Paraguay, and Uruguay as members aiming to establish a common market. The Mercosur Council is the highest organ in the agreement and its "Decisions" are binding to countries. It is up to the individual countries to decide how to incorporate decisions into their own legal systems. As such, MERCOSUR decisions are different instrument from a trade agreements.

of countries made through the 2012 Recommendation and the APEC-OECD Checklist, and establishes the basis for a more analytical assessment of their expected impacts. Ultimately, it is hoped that this stocktaking and related analytical work may be useful for developing similar horizontal chapters in future trade agreements.

The stocktaking is structured as follows. Section 1 provides a historical perspective on the mechanisms through which trade agreements have been used to advance GRPs and IRC. Section 2 examines specific GRP and IRC chapters included in the eight trade agreements under review, focusing on their main characteristics. The paper ends with a short conclusion describing the key features of GRP and IRC chapters included in recent trade agreements and some early reflections on their expected contribution to regulatory policy. Finally, Annex A provides structured and comparable information on the horizontal chapters under review against a common template.

Table 1. Overview of Horizontal GRP/IRC Chapters in recent trade agreements

	NZ-Singapore CEP Upgrade	EU–Japan EPA	Brazil – Chile Trade Agreement	CETA	Chile – Uruguay Trade Agreement	CPTPP	Pacific Alliance	USMCA
Parties	New Zealand and Singapore	The European Union and its Member States and Japan	Brazil and Chile	Canada, the European Union and its Member States	Chile and Uruguay	Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam	Chile, Colombia, Mexico and Peru	Canada, Mexico and the United States
Signature date	May 2019	17 July 2018	21 November 2018	30 October 2016	4 October 2016	8 March 2018	10 February 2015	30 November 2018
Entry into force	1 January 2020	1 February 2019	Not yet in force	Provisionally applied since 21 September 2017[5]	13 December 2018	30 December 2018	1 May 2016	1 July 2020
Name of Horizontal GRP/IRC Chapter	Regulatory cooperation	Good Regulatory Practices and Regulatory Cooperation	Good Regulatory Practices	Regulatory cooperation	Regulatory Coherence	Regulatory coherence	Regulatory improvement	Good regulatory practices
Sectoral Annexes	No	Yes	No	Yes	No	No	Yes	Yes
Establishment of special GRP/IRC body	No	Yes	No	Yes	Yes	Yes	Yes	Yes
Stakeholder consultation on GRP/IRC Chapter	No	No	No	Yes	No	Yes	Yes	Yes
Coverage of GRP/IRC Chapter under dispute settlement provisions	No	No	No	Yes	No	No	No	Yes
GRP/IRC Chapter Implementation monitoring	No	No	Yes	No	Yes	Yes	Yes	Yes
GRP/IRC Chapter review mechanism	No	No	Yes	No	Yes	Yes	Yes	Yes

Note: The CETA's provisional entry into force means that most of the agreement currently applies. The CPTPP is currently in force for Australia, Canada, Japan, Mexico, New Zealand, Singapore and Vietnam.
Source: Authors' own elaboration.

Key regulatory policy terminology used in this paper

Ex post evaluation refers to the process of assessing the effectiveness of policies and regulations once they are in force. It can be the final stage when new policies or regulations have been introduced and it is intended to know the extent of which they met the goals they served for. It can also be the initial point to understand a particular situation as a result of a policy or regulation in place, providing elements to discuss the shortcomings and advantages of its existence. *Ex post* evaluation should not be confused with monitoring, which refers to the continuous assessment of implementation in relation to an agreed schedule.

International regulatory co-operation (IRC) is defined, following (OECD, 2013[5]), as any agreement or institutional arrangement, formal or informal, between countries to promote some form of coherence in the design, monitoring, enforcement or *ex post* evaluation of regulation. It also includes the unilateral efforts of countries to account for the international environment in domestic rulemaking and the impacts of regulations beyond borders.

Regulation is the diverse set of instruments by which governments set requirements on enterprises and citizens. Regulation include all laws, formal and informal orders, subordinate rules, administrative formalities and rules issued by non-governmental or self-regulatory bodies to whom governments have delegated regulatory powers.

Regulatory impact assessment (RIA) is the systematic process of identification and quantification of benefits and costs likely to flow from regulatory or non-regulatory options for a policy under consideration. A RIA may be based on benefit-cost analysis, cost-effectiveness analysis, business impact analysis etc. Regulatory impact assessment is also routinely referred to as regulatory impact analysis, sometimes interchangeably (OECD, 2012[6]).

Regulatory management tools comprises different tools available to implement regulatory policy and foster regulatory quality. In particular, the 2017 Indicators of Regulatory Policy and Governance survey focuses on quality control of three regulatory management tools in particular: Regulatory Impact Assessment (RIA), stakeholder engagement, and *ex post* evaluation.

Regulatory policy is the set of rules, procedures and institutions introduced by government for the express purpose of developing, administering and reviewing regulation.

Regulatory quality is about enhancing the performance, cost effectiveness, and legal quality of regulation and administrative formalities. The notion of regulatory quality covers process, i.e. the way regulations are developed and enforced, which should follow the key principles of consultation, transparency, accountability and evidence-base. The notion of regulatory quality also covers outcomes, i.e. regulations that are effective at achieving their objectives, efficient, coherent and simple.

Stakeholder engagement refers to the process by which the government informs all interested parties of proposed changes in regulation and receives feedback.

Source: OECD (2018), *OECD Regulatory Policy Outlook 2018*, OECD Publishing, Paris, https://dx.doi.org/10.1787/9789264303072-en.

The historical perspective: GRPs and IRC in trade agreements

(OECD, 2017[3]) highlights that in and by themselves, trade agreements contribute to better quality and more coherence in regulatory matters through their core principles of non-discrimination in domestic regulations and their emphasis on designing least-trade restrictive regulations. Nevertheless,

(OECD/WTO, 2019[1]) notes that over time trade agreements have increasingly addressed regulations and standards explicitly, and incorporated mechanisms to promote good regulatory practices and regulatory co-operation. This section highlights some of these trends and provides the practical example of Mexico's trade agreements as an illustrative case in Box 1. It complements other OECD work, such as (Disdier, Stone and van Tongeren, 2019[2]), assessing the effects on trade flows of IRC-enhancing SPS and TBT provisions embedded in trade agreements (i.e. transparency mechanisms, mutual recognition of conformity assessment procedures, mandatory recognition of technical regulations or their harmonisation).

Building on previous OECD and academic works, (OECD, 2017[3]) identifies three approaches by which trade agreements address IRC (which can be extended to GRP more generally):

- Through specific provisions related to GRP and/or IRC mechanisms, in particular reflecting and sometimes deepening WTO disciplines set out in the Technical Barriers to Trade (TBT) and Sanitary and Phyto Sanitary (SPS) Agreements;
- Through sector-specific annexes or chapters to increase regulatory quality and co-operation; and
- Through horizontal chapters on transparency, GRP or regulatory co-operation.

According to (McDaniels, Molina and Wijkström, 2018[7]), of the 260 regional trade agreements (RTAs) in force and notified to the WTO as of December 2017, 200 agreements included TBT provisions; and of the 256 RTAs in force in 2015, 176 included SPS provisions. The TBT and SPS Agreements establish a number of principles, objectives and disciplines that should govern the regulatory activities of Members, all the while recognising the right of Members to regulate for legitimate policy objectives. These include, amongst others: non-discrimination; avoiding unnecessary trade barriers; ensuring a scientific basis for measures; consistency; transparency (including notification of draft measures); using relevant international standards as a basis for measures; basing measures on a risk-assessment; and promoting equivalence and acceptance of conformity assessment results (in-depth analysis and description provided in (OECD/WTO, 2019[1])).

Beyond traditional good regulatory practices related to transparency, evidence and risk based rule-making (Annex B), trade agreements have over time been increasingly seen as a portal to foster IRC through different mechanisms that promote dialogue and encourage parties to agreements to initiate co-operation on regulatory matters. Some trade agreements provide broad language that encourages countries to recognise each other's measures, to carry on co-operation activities and to exchange information. Others contain more binding language and concrete co-operation activities. For example, a number of trade agreements encourage parties to consider the technical regulations or standards of other parties as equivalent and, at times, explain upon request its reasons for not doing so – this is done either through the TBT Chapter (traditional location) or the horizontal chapter (the Brazil-Chile Trade Agreement, Chile-Uruguay Trade Agreement, the CPTPP, and Pacific Alliance). A similar obligation to explain may apply in respect to a refusal to accept the results of conformity assessment procedures conducted in the territory of the other party (Lesser, 2007[8]).

Trade agreements also provide vehicles for mutual recognition. (Correia de Brito, Kauffmann and Pelkmans, 2016[9]) maps the provisions on mutual recognition and equivalence of standards, technical regulations and conformity assessment procedures of 99 RTAs concluded by 8 OECD economies (Australia, Canada, the European Union, Republic of Korea, Japan, Mexico, New Zealand and the United States) and notified to the WTO by 30 May 2014. The paper finds that the sampled countries promote, in one way or another, unilateral recognition of technical regulations as well as unilateral or mutual recognition of the results of conformity assessment procedures as part of their RTAs. By contrast, the acceptance of technical regulations as equivalent is mainly promoted in the Australian and New Zealand RTAs. Very few RTAs integrate directly a mutual recognition agreement (MRA) in annex. Mostly, the sampled countries rely on the conclusion of stand-alone MRAs.

(OECD, 2017[3]) highlights that several trade agreements elaborate sector-specific commitments in respect to good regulatory practices, use of international standards, encouraging or implementing mutual recognition or more closely aligning the regulatory approaches of the partners. Sectors relatively frequently singled out for specific commitments include pharmaceutical products, medical devices, or chemical products, although some countries have included other sectors. For example, the vehicle sector is subject to specific regulatory co-operation commitments in the agreements between Korea and the US, and between Korea and the EU. Both agreements underline the importance of encouraging harmonisation of standards for motor vehicle environmental performance and safety, including in the World Forum for Harmonization of Vehicle Regulations (WP.29).

In recent years, a number of trade agreements, in addition to having specific transparency or other GRP/IRC provisions, have incorporated entire (horizontal) chapters. Most are dedicated to transparency (Lejárraga and Shepherd, 2013[10]). However, more recently, specific chapters on GRP or IRC have been included. These chapters are the focus of this paper and investigated further in the next sections. The value of horizontal chapters is to ensure the same standards across all border and behind-the-border measures and sectors covered by the agreements. Trade agreements usually establish different committees to monitor the implementation of the agreement or specific chapters (OECD, 2017[3]).

Box 1. GRP and IRC in trade agreements: the example of Mexico

Over time, Mexico has increasingly incorporated provisions concerning regulatory practices and co-operation in its trade agreements, following the broader global trend in trade negotiations. In particular, all of Mexico's trade agreements have included some sort of provisions related to GRPs, ranging from transparency, risk assessment, the adoption of international standards, and enabling international regulatory co-operation, for instance by encouraging equivalence of rules, mutual recognition of conformity assessment, or creating special Committees to enable regulatory co-operation, particular on TBT and SPS. Such provisions are included either in the general text of the Agreement, within horizontal or thematic chapters, or in sectoral annexes.

Typically, all of Mexico's trade agreements since 1990 have included some forms of regulatory transparency provisions, from publication of laws to notification of draft and/or adopted measures directly to trading partners. Most agreements include a horizontal transparency chapter, setting a broader requirement for a transparent and predictable policy environment for traders (e.g. NAFTA; Mexico-Colombia; etc.) In addition, transparency provisions are included throughout the agreements in specific chapters. Transparency for regulatory purposes is most common in the specific chapters on SPS or TBT in line with the WTO, with equivalent or slightly more detailed notification requirements of SPS and TBT measures. Some agreements also include transparency obligations for all measures relating to trade in goods (e.g. Mexico-Costa Rica; or Mexico-Uruguay) or services (e.g. Mexico-Japan), for a number of sector-specific measures such as telecommunications (e.g. Mexico-Nicaragua), financial services (e.g. Mexico-Peru) or automobile (e.g. Mexico-Colombia).

Building on regulatory transparency, regulators may be encouraged to conduct consultations early on in the rule-making process, particularly on SPS measures (e.g. Mexico-Costa Rica). Many trade agreements also envisage the establishment of a specific TBT or SPS Committee in which government officials and regulatory agencies from both parties can meet to discuss respective draft regulations or trade-restrictive measures (e.g. Mexico-Nicaragua, Mexico-Bolivia, Mexico-Japan). Finally, certain trade agreements include specific provisions allowing foreign stakeholders to participate in domestic stakeholder engagement procedures to the same extent as national stakeholders (e.g. Mexico-Costa Rica; Mexico-Chile; Mexico-Uruguay; NAFTA).

Other provisions in Mexico's trade agreements have aimed more directly at reducing unnecessary regulatory divergences. For instance, commitments to adopt international standards are commonly included in SPS and TBT Chapters, with specific bodies listed, going beyond the WTO SPS Agreement (e.g. NAFTA; Mexico-Colombia Trade Agreement). Overall, Mexico's trade agreements frequently set up an enabling environment for regulators to exchange throughout their regulatory process. Most agreements encourage collaboration to achieve equivalence of rules, and particularly of technical regulations (e.g. ALADI Agreement on TBT) or SPS measures, for instance with dialogue starting from common work plans for SPS measures (e.g. Mexico-Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua Free Trade Agreement).

A number of provisions also recognise the burdens imposed on trade by conformity assessment procedures and include an engagement to make conformity assessment procedures compatible as much as possible or to accredit conformity assessment bodies of other parties without discrimination (e.g. NAFTA, TLCUEM, AP, CPTPP). Among possible means to reduce burdens resulting from conformity assessment, agreements include commitments of the parties to embark in negotiations of mutual recognition agreements (e.g. Mexico-Peru) and participation in regional or international bodies such as the Inter-American Accreditation Co-operation (IAAC) (cf. for e.g. ALADI Agreement on TBT).

Source: (OECD, 2018[11]), *Review of International Regulatory Co-operation of Mexico*, Paris, https://dx.doi.org/10.1787/9789264305748-en.

Stocktaking of recent horizontal chapters on GRPs and IRC in trade agreement

This section maps the key features of the horizontal GRP and IRC chapters under review following a systematic approach. The stocktaking exercise first addresses the focus of these chapters and the scope of regulatory measures covered under their provisions. It then examines the regulatory management tools and IRC mechanisms promoted by these chapters building on the relevant practices and measures identified in the 2012 Recommendation (Table 2 and Annex B), the APEC-OECD Integrated Checklist on Regulatory Reform and OECD's body of work on IRC. Where applicable, this stocktaking draws parallels with relevant trends identified in the *2018 Regulatory Policy Outlook* (OECD, 2018[4]).

Table 2. Overall comparison of GRPs embedded in special chapters against the OECD Recommendation of the Council on Regulatory Policy and Governance

	NZ-Singapore CEP Upgrade	EU-Japan EPA	Brazil – Chile Trade Agreement	CETA	Chile – Uruguay Trade Agreement	CPTPP	Pacific Alliance	USMCA
Explicit Policy on Regulatory Quality								•
Communication, consultation, engagement		•	•		•	•	•	•
Regulatory oversight					•	•	•	•
Integrated Regulatory Impact Assessment		•	•	•	•	•	•	•
Ex post regulatory evaluation		•	•	•	•	•	•	•

	NZ-Singapore CEP Upgrade	EU-Japan EPA	Brazil – Chile Trade Agreement	CETA	Chile – Uruguay Trade Agreement	CPTPP	Pacific Alliance	USMCA
Performance review of Regulatory reform programmes						•		•
Organisation of regulatory agencies								
Administrative and Judicial Review				•				
Risk and regulation				•				•
Regulatory coherence across levels of government		•	•		•	•	•	•
Regulatory Management Capacity at Sub-national level			•					
International Regulatory Co-operation	•	•	•	•	•	•	•	•

Note: Issue related to Administrative and Judicial Review are, at times, covered under other chapters of trade agreements, notably on transparency.
Source: Based on the OECD (2012), Recommendation of the Council on Regulatory Policy and Governance, https://www.oecd.org/governance/regulatory-policy/49990817.pdf.

This section also examines the structural features of these chapters, including the mechanisms and tools set-up to secure their relevance and effectiveness. They include the special standing GRP/IRC bodies created by six of the eight horizontal chapters covered and specific tools to support engagement with stakeholder and monitor the implementation and periodical update of the chapters. Annex A provides the full information on the horizontal chapters under review, including the key features of the standing bodies.

As most of these chapters are only recently in force and there is still limited information on their implementation, this section is primarily of a descriptive nature and mainly focuses on their *de jure* characteristics. Notwithstanding, certain common features of the content and structure of these dedicated chapters can already be identified. The horizontal chapters for the Chile-Uruguay Trade Agreement and Pacific Alliance, while adopted before the CPTPP, took inspiration from the Trans-Pacific Partnership (TPP), which overlapped for Chile, Mexico and Peru. As a result, the content of the horizontal chapters in these two agreements are broadly similar to the CPTPP other than in specific provisions. The dedicated chapter in the Chile–Brazil Trade Agreement, adopted after the CPTPP, also draws inspiration from it in certain key aspects.

Finally, it is noteworthy that while sharing a largely common focus, these chapters may be named differently or include varying terminology around similar concepts. Table 3 provides an overview of these variations. These variations reflect the diversity of language around regulatory policy across countries and policy communities documented in previous OECD work (OECD, 2015[12]) and (OECD/WTO, 2019[1]).

Table 3. Overview of chapters' names, focus and terminology in relation to regulatory policy

Trade Agreement	Name of Horizontal GRP/IRC Chapter	Chapter main focus
NZ-Singapore CEP Upgrade	Regulatory Cooperation	Regulatory co-operation
EU-Japan EPA	Good regulatory practices and regulatory cooperation	Promoting a minimum level of good regulatory practices and strengthening IRC among partner countries
Brazil – Chile Trade Agreement	Good Regulatory Practices	Promoting a minimum level of good regulatory practices and strengthening regulatory cooperation among partner countries
CETA	Regulatory Cooperation	Regulatory co-operation
Chile – Uruguay Trade Agreement	Regulatory Coherence	Promoting a minimum level of good regulatory practices and strengthening regulatory co-operation among partner countries
CPTPP	Regulatory Coherence	Promoting a minimum level of good regulatory practices and strengthening regulatory co-operation among partner countries
Pacific Alliance	Regulatory improvement	Promoting a minimum level of good regulatory practices and strengthening regulatory co-operation among partner countries
USMCA	Good Regulatory Practices	Promoting a minimum level of good regulatory practices and strengthening regulatory co-operation among partner countries

Source: Author's own elaboration.

The focus of horizontal chapters on GRPs/IRC

Depending on the maturity of regulatory policy across States parties to these trade agreements, the focus of the horizontal chapters reviewed may be dually promoting a minimum level of GRPs and strengthening regulatory co-operation in partner countries, or centre mainly on the later. Consequently, save for TPP-inspired chapters in the Chile–Uruguay Agreement, the CPTPP and the Pacific Alliance, the focus differs across trade agreements and is not simply a replica of the other trade agreements that the countries are party to.

In trade agreements involving countries with diverging degrees of implementation of GRPs or where there is significant room for improvement, parties commit to endorse a minimum level of regulatory management tools. This is the case for the CPTPP and the Pacific Alliance, which involve a wide variety of countries with different levels of adoption of regulatory policy. In the cases of the Brazil–Chile and Chile–Uruguay trade agreements, partner countries still face significant challenges to embed good regulatory practices in their domestic rulemaking ((OECD, 2018[4]) and (OECD, 2020[13])). These chapters cover "traditional" GRPs, in particular regulatory impact assessments, stakeholder consultation and *ex post* evaluation. Yet, they also go beyond in their efforts to strengthen regulatory governance frameworks and promote additional tools such as regulatory oversight and coordination.

Notwithstanding their strong focus on GRPs, these chapters also include a number of IRC-related considerations through special provisions on co-operation. The CPTPP simultaneously covers GRPs and regulatory co-operation under the overarching concept of regulatory coherence defined as "[T]he use of good regulatory practices in the process of planning, designing, issuing, implementing and reviewing regulatory measures in order to facilitate achievement of domestic policy objectives, and in efforts across governments to enhance regulatory co-operation in order to further those objectives and promote

international trade and investment, economic growth and employment."[6] The Chile–Uruguay trade agreement and Pacific Alliance include an almost identical definition for the concepts of "regulatory coherence" and "regulatory improvement", correspondingly.

In trade agreements involving economies with more mature regulatory policy frameworks, horizontal chapters venture further into IRC. The CETA and the NZ–Singapore CEP Upgrade, provide an example of chapters titled *"Regulatory Cooperation"* that mainly focus on promoting IRC activities among trading partners. The NZ–Singapore CEP Upgrade and the USMCA include definitions around regulatory co-operation (Box 2). Somewhat in between, the dedicated chapter in the EU–Japan EPA focuses on both promoting GRPs and IRC with separate sections including provisions on each subject. This reflects how building robust GRPs that provide foreign policy makers and regulators with understanding and trust over the quality and efficiently of the regulatory policy frameworks of partner economies is a foundational element for successfully advancing into IRC approaches.

Box 2. The definitions of regulatory co-operation in the NZ-Singapore CEP Upgrade and the USMCA

While all dedicated chapters contain provisions on IRC, only two, the NZ-Singapore CEP Upgrade and the USMCA, embed definitions of regulatory co-operation. These definitions are not directly comparable as they reflect the different scope and focus of each chapter, i.e. a broader scope for the NZ-Singapore agreement vs. a trade-oriented focus in the USMCA. These are also working definitions adopted solely for the purpose of the agreement rather than whole of government ones.[1]

- **NZ-Singapore CEP Upgrade:** "Regulatory cooperation activities means the efforts between the Parties to enhance regulatory cooperation in order to further domestic policy objectives, improve the effectiveness of domestic regulation in the face of increased cross-border activity and promote international trade and investment, economic growth and employment."
- **USMCA:** "Regulatory cooperation means an effort between two or more Parties to prevent, reduce, or eliminate unnecessary regulatory differences to facilitate trade and promote economic growth, while maintaining or enhancing standards of public health and safety and environmental protection."

1 For example, the definition used in the USMCA differs from, and is narrower in scope than, an earlier definition used in US Executive Order 13609, Promoting International Regulatory Cooperation, whereby international regulatory cooperation refers to "a bilateral, regional, or multilateral process (…) in which national governments engage in various forms of collaboration and communication with respect to regulations, in particular a process that is reasonably anticipated to lead to the development of significant regulations." (3 CFR 13609, 2012[14]).
Source: NZ-Singapore CEP Upgrade Article 13.1: Definitions; and USCMCA, Article 28.1: Definitions.

The horizontal chapter on *"Good Regulatory Practices"* in the USMCA, stands slightly out in terms of its focus. While a large number of its considerations are aimed at advancing GRPs across parties, the chapter also highlights the relevance of IRC noting that "Good regulatory practices also are fundamental to effective regulatory co-operation."[7] Furthermore, the chapter includes a specific provision promoting regulatory compatibility and co-operation and lists a range of mechanisms to minimise regulatory differences and facilitate trade or investment. While the chapter goes into less details on IRC, compared to GRPs, this is likely explained by the importance for the partners to establish a firm foundation of GRPs for co-operation

[6] CPTPP Article 25.2: General Provisions.

[7] USMCA Article 28.2: Subject Matter and General Provisions.

to succeed and the parallel existence of specific platforms established for the expressed purpose of fostering regulatory co-operation among the partners. These platforms include the Canada–U.S. Regulatory Cooperation Council (RCC), the High Level Regulatory Cooperation Council between Mexico and the United States (HLRCC), and the North American Leaders' Summit between Canada, Mexico and the United States. Acknowledging these and other precedent co-operation efforts, the USMCA's reads: "The parties recognize the valuable work of bilateral and trilateral co-operation fora, and intend to continue to work together to further regulatory compatibility on a mutually beneficial basis in such fora or under this Agreement."[8]

The regulatory measures under the scope of horizontal chapters

Virtually all horizontal chapters begin by setting the range of regulatory measures to which its provisions apply while reaffirming the right of each party to identify its regulatory priorities and address these priorities as it considers appropriate. The major difference between trade agreements lies in the breadth of regulatory measures covered, whether focusing on those measures with a trade impact or potentially encompassing a broader set of regulations.

The horizontal chapter in the CETA has an explicit trade focus. It "[A]pplies to the development, review and methodological aspects of regulatory measures of the Parties' regulatory authorities that are covered by, among others, the TBT Agreement, the SPS Agreement, the GATT 1994, the GATS, and Chapters Four (Technical Barriers to Trade), Five (Sanitary and Phytosanitary Measures), Nine (Cross-Border Trade in Services), Twenty-Two (Trade and Sustainable Development), Twenty-Three (Trade and Labour) and Twenty-Four (Trade and Environment)".[9]

Other horizontal chapters go beyond and include (for some potentially) a broader definition of regulatory measures promoting a more extensive use of GRPs and IRC. This is the case of Chapter 28 of the USMCA, which provides obligations on GRPs including for the planning, design, issuance, implementation and review of mandatory measures of general application adopted, issued, or maintained by a regulatory authority.[10] Similarly, the NZ-Singapore CEP Upgrade defines domestic regulation as "[A] measure of general application adopted by regulatory agencies within the Parties and with which compliance is mandatory."[11] The breath of the measures covered under the dedicated chapter of the EU-Japan EPA is also broader as it extends to regulations and directives[12] and delegated and implementing acts[13] for the EU; and laws, Cabinet Orders and Ministerial Ordinances, for Japan. Notably, in some dedicated chapters promoting both GRPs and IRC, the scope of regulatory measures covered may differ depending on the area in question. In the USMCA, for example, the obligations related to GRP fall on a broad set of regulations whereas regulatory co-operation activities focus on trade facilitation (Box 2). In the EU-Japan EPA, the provisions related to regulatory co-operation activities are broader than those related to GRPs, also covering other general applications measures issued by the regulatory authority, such as guidelines, policy documents or recommendations.

[8] USMCA Article 28.17: Encouragement of Regulatory Compatibility and Cooperation

[9] CETA Article 21.1: Scope

[10] USMCA Annex 28-A: Additional Provisions Concerning the Scope of "Regulations" and "Regulatory Authorities" set a number of exceptions.

[11] NZ-Singapore CEP Upgrade Article 13.1: Definitions.

[12] As provided for in Article 288 of the Treaty on the Functioning of the European Union.

[13] As provided in in Articles 290 and 291 of the Treaty on the Functioning of the European Union, respectively.

Unlike the dedicated chapters that contain a pre-set definition of regulatory measures covered, the CPTPP, Brazil–Chile and Chile–Uruguay trade agreements, and Pacific Alliance follow a positive list approach where parties are individually allowed to define the regulatory measures to which their obligations will apply. They set a specific timeframe for parties to determine and make publicly available their corresponding lists of measures covered.[14] These chapters also encourage parties to review their covered regulatory measures and notify plans of review, without specifying the process and frequency of reviews. While this approach potentially allows countries to extend the application of the chapter beyond trade-related measure, ultimately such broader coverage will depend on each country. Japan provides an example of a country that has opted to apply the CPTPP chapter on *Regulatory Coherence* to a broad range of policies connected to the Government Policy Evaluation Act (Ministry of Foreign Affairs of Japan, 2019[15]).

Beyond defining the regulatory measures falling under the remit of the horizontal chapter, only two trade agreements under review provide a definition of the relevant regulatory authorities. The USMCA defines regulatory authority as an administrative authority or agency at the central level of government that develops, proposes or adopts a regulation, excluding legislatures or courts, further noting that that the Governor in Council of Canada and the President of the United States, are not regulatory authorities for the purposes of the chapter. The EU-Japan EPA defines regulatory authorities as the European Commission and the Government of Japan, correspondingly. Both therefore exclude the regulatory activity of sub-national government where they exist.

Legal Standing

Horizontal chapters promoting GRP/IRC vary in the way they embed regulatory commitments but, with the notable exception of the USMCA discussed below, they mostly rely on best endeavour language. Still, the increasingly frequent inclusion of these chapters in trade agreements, and their alignment with language used in international instruments, such as the 2012 Recommendation and the APEC-OECD Checklist, shows international convergence on good regulatory and IRC practices and the growing pressure for countries to voluntarily adopt them.

Following the trend of GRP provisions in previous trade agreements, the chapters under the CETA and the NZ-Singapore CEP Upgrade rely on best-efforts language embedding non-binding commitments. They expressly state the voluntary nature of regulatory co-operation activities and clarify that parties are not required to enter into any particular activity under the agreement. The chapters in the Chile-Brazil Trade Agreements, the Chile-Uruguay Trade Agreement, the CPTPP and Pacific Alliance contain stronger commitments to adopt a range of GRP mechanisms, albeit under a best efforts language ("*should*", "*to the extent appropriate and consistent with its law, each Party should encourage…*"). Still, these four dedicated chapters provide reporting obligations on the status of implementation of these mechanisms, which could incentivise parties to deliver on their policy commitments. The EU-Japan EPA includes similar best effort language in its GRP-related provisions and expressly states the voluntary nature of their regulatory co-operation activities. In contrast, the USMCA includes binding language and notes that the "Chapter sets out specific obligations with respect to good regulatory practices, including practices relating to the planning, design, issuance, implementation, and review of the Parties' respective regulations."[15]

[14] The timeframes are: one year for the CPTPP and the Chile-Brazil Trade Agreement, and 3 years for the Chile-Uruguay Trade Agreement and the Pacific Alliance, in all cases counted since the entry into force of the corresponding agreements.

[15] USMCA Article 28.2: Subject Matter and General Provisions.

In line with the level of commitments imposed, there is no recourse to dispute settlement under the horizontal chapters of the NZ-Singapore CEP Upgrade, EU-Japan EPA, the Brazil–Chile Trade Agreements, the Chile-Uruguay Trade Agreement, the CPTPP, and Pacific Alliance. The chapter under CETA is not specifically excluded from the system for resolving disputes on the interpretation or application of the agreement. By contrast, the USMCA's horizontal chapter is enforceable through dispute settlement within one year of entry into force of the agreement and "[T]o address a sustained or recurring course of action or inaction that is inconsistent with a provision of this Chapter."[16]

In the same vein, standalone chapters on GRPs and IRC typically have a low precedence over other chapters of these agreements. The NZ-Singapore CEP Upgrade, the EU-Japan EPA, the Brazil-Chile Trade Agreement, the Chile-Uruguay Trade Agreement, the CPTPP, and Pacific Alliance include clauses that expressly give precedence to other chapters of the agreement in case of conflict.

Good regulatory practices promoted in horizontal chapters

In encouraging parties to strengthen regulatory policy, the horizontal chapters under review promote the systematic adoption of a number of regulatory management tools available to policy-makers to ensure the quality of laws and regulations. Virtually all horizontal chapters promote the uptake of regulatory impact assessment (RIA) and stakeholder consultation. At times, and departing from the traditional TBT and SPS provisions, these chapters also promote regulatory coherence and coordination across levels of government, regulatory oversight, and *ex post* evaluation of regulations. Overall, the focus remains mostly on regulatory design, although some chapters extend to regulatory implementation and enforcement. This is in line with the strong focus of countries on the early stages of rule-making rather than on regulatory delivery (OECD, 2018[4]).

Regulatory impact assessment (RIA)

The EU-Japan EPA, the Brazil-Chile Trade Agreement, Chile-Uruguay Trade Agreement, the CPTPP, Pacific Alliance and the USMCA include provisions that promote RIA, one of the more widespread GRP disciplines (Box 3). For instance, in the USMCA, parties recognise "[T]hat regulatory impact assessment is a tool to assist regulatory authorities in assessing the need for and potential impacts of regulations they are preparing. Each Party should encourage the use of regulatory impact assessments in appropriate circumstances when developing proposed regulations that have anticipated costs or impacts exceeding certain thresholds established by the Party."[17] Similarly, CPTPP's Article 25.5 addressing the implementation of core good regulatory practices reads: "To assist in designing a measure to best achieve a Party's objective, each Party should generally encourage relevant regulatory agencies, consistent with its laws and regulations, to conduct regulatory impact assessments when developing proposed covered regulatory measures that exceed a threshold of economic impact, or other regulatory impact, where appropriate, as established by the Party. Regulatory impact assessments may encompass a range of procedures to determine possible impacts."[18]

These chapters generally recognise the differences among countries' regulatory approaches and their ability to follow their own methods in implementing this tool (including by defining their own thresholds for conducting RIA). Nevertheless, they typically require policy makers and regulators to take certain key steps during RIA, namely assessing the need for proposing a regulation, identifying alternative options, reporting costs and benefits, and identifying the preferred policy option. In addition, the Chile-Brazil Trade Agreement, Chile-Uruguay Trade Agreement, the CPTPP, and Pacific Alliance encourage policy makers

[16] USMCA Article 28.20: Application of Dispute Settlement.

[17] USMCA Article 28.11: Regulatory Impact Assessment.

[18] CPTPP Article 25.5 on Implementation of Core Good Regulatory Practices.

to rely on the best reasonably obtainable information for their rule-making activities, while the USMCA contains obligations to this effect. Notably, other than for the Brazil-Chile Trade agreement and the EU-Japan EPA, all these agreements call on parties to consider the potential impacts of proposed regulations on SMEs when conducting RIA.

While the CETA does not include a substantive provision dealing with RIA, it assumes it (the two jurisdictions undertake this type of assessment routinely) and encourages parties to consider undertaking joint RIA when examining opportunities to minimise unnecessary divergences in regulations (see the section on IRC below).

Box 3. The practice of RIA in the 2012 Recommendation and recent trends

Regulatory impact assessment is a key tool to improve regulatory quality. It helps governments advance towards evidenced-based policy making by allowing regulators to examine and measure the likely benefits, costs and effects of laws and regulations, and assess alternative options. As such, Principle 4 of the 2012 Recommendation calls on Members to:

> *"Integrate Regulatory Impact Assessment (RIA) into the early stages of the policy process for the formulation of new regulatory proposals. Clearly identify policy goals, and evaluate if regulation is necessary and how it can be most effective and efficient in achieving those goals. Consider means other than regulation and identify the trade-offs of the different approaches analysed to identify the best approach."*

The *2018 Regulatory Policy Outlook* finds that RIA has become an important step in the rulemaking process of most countries. Yet, while a number of member countries have improved their RIA systems between 2014 and 2017, areas for further action include avoiding over-procedural assessments and effectively targeting the most significant laws and regulations. There is also room for improvement in securing that where assessments are undertaken, they cover a range of significant effects beyond regulatory burdens for business. The OECD has developed a set of Best Practice Principles on Regulatory Impact Assessment that provide a practical instrument for better designing and implementing RIA systems and strategies.

Source: OECD (2012), Recommendation of the Council on Regulatory Policy and Governance, Paris, http://dx.doi.org/10.1787/9789264209022-en; OECD (2018), OECD Regulatory Policy Outlook 2018, Paris, https://dx.doi.org/10.1787/9789264303072-en; and (OECD, 2020[16]), *Regulatory Impact Assessment, OECD Best Practice Principles for Regulatory Policy*, OECD Publishing, Paris, https://doi.org/10.1787/7a9638cb-en.

Stakeholder engagement

Almost all horizontal chapters promote stakeholder engagement in the rulemaking process either by affirming the importance of consultation with interested parties in the development of regulatory measures (the Chile-Uruguay Trade Agreement, the CPTPP and Pacific Alliance), by encouraging parties to consult regulations with interested parties (Brazil-Chile Trade Agreement) or by detailing substantive practices for consultation (EU-Japan EPA and USMCA). This is in line with the growing attention paid by countries to stakeholder engagement in the development, implementation and review of laws and regulations (Box 4). While no chapter requires parties to inform the public of forthcoming consultations, a number of them require forward planning by publishing an annual list of regulations that a country plans to adopt (the EU-Japan EPA, the Chile-Uruguay Trade Agreement, the CPTPP, Pacific Alliance and USMCA).

The dedicated chapter in the EU-Japan EPA includes considerations for public consultation with the public of major regulatory measures. It encourages countries to use a single online consultation portal the use of electronic means of communication. The process includes, where applicable:

- publication of either the draft regulatory measures or consultation documents providing sufficient details about regulatory measures under preparation;
- offering reasonable opportunities for any person to provide comments on a non-discriminatory basis;
- consideration the comments received; and
- making publicly available any comment received or a summary with the results of the consultations.

The USMCA contains provisions to secure transparency in the development of regulations and participation by interested parties in the development and retrospective review of regulations. The *ex ante* consultation process includes:

- public access to regulations and RIA, if applicable, before their finalisation;
- a written comment period for domestic and foreign stakeholders (including a 60-day minimum consultation period for draft regulation that may have a significant impact on trade);
- availability of a website for submission of comments;
- best endeavours to publish written comments received, except to the extent necessary to protect confidential information or withhold personal identifying information or inappropriate content; and
- publication of the regulatory authority's feedback on substantive issues raised during the consultation stage.

In addition to promoting stakeholder engagement as a domestic regulatory management tool, the majority of these chapters also embed mechanisms to allow interested parties to give feedback on relevant regulatory issues or on the implementation of the chapter itself. These mechanisms are discussed in the corresponding section below.

Box 4. Stakeholder engagement in the 2012 Recommendation and recent trends

Stakeholder engagement refers to informing and eliciting feedback from citizens and other affected parties on regulatory proposals so that they can be improved and broadly accepted by society. It serves the dual purposes of improving the quality of the regulatory process by providing policy makers with evidence for their decisions and strengthening ownership and trust in government (OECD, 2018[4]). Principle 2 of the 2012 Recommendation notes that countries should:

> *"Adhere to principles of open government, including transparency and participation in the regulatory process to ensure that regulation serves the public interest and is informed by the legitimate needs of those interested in and affected by regulation. This includes providing meaningful opportunities (including online) for the public to contribute to the process of preparing draft regulatory proposals and to the quality of the supporting analysis. Governments should ensure that regulations are comprehensible and clear and that parties can easily understand their rights and obligations."*

Together with RIA, stakeholder engagement is one of the strongest regulatory policy disciplines in OECD countries. The *2018 Regulatory Policy Outlook* shows that almost all OECD countries governments have entrenched stakeholder engagement in their rule-making processes, increasingly seeking feedback from citizens and business when developing laws and regulations and allowing more time for consultations. However, there is still room to secure that consultation outcomes are effectively considered in regulatory design and that the engagement with stakeholders is meaningful, for instance, by providing feedback to stakeholders as to how their input was used.

Source: OECD (2012), *Recommendation of the Council on Regulatory Policy and Governance*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264209022-en; OECD (2018), *OECD Regulatory Policy Outlook 2018*, OECD Publishing, Paris, https://dx.doi.org/10.1787/9789264303072-en and OECD (2020 forthcoming), *OECD Best Practice Principles on Stakeholder Engagement in Regulatory Policy*, OECD Publishing, Paris (OECD, 2020[17]).

Ex post evaluation

All horizontal chapters focused on promoting GRPs, encourage parties to evaluate whether regulations do achieve their objectives in practice. This is a core regulatory management tool that still lags behind RIA and stakeholder engagement in its uptake across OECD countries (Box 5). Horizontal chapters vary in the way they embed commitments on evaluation of existing regulations. Those between jurisdictions where *ex post* evaluation of regulations is still limited call for the establishment of this mechanism; whereas for jurisdictions with more robust regulatory policy practices these chapters set detailed requirements for evaluations. The trade agreements between Brazil-Chile and Chile-Uruguay, the CPTPP and Pacific Alliance rely on broad language that promote adoption of *ex post* evaluation through provisions that call on parties to review their regulatory measures covered under the agreement. For instance, the CPTPP states that "Each Party should review, at intervals it deems appropriate, its covered regulatory measures to determine whether specific regulatory measures it has implemented should be modified, streamlined, expanded or repealed so as to make the Party's regulatory regime more effective in achieving the Party's policy objectives."[19] The dedicated chapters in the Brazil-Chile Trade Agreement, Chile-Uruguay Trade Agreement and Pacific Alliance have similar language. In all agreements, parties are free to determine the frequency of these reviews and their methodology. Slightly more stringent, the EU-Japan EPA, calls on parties to maintain processes or mechanisms to promote periodic retrospective evaluation of regulatory measures in force and make publicly available its plans for and the results of such evaluations.

By contrast, under the USMCA, parties agree to "adopt or maintain procedures or mechanisms to conduct retrospective reviews of its regulations in order to determine whether modification or repeal is appropriate."[20] The chapter sets forth a number of formal requirements for these evaluations, including on procedural aspects and the types of considerations that policy makers should observe. Retrospective reviews may be launched under a country's law, at the initiative of a regulatory authority, or in response to the suggestion of an interested party to a regulatory authority for the amendment or repeal of a regulation based, for instance, in its ineffectiveness, level of burden or reliance on outdated or incorrect information. The chapter encourages parties to publish official plans and results of *ex post* evaluations. Moreover, the USMCA includes minimum methodological steps that should be observed in these assessments including addressing impacts of regulations on SMEs and considering, as appropriate:

- the effectiveness of the regulation in meeting its initial stated objectives (for example by examining its actual social or economic impacts);
- any circumstances that have changed since the development of the regulation, including availability of new information;
- new opportunities to eliminate unnecessary regulatory burdens;
- ways to address unnecessary regulatory differences that may adversely affect trade among parties; and
- any relevant views expressed by members of the public.

[19] CPTPP Article 25.5 on Implementation of Core Good Regulatory Practices.

[20] USMCA Article 28.13 on Retrospective Review.

Half of the dedicated chapters under review also touch on *ex post* review as an avenue of regulatory co-operation among parties. The CETA notes that parties may conduct *ex post* evaluations of regulations or policies, compare the methods and assumptions used in these reviews and share summaries of their outcomes, when applicable. In the same vain, the chapter in the Brazil-Chile Trade Agreement provides that parties may exchange information on *ex post* assessment methodologies and practices. The EU-Japan encourages parties to exchange of information on good regulatory practices, including on retrospective evaluations. Similarly, the USMCA recognises that periodically exchanging information on post-implementation reviews of regulations in effect affecting trade or investment may contribute to minimise regulatory divergences.

Box 5. *Ex post* evaluation in the 2012 Recommendation and trends

Ex post evaluation refers to the assessment of the effectiveness of regulation once it is in force. It is only after implementation that the effects and impacts of regulations can be fully assessed, including direct and indirect incidence and unintended consequences. Regulations may also become outdated as the result of a change in societal preferences or technological advancement. Consequently, regular reviews are needed to ensure that regulations are still necessary, relevant and fit for purpose. Reflecting on this, Principle 5 of the 2012 Recommendation calls on governments to:

> *"Conduct systematic programme reviews of the stock of significant regulation against clearly defined policy goals, including consideration of costs and benefits, to ensure that regulations remain up to date, cost justified, cost effective and consistent, and deliver the intended policy objectives."*

Yet despite the large potential it offers for governments, the *2018 Regulatory Policy Outlook* shows that *ex post* evaluation remains the least developed regulatory management tool across OECD countries. There is room for improvement in systematising the evaluation of laws and regulations and developing more comprehensive methodologies for these assessments.

Source: OECD (2012), *Recommendation of the Council on Regulatory Policy and Governance*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264209022-en; and OECD (2018), *OECD Regulatory Policy Outlook 2018*, OECD Publishing, Paris, https://dx.doi.org/10.1787/9789264303072-en.

Regulatory enforcement

The horizontal chapters in the EU-Japan EPA, CETA and USMCA include language promoting regulatory enforcement and compliance. The insertion of such considerations in these chapters is noteworthy as it corresponds to a key area of weakness of the rulemaking cycle clearly identified by the regulatory policy community and where dedicated chapters have, at times, gone further than the good regulatory practices promoted in the 2012 Recommendation (Box 6).

One of the objectives of regulatory co-operation under the CETA is to "[I]mprove regulatory implementation and compliance."[21] The chapter goes on to include a provision that promote the exchange of information among regulators on planned or ongoing enforcement and compliance strategies, and on the administration, implementation and enforcement of regulations, as well as on the mechanism to obtain and measure compliance. In addition, the CETA foresees more detailed co-operation or exchanges of

[21] CETA, Article 21.3 on Objectives of Regulatory Cooperation.

information for non-food products, including on market surveillance and enforcement activities and coordinated actions such as product recall.[22]

The EU-Japan EPA includes a provision on regulatory coherence that encourages parties to promote common regulatory approaches to avoid unnecessary duplication of regulatory requirements including conformity assessment processes and inspections.[23]

The USMCA recognises co-ordination in the implementation of regulations and the exchange of compliance information among parties as mechanisms to minimise unnecessary regulatory divergences and facilitate trade or investment.

Box 6. The increased focus on regulatory enforcement and implementation

Ensuring effective implementation of and compliance with laws and regulations is a key factor for the effectiveness and quality of regulatory policy. However, implementation remains the weakest phase of the regulatory governance cycle with only a few countries providing explicit policy frameworks to strengthen the performance of inspections agencies and regulatory authorities (OECD, 2018[4]).

The OECD has developed a number of work focused on advancing regulatory delivery and closing the gap between the development of regulation and their implementation. These include a set of Best Practice Principles on Regulatory Enforcement and Inspections and a Toolkit that look at the policies, tools and institutions responsible for promoting effective compliance, and the process of reforming inspection services to achieve results.

Source: (OECD, 2018[4]), OECD Regulatory Policy Outlook 2018, Paris, https://dx.doi.org/10.1787/9789264303072-en; and (OECD, 2018[18]), OECD Regulatory Enforcement and Inspections Toolkit, Paris, https://dx.doi.org/10.1787/9789264303959-en.

Institutional setup for regulatory oversight and coordination

A majority of the horizontal chapters encourage parties to develop an institutional set-up to strengthen regulatory quality and coherence. In particular, and depending on the state of play of regulatory policy among signatory parties, the horizontal GRP/IRC chapters in the Chile-Uruguay Trade Agreement, the CPTPP, the Pacific Alliance, the EU-Japan EPA and the USMCA either encourage the establishment of regulatory oversight or their role/recognition. This is in line with the 2012 Recommendation that recognises regulatory oversight as a key enabler of effective regulatory frameworks (Box 7).

The Chile-Uruguay Trade Agreement, the CPTPP and Pacific Alliance encourage countries to consider the establishment of a national or central coordinating body tasked with facilitating effective inter-agency coordination and certain regulatory oversight functions. Similarly, the EU-Japan EPA generally encourages parties to maintain internal coordination processes or mechanisms to foster GRPs. The CPTPP reads (the Chile-Uruguay Trade Agreement and Pacific Alliance have similar language): “[E]ach Party shall endeavour to ensure that it has processes or mechanisms to facilitate the effective interagency coordination and review of proposed covered regulatory measures. Each Party should consider establishing and maintaining a national or central coordinating body for this purpose.” The oversight functions of this body include:

- review proposed regulatory measures to determine the extent to which they adhere to GRPs;

[22] CETA, Article 21.7 on Further Cooperation between the Parties.

[23] EU-Japan EPA, Article 18.13 on Good practices to promote regulatory compatibility.

- strengthen consultation and coordination among public agencies and bodies to identify potential overlaps and duplications and prevent the creation of inconsistent requirements;
- provide recommendations for systemic regulatory improvements; and
- publicly report on these matters.

By contrast, the USMCA highlights the importance of each party's existing central regulatory coordinating body, but includes no specific commitments. This is taking place in a context where the three signatory parties have long-standing central regulatory oversight bodies in place (within the Treasury Board Secretariat in Canada, the National Commission for Regulatory Improvement (CONAMER) in Mexico, and the Office of Information and Regulatory Affairs (OIRA) in the United States). Article 28.3 of the agreement notes: "Recognizing that institutional arrangements are particular to each Party's system of governance, the Parties note the important role of their respective central regulatory coordinating bodies in promoting good regulatory practices; performing key advisory, coordination, and review functions to improve the quality of regulations; and developing improvements to their regulatory system. The Parties intend to maintain their respective central regulatory coordinating bodies, within their respective mandates and consistent with their law."[24]

Box 7. Regulatory oversight in the 2012 Recommendation and trends

The institutional setup for regulatory policy and oversight is a critical enabler of effective regulatory frameworks. The 2012 Recommendation outlines a number of oversight functions to promote high quality evidence-based decision making and enhance the impact of regulatory policy. These functions include the quality control of regulatory management tools; examining the potential for regulation to be more effective; contributing to the systematic improvement of the application of regulatory policy; co-ordination; training and guidance; and strategies for improving regulatory performance. In line with this, Principle 3 of the 2012 OECD Recommendation calls on countries to:

> *"Establish mechanisms and institutions to actively provide oversight of regulatory policy procedures and goals, support and implement regulatory policy, and thereby foster regulatory quality."*"

Evidence from the *2018 Regulatory Policy Outlook* shows that OECD members and accession countries have advanced regulatory oversight through various institutional setups and mandates aiming to promote and co-ordinate regulatory quality across government. Albeit through different institutional set-ups, all OECD countries have set-up a body covering at least one of the functions identified in the 2012 Recommendation.

Source: OECD (2012), *Recommendation of the Council on Regulatory Policy and Governance*, Paris, http://dx.doi.org/10.1787/9789264209022-en; and OECD (2018), *OECD Regulatory Policy Outlook 2018*, Paris, https://dx.doi.org/10.1787/9789264303072-en.

The IRC mechanisms promoted

IRC has become a critical dimension of regulatory quality and effectiveness. The 2012 Recommendation recognises its importance emphasising the need for regulators and policy-makers, more generally, to consider relevant international standards and frameworks for co-operation, and the likely effects of regulation on parties outside the jurisdiction. (OECD, 2013[5]) provides a typology of the unilateral, bilateral and multilateral IRC approaches that regulators can draw from to achieve their policy objectives. Yet,

[24] USMCA Article 28.3 on Central Regulatory Coordinating Body.

despite increasing awareness over the relevance of IRC, its use by domestic policy makers and regulators remains quite new (OECD, 2018[4]). Uptake of IRC takes time and depends on the establishment of a strong culture of regulatory quality that enables partner jurisdictions to trust each other's institutional set ups and regulatory practices.

As highlighted earlier, two of the chapters focus largely on IRC among trading partners: the NZ-Singapore CEP Upgrade and the CETA, while the EU-Japan EPA dually promotes GRPs and regulatory co-operation. Yet, even if they are more focused on promoting GRPs, the other chapters also embed several of the IRC mechanisms identified in the OECD typology. Albeit in varying forms, they encourage policy makers and regulators to appraise relevant regulatory initiatives in other parties and/or international standards when planning or developing regulations. Further, and as discussed below, a key feature of the majority of these chapters is the creation of special formal bodies to support IRC among parties.

Some of the IRC mechanisms more widely promoted under these horizontal chapters include exchange of information, the use of international standards, and mutual recognition agreements – this does not depart from the traditional provisions embedded in TBT or SPS chapters as summarised in Section I of this paper. However, beyond consolidating traditional approaches to regulatory co-operation, the horizontal chapters go further in promoting joint approaches. Notably, in the CETA and EU-Japan EPA, parties venture into more ambitious IRC mechanisms including: the possibility of conducting concurrent or joint RIA (CETA), aligning data collection efforts for issues that may require regulatory action, and comparing methodologies and when possible share results of *ex post* evaluations. The EU-Japan EPA also includes a detailed mechanism for exchange of information on planned or existing regulatory measures across parties (Box 8).

All chapters promote exchange on regulatory issues particularly in the early stages of regulatory development. For instance, with a focus on minimising unnecessary regulatory divergences and facilitating trade and investment, the USMCA encourages early exchange of technical or scientific information, data and research agendas and early sharing of regulations under development. Similarly, the EU-Japan EPA promotes the exchange of RIA outcomes, including the assessment of the effects on trade and investment. The Chile-Brazil Trade Agreement, provides for exchanges on data and methodologies for RIA and results of cost benefit analysis.

A notable feature of the chapters in the EU-Japan EPA, the CETA, the Brazil-Chile Trade Agreement, and USMCA is that they contemplate exchange of information at the late stage of the regulatory cycle, including on *ex post* review. The CETA and USMCA also encourage sharing of compliance data. In addition, the CETA embeds provisions on enforcement strategies and exchange of information on specific sectors including non-food product safety and safety of consumer products (Box 9). The NZ-Singapore CEP Upgrade, Brazil-Chile Trade Agreement, Chile-Uruguay Trade Agreement, CPTPP, and Pacific Alliance include information exchange as part of the co-operation activities that may be promoted under the chapter.

Three of the chapters under review include considerations that encourage the use of international standards in domestic rulemaking. In the USMCA, parties recognize that "facilitating the greater use of relevant international standards, guides, and recommendations as the basis for regulations, testing, and approval procedures" among the mechanism that can help minimise regulatory divergences and promote trade and investment. The CETA goes a step further and promotes co-operation of parties in the development, adoption, implementation and maintenance of international standards. Similarly, the EU-Japan EPA notes that parties may promote regulatory compatibility by co-operating bilaterally or in relevant international fora to develop and promote the adoption and implementation of international regulatory standards, guidelines or other approaches.[25] Other chapters go beyond the scope of obligation to adopt international standards required under the TBT agreement to encompass a broader set of international instruments. In the NZ-Singapore CEP Upgrade parties acknowledge that "[T]he adoption of

[25] EU-Japan EPA, article 18.13 Good practices to promote regulatory compatibility.

international models, norms and rules should be considered in the development of domestic regulation",[26] going beyond technical regulation. The Brazil Chile Trade Agreement, Chile-Uruguay Trade Agreement, the CPTPP and the Pacific Alliance include language highlighting that, to the extent appropriate and consistent with their laws, parties should encourage their relevant regulatory agencies to consider regulatory measures in other parties, as well as relevant developments in international, regional and other fora when planning covered regulatory measures.

Box 8. The EU-Japan EPA mechanism for exchange of information and consultations on planned or existing regulatory measures

The EU-Japan EPA includes a mechanism to facilitate the exchange of information on planned or existing regulatory measures. As part of this process, parties may submit a request for information and clarifications regarding regulatory measures of the other party. The party to whom the request is addressed shall endeavour to respond promptly.

Notably, the chapter also includes a detailed process that allows parties to raise concerns about planned or existing regulatory measures.

The process requires the requesting party to identify the regulatory measure at issue, provide a description of its concerns and, where relevant, submit questions. The chapter sets a 60-day period for the responding party to provide written comments which, to the extent possible, should include inter alia the policy objective and rationale of the regulatory measure and, where applicable, an explanation as to the absence of a less trade or investment restrictive measure which could achieve the same policy objective with the same efficiency. After the 60-day period or following receipt of written comments, the requesting party may launch consultations to explore options to address its concerns, including proposing adjustments to the regulatory measure in question or adoption of less trade or investment restrictive alternatives. These consultations take place through meetings or by electronic means. A report on the results of the consultation is prepared by the requesting party, in consultation with the responding party, and sent by special contact points to the Committee on Regulatory Cooperation for consideration.

However, there is no obligation to achieve a specific regulatory outcome and no commitments to amend regulatory measures following this procedure.

Note: EU-Japan EPA, Article 18.16.

Chapters in the NZ-Singapore CEP Upgrade, EU-Japan EPA and CETA, include mutual recognition as an avenue of co-operation. For example, mutual recognition is one of the tools mentioned in the NZ-Singapore CEP Upgrade among a range of formal mechanisms of co-operation that parties can explore under the agreement, which also include tools such as equivalence or harmonisation.[27] Similarly, co-operation

[26] NZ-Singapore CEP Upgrade Article 13.2: General Provisions.

[27] NZ-Singapore CEP Upgrade, Article 13.4 on Cooperation: Article 13.4: Cooperation *"1. The Parties shall cooperate in order to facilitate the implementation of this Chapter and to maximise the benefits arising from it. Regulatory cooperation activities shall take into each Party's needs, and may include: (a) bilateral information exchanges, dialogues or meetings between policy officials in agencies responsible for regulatory management of the Parties; (b) bilateral information exchanges, dialogues or meetings between policy officials in regulatory agencies or regulators of the Parties; (c) formal cooperation, such as mutual recognition, equivalence or harmonisation; and (d) other activities that the Parties may agree to."*

activities under the CETA include "examining opportunities to minimise unnecessary divergences in regulations though means such as: […] considering mutual recognition in specific cases."[28] The EU-Japan notes that to promote regulatory compatibility parties may consider the "promotion of common principles, guidelines, codes of conduct, mutual recognition of equivalence and implementing tools, to avoid unnecessary duplication of regulatory requirements such as testing, qualifications, audits or inspections".[29]

Finally, albeit with differences in scope, seven of the horizontal chapters touch upon the participation of parties in bilateral or regional initiatives and international fora to promote regulatory co-operation. One of the stated objectives of the EU-Japan EPA is to reinforce bilateral co-operation between the parties in international fora, the chapter encourages regulatory co-operation and coordination in these platforms and expressly mentions their potential to promote regulatory compatibility.[30] The NZ-Singapore CEP Upgrade, Chile-Uruguay Trade Agreement, the CPTPP, and Pacific Alliance note that regulatory co-operation under each chapter or special standing body should add value to and avoid duplications with ongoing initiatives in other relevant fora. As noted before, the USMCA recognises the role of bilateral and trilateral co-operation for regulatory alignment; it highlights the parties' intention to further this work and mentions collaboration in relevant international fora as a mechanism to reduce regulatory heterogeneity. In addition, the USMCA sectoral annexes on Chemical Substances, Cosmetic Products, Energy Performance Standards, Medical Devices and Pharmaceuticals encourage the engagement in international initiatives and fora to enhance regulatory compatibility.[31]

Creation of special GRP/IRC bodies

A key feature of six of the eight horizontal chapters under review is the creation of a standing body responsible for overseeing the implementation of the chapter or providing a platform to support regulatory co-operation among parties. Table 4 presents an overview of the special bodies created by horizontal chapters to these effects.

The establishment of special committees or subsidiary bodies under dedicated chapters of trade agreements is not a new development, both in the broader landscape of trade agreements and within the specific instruments under review. For example, overall the CETA creates 9 specialised subcommittees while the EU-Japan EPA establishes 10, and the CPTPP includes over 12 subsidiary bodies. Furthermore, the set-up and functions of these new special GRP/IRC bodies align with those typically entrusted with facilitating the implementation and/or enforcement of chapters embedded in trade agreements, and advancing co-operation between parties in a specific field.[32] Still, while these bodies may help regulatory co-operation and build trust among parties, their multiplication may also raise issues of governance and efficiency (OECD, 2017[3]). Alternatively, parties may choose to allocate these responsibilities with contact points specially designated for these purposes. This is the case of the dedicated chapters in the Brazil-Chile Trade Agreement and the NZ-Singapore CEP Upgrade. The Brazil-Chile Trade Agreement provides for focal points responsible for overseeing the implementation of the chapter and considering revision. The contact points for the chapter of the NZ-Singapore CEP Upgrade are tasked with consulting or coordinating with their regulatory agencies on issues arising under the chapter.

[28] CETA, Article 21.4 (g) on Regulatory cooperation activities.

[29] EU-Japan EPA, article 18.13 Good practices to promote regulatory compatibility.

[30] EU-Japan EPA, articles 18.1 Objectives and general principles and 18.13 Good practices to promote regulatory compatibility.

[31] USMCA, Chapter 12 Sectoral Annexes.

[32] For instance, (Laprévote, 2019[22]) discusses the existence of such bodies under competition policy chapters of trade agreements.

Further, the majority of the specialised GRP/IRC bodies set-up in the dedicated chapters under review are still not active. As such, this section reviews their key features and focuses on their potential value in lieu assessing their performance. Arguably, the establishment of these special bodies creates an opportunity to bring together relevant actors working on regulatory policy, notably from the regulatory and trade communities. Some agreements also allow interested parties to participate in meetings of this standing body on an *ad-hoc* basis (e.g. CETA, EU-Japan EPA, and USMCA). Their existence also *de facto* acknowledges the importance of continuous discussion platforms and stakeholder participation for regulatory co-operation (which a trade agreement cannot achieve in itself). The frequency of meetings is usually annual, unless otherwise decided by the parties. To date, only the CETA's Regulatory Cooperation Forum (CETA RCF) and the EU-Japan Committee on Regulatory Cooperation are operational. The CETA Regulatory Cooperation Forum held its first meeting in 2018 and parties established a work plan covering five areas for co-operation (Box 9). The first meeting of the Committee on Regulatory Cooperation under the EU-Japan EPA took place in early 2020, parties confirmed the functions of the committee, agreed to serve as a platform to exchange of information on and examine suggestions from stakeholders, and discussed practices to ensure early information on planned regulatory measures on both sides (Committee on Regulatory Cooperation under the Agreement between the European Union and Japan for an Economic Partnership, 2020[19]).

Table 4. Special GRP/IRC bodies

	Body					
	Committee on Regulatory Cooperation (EU-Japan EPA)	**Regulatory Coherence Committee** (Chile – Uruguay Trade Agreement)	**Regulatory Cooperation Forum** (CETA)	**Committee on Regulatory Coherence** (CPTPP)	**Regulatory Improvement Committee** (Pacific Alliance)	**Committee on Good Regulatory Practices** (USMCA)
Purpose	Enhance and promote good regulatory practices and regulatory co-operation between the parties.	• Oversee the implementation and operation of the chapter and identify future priorities for co-operation	Facilitate and promote regulatory co-operation between Canada and the EU according to the chapter.	Oversee the implementation and operation of the chapter and identify future priorities for co-operation	Oversee the implementation of the chapter and identify future priorities for co-operation.	Enhance communication and collaboration among parties in matters relating to the chapter, including encouraging regulatory compatibility and regulatory co-operation, with a view to facilitate trade.
Functions	• Discuss proposals for regulatory co-operation activities; • Exchange information on, and promote GRPs; • Recommend regulatory co-operation activities, including pre-regulatory research; • Promote bilateral regulatory co-operation activities with the aim of facilitating compatible regulatory outcomes; • Support the development of practical mechanisms, implementing tools and best practices to promote GRPs and regulatory co-operation; • Encourage regulatory co-operation and co-ordination in international	• Receive Implementation Reports by parties. • Undertake the 5-year review of the chapter and propose recommendations for improvement.	• Provide a forum for discussion of regulatory policy issues of mutual interest. • Assist and support individual regulators to identify potential partners for co-operation activities. • Review regulatory initiatives with potential for co-operation. • Encourage bilateral co-operation activities.	• Receive Implementation Reports by parties. • Undertake the 5-year review of the chapter and propose recommendations for improvement.	• Consider issues related to implementation and operation of the chapter • Identify priorities of work on regulatory improvement. • Recommend amendments of the chapter to the Commission. • Undertake the 3-year review of the chapter and propose recommendations for improvement.	• Monitor the implementation and operation of the chapter, including through updates on each party's regulatory practices and processes; • Exchange information on effective methods for implementing the chapter, including approaches to regulatory co-operation, and relevant work in international fora; • Consults on matters and positions in advance for meetings in international fora related to the work of the chapter; • Consider suggestions from stakeholders regarding opportunities to strengthen the application of GRPs;

	Body					
	Committee on Regulatory Cooperation (EU-Japan EPA)	**Regulatory Coherence Committee** (Chile – Uruguay Trade Agreement)	**Regulatory Cooperation Forum** (CETA)	**Committee on Regulatory Coherence** (CPTPP)	**Regulatory Improvement Committee** (Pacific Alliance)	**Committee on Good Regulatory Practices** (USMCA)
	fora, including periodic bilateral exchanges of information on relevant ongoing or planned activities; • Identify and endorse priority areas of regulatory co-operation; • Provide guidelines to help streamline the regulatory co-operation of other specialised committees under the agreement and of other bilateral regulatory co-operation fora; • Consider the report on the outcome of consultations on planned or existing regulatory measures and review the progress on the implementation of the satisfactory solution to concerns raised; and • Establish ad hoc working groups to pursue specific regulatory co-operation activities.					• Consider developments in GRPs and approaches to regulatory co-operation to identify future work for the GRP Committee or making recommendations for improving the operation and implementation of the chapter.
Frequency of meetings	Within the first year since entry into force of the agreement and at least once a year thereafter unless decided otherwise.	Within the first 3 year since entry into force of the agreement and afterwards as parties see fit.	At least annual.	At least annual.	Within the first year since entry into force of the chapter and afterwards as parties see fit.	At least annual.

Source: Authors' own elaboration.

Functions

The functions for these standing bodies vary depending on the focus of the agreement. The bodies under the Chile-Uruguay Trade Agreement, the CPTPP, Pacific Alliance and USMCA are tasked with monitoring the implementation and operation of the commitments under each chapter, including through special reporting mechanisms put in place for these effects. These bodies are also responsible for identifying additional priorities for regulatory co-operation among parties and, in the case of the Pacific Alliance, Chile-Uruguay Trade Agreement and CPTPP, consider developments and best practices in GRPs and potentially recommend updates to the chapter. Notably, the GRP Committee under the USMCA has additional functions that include consulting in advance of meetings in international fora on issues related to the chapter and considering suggestions from stakeholders regarding opportunities to strengthen the application of GRPs.

On the other hand, the Regulatory Cooperation Forum created by the CETA is largely focused on strengthening regulatory co-operation between Canada and the EU. It provide a forum for discussion of regulatory policy issues, reviews regulatory initiatives with potential for co-operation, assist and support regulators to identify partners for collaborations and promotes bilateral co-operation activities. Similarly, the Committee on Regulatory Cooperation under the EU-Japan EPA has an ambitious range of functions focusing on enhancing and promoting GRPs and regulatory co-operation between the parties. The committee is also responsible for considering the reports on consultations on planned or existing regulatory measures on both sides and reviews the progress on the implementation of the satisfactory solution when concerns are raised.

Responsible parties

All GRP/IRC bodies comprise representatives from government authorities or agencies. While in most cases countries are free to select the relevant authority that sits in the committee, the delegates to some of these bodies are required to be part of a specific government agency or have a certain level of seniority.

The USMCA's Committee on Good Regulatory Practices is formed by representatives from each party, including representatives from trade departments, national regulatory oversight bodies (the Treasury Board of Canada Secretariat, the National Commission for Regulatory Improvement in Mexico and the United States Office of Information and Regulatory Affairs) and, as relevant, from other regulatory agencies. The bodies under the Pacific Alliance, Chile-Uruguay Trade Agreement and CPTPP, are formed by government representatives of their corresponding parties without identifying a specific authority or level of seniority.

The CETA's Regulatory Cooperation Forum is comprised by relevant officials from both parties and is co-chaired by a senior representative of the Government of Canada at the level of Deputy Minister or equivalent or designate, and a senior representative of the EU Commission at a Director General level or equivalent or designate. In practice, work under this Forum on the EU side is led jointly by the Commission's Directorate General for Internal Market, Industry, Entrepreneurship and SMEs and the Directorate General for Trade, while for Canada is led jointly by the Treasury Board of Canada Secretariat and Global Affairs Canada (CETA Regulatory Cooperation Forum, 2019[20]).

The EU-Japan Committee on Regulatory Cooperation is formed by representatives from both parties of unspecified authority or seniority. On the Japanese side, the first committee meeting was attended by participants from the Ministry of Foreign Affairs, Ministry of Economy Trade and Industry and the Delegation of Japan to the EU; while the EU was represented by officials from the Directorates-General for Trade, Health and Food Safety, and for Internal Market, Industry, Entrepreneurship and SMEs, together with the EU Delegation to Japan (Committee on Regulatory Cooperation under the Agreement between the European Union and Japan for an Economic Partnership, 2020[19]).

Box 9. CETA's Regulatory Cooperation Forum Work Plan

In December 2018, the Regulatory Cooperation Forum (RCF) established under the CETA's chapter on Regulatory Cooperation held its first meeting and agreed a first work plan which is will updated annually. The work plan covers five areas for collaboration:

- *Cybersecurity and the Internet of Things (IoT)*. The co-operation aims to assist in understanding Canadian and EU initiatives for collaboration across sectors to foster adoption and mitigate risks from connected to IoT devices and to exchange on relevant regulatory approaches. Collaboration would extend to identifying the impact of possible differences in regulation, certification, or labelling approaches.
- *Animal Welfare.* Canada and the EU agreed to address long distance transport of animals a first topic for engagement under the RCF. The co-operation on this subject would allow countries to exchange information on implementation results to potentially inform transportation protocols and facility design/purchase.
- *"Cosmetic-Like" Drug Products.* Certain "cosmetic like" products (i.e. sunscreens, antidandruff shampoos and toothpastes) are regulated as drugs in Canada and classified as cosmetics in the EU, thus subject to different regulatory requirements. Many of these "cosmetics-like products" are not covered in the existing EU-Canada MRA agreements and therefore cannot benefit from them. Under the RCF regulators from both sides will explore the possibility for Canadian importers of such EU products to be exempt from certain specific requirements to avoid duplications and additional cost and delay in access to markets.
- *Pharmaceutical Inspections.* A 1998 MRA between Canada and the EU includes recognition of pharmaceutical Good Manufacturing Practices (GMP) compliance inspections conducted in their own respective territories. Regulators are discussing the potential alignment of EU and Health Canada practices and processes related to the mutual recognition of pharmaceutical GMP inspections conducted in third countries.
- *Consumer product safety.* In November 2018, an administrative agreement was signed between Canada and the European Commission to exchange information between the EU RAPEX alert system and RADAR, Canada's consumer product incident reporting system. The exchange of information started on June 5, 2019 providing Canadian and European regulators detailed consumer product safety information. This allows for easier access to important information related to recalled products, better capacity for coordination of recall and/or surveillance activities, and improved collaboration between regulators of both jurisdictions in order to keep citizens safe.

In preparation for this meeting, Canada and the EU carried out consultations with stakeholders to identify areas of interest for regulatory co-operation. Following each party's calls for proposals, the EU Commission received 26 responses and Canada received close to 40 responses. The areas covered by the work plan were drawn from these consultations, feedback from Canadian and EU regulators, and agreed to by the EU and Canadian Co-chairs of the RCF.

Source: Comprehensive Economic and Trade Agreement Regulatory Cooperation Forum Work Plan, https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/2019-06-28-work-travail-plan.aspx?lang=eng.

Reporting back

Typically, these standing bodies report to a higher administrative body responsible for managing the overall agreement. The Regulatory Cooperation Forum reports on the implementation of the chapter to the CETA Joint Committee while the Regulatory Cooperation Committee informs the EU-Japan Joint Committee on the results of its meetings. The Committee on Regulatory Coherence can submit recommendations to the CPTPP Commission for improving the chapter enhancing the benefits of the agreement (the chapter in the Pacific Alliance includes a similar provision for the Regulatory Improvement Committee as does the Chile-Uruguay Trade Agreement).

Mechanisms to monitor implementation by parties and update horizontal chapters

The horizontal GRP/IRC chapters under the Chile-Uruguay Trade Agreement, the CPTPP, the Pacific Alliance and the USMCA embed formal mechanisms to monitor the implementation of the commitments by parties albeit in varying degrees of detail. Tracking the implementation of commitments provides the basis to understand the actual impact of these chapters and delivers evidence that may support their evaluation and potential revision. In line with this, the 4 specific bodies are also allowed to recommend improvements to the chapter to a higher administrative body responsible for the overall agreement.

The USMCA includes a broad reference to GRP Committee's role in monitoring the implementation and operation of the Chapter, including through updates on each party's regulatory practices and processes. As part of its functions, the USMCA's GRP Committee will consider developments in GRPs and approaches to regulatory co-operation to identify future areas of work or make recommendation to the USMCA Commission to improve the operation and implementation of the chapter.

The Chile-Uruguay Trade Agreement, the CPTPP and the Pacific Alliance include formal and substantive requirements for implementation reports by countries. Under these chapters, parties are required to notify status of implementation to the corresponding standing body. The first implementation report needs to be submitted 2 years after the entry into force of the CPTPP and Pacific Alliance and 3 years after the entry into force of the Chile-Uruguay Trade Agreement. Subsequent reports are required every 3 (Pacific Alliance) and 4 years (Chile-Uruguay Trade Agreement and CPTPP). In their first implementation report, parties need to describe the steps taken or planned to implement the chapter. These include details on measures to establish processes or mechanisms to facilitate co-ordination and review of proposed covered regulatory measures; encourage RIA; ensure that covered regulatory measures are written and available to the public; review covered regulatory measures; and annually inform the public on forthcoming covered regulatory measures. Subsequent implementation reports need to cover actions taken to implement the chapter since the previous report. Reports are reviewed and discussed by the corresponding standing body and potentially allow to identify opportunities for assistance and co-operation activities.

In addition, the CPTPP's Committee on Regulatory Coherence is expected to examine developments in the field of GRPs, best practices in regulatory oversight and coordination and the actual implementation of the chapter at least every five years. These evaluations may give rise to recommendations to the CPTPP Commission to improve the chapter or enhance the benefits of the agreement. The Chile-Uruguay Trade Agreement and Pacific Alliance provides for an equivalent exercise every five and three years, respectively.

Consultation with stakeholders

A majority of the horizontal chapters include mechanisms to allow interested parties to provide input or participate in their implementation. Stakeholder engagement typically falls within the responsibilities of each special standing body. For example, the committees under the Chile-Uruguay Trade Agreement, the CPTPP and Pacific Alliance are tasked with setting up mechanisms to allow interested parties to provide inputs on issues relevant to enhance regulatory coherence. Similarly, the USMCA's GRP Committee is

expected to consider suggestions from stakeholders about opportunities to strengthen the application of good regulatory practices. The CETA's horizontal chapter also provides opportunities for stakeholder engagement and allows parties to consult with interested parties, including representatives from academia, think-tanks, non-governmental organisations, businesses, consumer and other organisations (Box 9). Further, the bodies under the USMCA, the CETA and EU-Japan EPA envisage the possibility of parties agreeing to invite interested persons to contribute to their work.

Conclusions

Regulatory policy and co-operation have started to figure more prominently in trade agreements as these agreements become more detailed and ambitious, and as countries increase their commitment to regulatory quality. More recently, there has been a shift to include horizontal chapters on good regulatory practices (GRPs) and/or international regulatory co-operation (IRC). While the addition of these specific chapters is a relatively new trend, the inclusion of GRP-related provisions in trade agreements is not. As documented by the OECD and others, the importance of regulatory quality was demonstrated by the increasing incorporation of GRP disciplines through a range of approaches in different chapters, most prominently, but not only, in chapters on Technical Barriers to Trade (TBT) and Sanitary and Phyto Sanitary (SPS) (Disdier, Stone and van Tongeren, 2019[2]).

While the development of horizontal GRPs and IRC chapters is accelerating, it is still too early to assess their impact on regulatory policy and/or regulatory co-operation, in particular compared to the more traditional insertion of TBT and SPS+ provisions. However, this work provides a first systematic mapping of their *de jure* features against a common structure provided by the normative work of the OECD Regulatory Policy Committee, including the 2012 *OECD Recommendation on Regulatory Policy and Governance*. This stocktaking highlights certain commonalities and differences across agreements and draws some early conclusions.

Compared to previous approaches to promote GRP and IRC through trade agreements, **these chapters signal countries' increasing interest in elevating the visibility and ambition of regulatory policy and regulatory co-operation**.

- This is seen in the broader application of GRP and IRC-related considerations in trade agreements. Whereas traditional TBT and SPS provisions are clearly geared to facilitating trade (addressing technical regulations and regulatory requirements that cause trade frictions), the language used in some of the new horizontal chapters promotes a more extensive adoption of regulatory management tools for a broader range of regulatory measures.
- There is also evidence that the new horizontal chapters provide an opportunity to extend the coverage of GRP and IRC beyond regulatory impact assessment (RIA), stakeholder consultation and the adoption of international standards to include the role of regulatory oversight, *ex post* evaluation, and co-operation on regulatory enforcement.
- While still marginal, some of the new chapters under review include more binding language and/or are covered under dispute-settlement mechanisms.
- Finally, the incorporation of dedicated GRP and IRC chapters highlights the horizontal nature of these disciplines and their relevance beyond TBT and SPS measures, ensuring that regulatory issues not covered by the traditional chapter structure of trade agreements can be addressed.
- Nevertheless, the extent to which countries actually use these horizontal chapters to extend the application of GRP and IRC beyond TBT and SPS scope remains to be seen and should be monitored as parties start implementing them.

The level of ambition of these standalone chapters is largely connected to the state of play of regulatory policy in partner countries, which explains their variety.

- When parties display a solid uptake of regulatory management tools through robust national regulatory policy frameworks, the chapters focus on promoting practical avenues for co-operation on regulatory matters. This is the case of the CETA and NZ-Singapore CEP Upgrade. However, when there are gaps among partners' domestic GRP frameworks, these chapters tend to promote a common minimum level of GRPs and strengthen IRC. While it is still too early to classify these chapters into definite categories, the Brazil-Chile Trade Agreement, the Chile-Uruguay Trade Agreement CPTPP and the Pacific Alliance share strong common features and provide examples of the latter "model" of horizontal GRP chapters.
- Overall, and in line with previous OECD work, this gradual approach to GRP and IRC supports the notion that GRPs, including effective oversight mechanisms, are considered a *sine qua non* condition, a key building block to more ambitious IRC approaches, and an important avenue to facilitate trade. A solid GRP framework can generate understanding and trust in the respective regulatory systems of trade partners and allow them to strengthen IRC, which is likely to alleviate the regulatory differences that may be burdensome for traders.
- In light of the uneven adoption of regulatory policy across countries ((OECD, 2018[4]) (OECD, 2020[21])), these horizontal chapters may represent in some cases a compromise among diverse partners. While such chapters are likely to be relatively ambitious and aspirational for partners with a low maturity of regulatory policy, they may be less stringent for those with more mature policies. In these latter cases, and even when their provisions may appear limited compared to the existing regulatory practices, they may nonetheless be valuable in helping establish regulatory co-operation mechanisms to foster better understanding of partners' respective rulemaking systems of partners and help build confidence across parties.

These chapters build on and complement existing rulemaking practices in trading partners; the question is therefore whether they will be effective at leveraging and strengthening GRP and IRC already in place.

- Laws and regulations are the results of domestic processes led by line ministries and regulatory agencies, with mandates and objectives that may only marginally intersect the trade agenda. The extent to which chapters embedded in trade agreements may complement, and potentially strengthen, existing domestic GRP structures and practices will depend on their capacity to engage ministries, regulators and regulatory oversight bodies and support a whole-of-government approach to regulatory policy. Bridging the gap with the regulatory policy community is a crucial condition for the success of these chapters, and is likely a function of the degree to which the regulatory community was involved in their discussion and negotiation, as well as in their implementation, including future dialogues on regulatory matters supported by the chapter and, when applicable, its dedicated body.
- This stocktaking highlights the alignment of disciplines promoted by these horizontal chapters with the 2012 OECD Recommendation on Regulatory Policy and Governance (and the APEC/OECD Checklist on Regulatory Reform). This is a positive development likely to help catalyse the efforts across policy communities and limit the fragmentation of approaches to GRPs and IRC. The horizontal chapters under review are consistent in advancing traditional GRP disciplines promoted in these instruments, such as RIA and stakeholder engagement. A number of chapters address new areas promoted in the 2012 Recommendation and recent OECD work, such as ex post evaluation and regulatory oversight. Notably, some chapters go further than the 2012 Recommendation and venture into regulatory enforcement and promote the exchange of information and co-operation on regulatory management practices such as RIA and *ex post* assessment.

- Going forward, it will be important to monitor the implementation and impact of these horizontal chapters. They still represent a “soft” convergence around GRPs and IRC practices, relying mostly on “best endeavour” language. Nevertheless, they increasingly include implementation and evaluation clauses and promote continuous dialogue through the establishment of standing bodies. This reflects the practical challenges of legally enforcing regulatory policy in most countries, and underlines the core objective of these chapters, which is largely to educate about and promote good regulatory practices. As a consequence, it will be both important and challenging to monitor the implementation and impact of these chapters – important because their educational value will materialise over time; challenging because it will be difficult to disentangle and attribute effects to these provisions independently from concurrent efforts to embed regulatory policy.
- While it is too early to assess their impact, including whether they will differ significantly in their application (or lack thereof) from the traditional committees established under the TBT or SPS chapters, the creation of standing bodies is arguably an opportunity to bring together relevant players working on improving regulatory quality, including the regulatory community (regulatory oversight bodies, regulating ministries, regulatory agencies and inspections). These chapters de facto acknowledge the importance of discussion platforms and stakeholder participation for regulatory co-operation. They may thus be seen as “meta IRC platforms”.

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Annex A. Structured information on the standalone chapters on good regulatory practices and international regulatory co-operation of eight trade agreements

This Annex provides the full set of information collected on horizontal chapters on GRPs / IRC for the following eight trade agreements against a comparable template:

- the Agreement between New Zealand-Singapore on a Closer Economic Partnership (CEP Upgrade).
- the Agreement between the EU and Japan for an Economic Partnership (EU–Japan EPA);
- the Brazil–Chile Trade Agreement;
- the Canada-EU Comprehensive Economic and Trade Agreement (CETA);
- the Chile–Uruguay Trade Agreement;
- the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP);
- the First Amendment to the Additional Protocol of the Pacific Alliance Framework Agreement (Pacific Alliance); and
- the United States-Mexico-Canada Agreement (USMCA).

Protocol to Amend the Agreement between New Zealand-Singapore on a Closer Economic Partnership (NZ-Singapore CEP Upgrade)

Overview

Signature date	Signature pending
Entry into force	Not yet in force
Parties	New Zealand and Singapore
Structure of the Agreement	The CEP upgrade 2018 consists of two treaty-level instruments a Protocol that amends the original CEP agreement from 2000; and a mutual recognition agreement on conformity assessment. It also includes two non-binding side letters covering professional qualification recognition, and the relationship between the Protocol and other free trade agreements between New Zealand and Singapore.
GRP/IRC provisions	Chapter 5 on Sanitary and Phytosanitary Measures Chapter 6 on Technical Barriers to Trade
GRP chapter	No
IRC chapter	Chapter 13 on Regulatory Co-operation
GRP/IRC provisions in Sectoral Annexes	Annex 6.1 on Electrical and Electronic Equipment Annex 6.2 on Wine and Distilled Spirits

	Annex 6.3 on Pharmaceuticals Annex 6.4 on Cosmetics Annex 6.5 on Medical Devices
Trade Agreement Administrative Body	No

Identification of approaches used to promote GRP & regulatory coherence

Title	**Chapter 13 on Regulatory Cooperation**
Scope	Defines "regulatory cooperation activities" as efforts between the parties to enhance regulatory co-operation in order to further domestic policy objectives, improve the effectiveness of domestic regulation in the face of increased cross-border activity and promote international trade and investment, economic growth and employment. Defines "domestic regulation" as a mandatory measure of general application adopted by regulatory agencies within the parties.
Focus	Promote regulatory co-operation activities between NZ and Singapore.
Legal standing	Best efforts. Non-binding.
GRP/IRC mechanisms promoted	The Chapter recognizes the importance of: • Principles of GRP • Considering the adoption of international models, norms and rules in the development of domestic regulation. • Regulatory co-operation to diminish trade frictions. Co-operation can take the form of: • Bilateral information exchanges, dialogues or meetings between policy officials in agencies responsible for regulatory oversight; • Bilateral information exchanges, dialogues or meetings between policy officials in regulatory agencies or regulators of the parties; • Formal co-operation, such as mutual recognition, equivalence or harmonisation.
Role for specific domestic bodies/authorities (i.e. regulatory oversight body or trade body)	Yes, express mention of regulatory oversight bodies' role in exchange of information.
Special GRP/IRC body	No
Consultation with stakeholders on Chapter	No
Coverage under dispute settlement provisions	No. Expressly excluded
Monitoring mechanism for implementation by Parties and chapter update	No

Agreement between the European Union and Japan for an Economic Partnership (EU-Japan EPA)

Overview

Signature	17 July 2018	
Entry into force	1 February 2019	
Parties	Japan, the European Union and its Member States	
Structure of the Agreement	23 Chapters Sectoral annexes	
GRP/IRC provisions	Chapter 6 on Sanitary and phytosanitary measures Chapter 7 on Technical barriers to trade Chapter 17 on Transparency	
GRP/IRC chapter	Chapter 18 - Good Regulatory Practices and Regulatory Cooperation	
Sectoral Annex with GRP/IRC provisions	Annex 8-A Regulatory cooperation on financial regulation	
Trade Agreement Administrative Body	Name of Body	Joint Committee
	Functions	The Joint Committee: • reviews and monitor the implementation and operation of the agreement and can make appropriate recommendations to the parties, if necessary; • supervises and coordinate the work of all bodies established under the agreement, and recommends to them any necessary action; • seeks to solve problems that may arise under the agreement or resolve disputes on its interpretation or application, without prejudice to Chapter 21; • considers any other matter of interest under the Agreement as agreed by the parties; and • adopts its rules of procedure, the Rules of Procedure of a Panel and Code of Conduct for Arbitrators, and the Mediation Procedure referred to in Article 21.

Identification of approaches used to promote GRPs and regulatory coherence

Title	**Chapter on Good Regulatory Practices and Regulatory Co-operation**
Scope	Section A of the chapter, on Good Regulatory Practices and Regulatory Cooperation applies to regulatory measures issued by a regulatory authority of a party in matters covered under the agreement. Regulatory measures are measures of general application which are: for the European Union: regulations and directives, as provided for in Article 288 of the TFEU; and delegated and implementing acts, as provided for in Articles 290 and 291 of the TFEU, respectively; and for Japan: laws; Cabinet Orders; and Ministerial Ordinances. In addition, Sub-sections 3 on Regulatory Cooperation and 4 on Institutional Provisions apply to other measures of general application issued by the regulatory authority of a party that are relevant for regulatory co-operation activities, such as guidelines, policy documents or recommendations.
Focus	The chapter aims to promote good regulatory practices and regulatory co-operation among the parties.

Legal standing	Best efforts. Non-binding.
GRP/IRC mechanisms promoted	GRPs promoted at domestic level: • Early information on planned regulatory measures • Public consultation • Regulatory impact assessment • *Ex post* review IRC mechanisms promoted: • Exchange of information, including on RIA and *ex post* assessment • Promotion of regulatory compatibility through: o Common principles, guidelines, codes of conduct, mutual recognition of equivalence and implementing tools related to testing, qualifications, audits, or inspection; and o Bilateral co-operation and co-operation with other countries in international fora and co-operation to develop joint initiatives and promote international regulatory standards, guidelines and other approaches
Role for specific domestic bodies/authorities	The chapter sets for each party to designate specific contact points for issues that may arise under chapter (no indication of seniority or specific authority)
Special GRP/IRC body	Yes, the Committee on Regulatory Cooperation
Consultation with stakeholders on Chapter	No
Coverage under dispute settlement provisions	No
Monitoring mechanism for implementation by parties and chapter update	No
Interaction with other chapters	The specific provisions in other chapters of the agreement prevail

Special GRP/IRC body

Name of Body	**Committee on Regulatory Cooperation (Committee)**
Scope	Chapter 18 Section A
Purpose	Enhance and promote good regulatory practices and regulatory co-operation between the parties
Participants	The EU-Japan Committee on Regulatory Cooperation is formed by representatives from both parties of unspecified authority or seniority. In practice, on the Japanese side, the first committee meeting was attended by participants from the Ministry of Foreign Affairs, Ministry of Economy Trade and Industry and the Delegation of Japan to the EU; while the EU was represented by officials from the Directorates-General for Trade, Health and Food Safety, and for Internal Market, Industry, Entrepreneurship and SMEs, together with the EU Delegation to Japan
Activities	The Committee may: • Discuss proposals for regulatory co-operation activities; • Exchange information on, and promote, good regulatory practices; • Recommend regulatory co-operation activities on matters of common interest, including on pre-regulatory research;

	• Promote bilateral regulatory co-operation activities with the aim of facilitating compatible regulatory outcomes, in particular in areas where no regulatory measures exist or where their developments are at an initial stage; • Support the development of practical mechanisms, implementing tools and best practices to promote good regulatory practices and regulatory co-operation; • Encourage regulatory co-operation and coordination in international fora, including periodic bilateral exchanges of information on relevant ongoing or planned activities; • Periodically identify and endorse priority areas of regulatory co-operation; • Provide guidelines to help streamline the regulatory co-operation of other specialised committees established under the agreement and of other bilateral regulatory co-operation fora; • Consider the report on the outcome of consultations on planned or existing regulatory measures and review the progress on the implementation of the satisfactory solution to concerns raised by these issues, if applicable; and • Establish, as necessary, *ad hoc* working groups to pursue specific regulatory co-operation activities, which will report to the Committee on Regulatory Cooperation.
Frequency of meetings	Within the first year since entry into force of the agreement and unless once a year thereafter unless decided otherwise.
Decision making	Consensus
Early results	Not yet implemented

Brazil - Chile Trade Agreement

Overview

Signature		
Entry into force		
Parties	Brazil and Chile	
Structure of the Agreement	24 Chapters	
GRP/IRC provisions	Chapter 4 Sanitary and Phytosanitary measures Chapter 5 on Technical Barriers to Trade	
GRP/IRC chapter	Chapter 3 on Good Regulatory Practices Regulatory (*Boas Práticas Regulatórias -Buenas Prácticas Regulatorias*)	
Sectoral Annex with GRP/IRC provisions	No	
Trade Agreement Administrative Body	Name of Body	Administrative Commission (*Comisión Administradora*)
	Functions	• Secure a correct application of the agreement; • Assess the results achieved in the application of the agreement; • Oversee the work of all Committees and other bodies established under the agreement; and • Manage any other issue that may affect the functioning of the agreement.

Identification of approaches used to promote GRPs and regulatory coherence

Title	**Good Regulatory Practices** (*Boas Práticas Regulatórias -Buenas Prácticas Regulatorias*)
Scope	Regulatory measures that each party determines for itself (positive list type of approach). Regulatory measures are defined as mandatory measures of general application adopted by regulatory authorities and covered under the agreement. Each Party determines the regulatory measures covered by the agreement aiming to achieve significant coverage. A list of regulatory measures covered needs to be provided no later than one year after the date of entry into force of the agreement.
Focus	The chapter seeks to strengthen and promote the adoption of good regulatory practices among parties.
Legal standing	Best efforts.
GRP/ IRC mechanisms promoted	GRPs promoted at domestic level: • Regulatory coherence across levels of government • Regulatory Impact Assessment • Stakeholder consultation • Early notice of planned regulatory measures • *Ex post* review IRC mechanisms promoted: • Consideration of foreign and international regulations, rules and standards • Exchange of information (including on public consultation mechanisms, RIA, and *ex post* assessment) • Capacity building and technical assistance
Role for specific domestic bodies/authorities	No
Special GRP/IRC body	No
Consultation with stakeholders on Chapter	No
Coverage under dispute settlement provisions	No
Monitoring mechanism for implementation by parties and chapter update	Yes
Interaction with other chapters	In case of discrepancies, other chapters in the agreement prevail

Comprehensive Economic and Trade Agreement (CETA) between Canada and the European Union and its Member States

Overview

Signature	30 October 2016	
Entry into force	21 September 2017	
Parties	Canada, the European Union and its Member States	
Structure of the Agreement	30 Chapters Sectoral annexes (including Annex 4 - A on Cooperation in the field of motor vehicle regulations) Joint Interpretative Instrument	
GRP/IRC provisions	Chapter 4 Technical barriers to trade Chapter 5 Sanitary and Phytosanitary Measures Chapter 11 Mutual Recognition of Professional Qualifications Chapter 25 on Bilateral dialogues and Cooperation Chapter 27 on Transparency	
GRP/IRC chapter	Chapter 21 on Regulatory Cooperation	
Sectoral Annex with GRP/IRC provisions	Annex 4-A Cooperation in the Field of Motor Vehicle Regulations	
Trade Agreement Administrative Body	Name of Body	CETA Joint Committee (Established in Chapter 26 on Administrative and Institutional Provisions)
	Functions	• supervise and facilitate the implementation and application of the agreement and further its general aims; • supervise the work of all specialised committees and other bodies established under the agreement; • seek appropriate ways and methods of preventing problems or resolving disputes that might arise in areas covered by the agreement or on the interpretation or application of the agreement; • adopt its own rules of procedure; • make binding decisions for the purposes of the agreement; and • consider any matter of interest relating to an area covered by the agreement.

Identification of approaches used to promote GRPs and regulatory coherence

Title	**Chapter 21 on Regulatory Co-operation**
Scope	The chapter applies to the development, review and methodological aspects of regulatory measures of the parties' regulatory authorities that are covered by, among others, the TBT Agreement, the SPS Agreement, the GATT 1994, the GATS, and Chapters 4 (Technical Barriers to Trade), 5 (Sanitary and Phytosanitary Measures), 9 (Cross-Border Trade in Services), 22 (Trade and Sustainable Development), 23 (Trade and Labour) and 24 (Trade and Environment).

Focus	The chapter aims to strengthen regulatory co-operation among the parties.
Legal standing	Best efforts language
IRC mechanisms promoted	The chapter encourages regulators to exchange experiences and information, and identify areas where they could co-operate. It promotes that partners undertake the following activities to fulfil the objectives, *inter alia*: • Exchange of information and consultation through the regulatory development process, including on the administration, implementation and enforcement of regulations. • Early exchange of information about contemplated regulatory actions, measures or amendments under consideration, at the earliest stage possible • Examining opportunities to minimise unnecessary divergences in regulations through joint RIA, achieving a harmonised, equivalent or compatible solution; or considering mutual recognition in specific cases. • Aligning regulatory data collection and sharing regulatory data. • Conducting *ex post* reviews of regulations or policies, comparing methodologies and when possible share results of *ex post* reviews. The chapter encourages the convergence and compatibility between the regulatory measures of the parties and calls them to consider the regulatory measures or initiatives of the other party on the same or related topics, when appropriate. Article 21.7 set further co-operation between the parties including details on exchange of information of different topics including safety of consumer products. This article calls for coordination with the Committee on Trade in Goods.
Role for specific domestic bodies/authorities	The chapter sets specific contact points for issues that may arise under chapter: • For Canada, the Technical Barriers and Regulations Division of the Department of Foreign Affairs, Trade and Development. • For the EU, the International Affairs Unit of the Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs, European Commission, or its successor. Each contact point is responsible for consulting and coordinating with its respective regulatory departments and agencies.
Special GRP/IRC body	Yes, the Regulatory Cooperation Forum (RCF)
Consultation with stakeholders on Chapter	Yes
Coverage under dispute settlement provisions	Yes (Not excluded)
Monitoring mechanism for implementation by parties and chapter update	No

Special GRP/IRC body

Name of Body	**Regulatory Cooperation Forum (RCF)**
Scope	Chapter 21 on Regulatory Cooperation
Purpose	Facilitate and promote regulatory co-operation between Canada and the EU according to the chapter. The RCF considers a broad range of regulatory measures in order to improve regulatory planning, promote transparency, and enhance the efficacy of regulations by seeking to reduce duplication and misalignment. These efforts aim to help lower trade barriers, make it easier to do business in both markets, and improve choice for consumers.

Participants	Co-chaired by a senior representative of the Government of Canada at the level of a Deputy Minister, equivalent or designate, and a senior representative of the European Commission at the level of a Director General, equivalent or designate, and shall comprise relevant officials of each Party. In practice, work under this Forum on the EU side is led jointly by the Commission's Directorate General for Internal Market, Industry, Entrepreneurship and SMEs and the Directorate General for Trade, while for Canada is led jointly by the Treasury Board of Canada Secretariat and Global Affairs Canada.
Activities	RCF has the following functions: • Provide a forum to discuss regulatory policy issues of mutual interest; • Help individual regulators to identify potential partners for co-operation activities and provide them with appropriate tools for that purpose, such as model confidentiality agreements; • Review regulatory initiatives, whether in progress or anticipated, that may provide potential for co-operation. The reviews, carried out in consultation with regulatory departments and agencies, should support the implementation of the chapter; and • Encourage the development of bilateral co-operation activities.
Frequency of meetings	At least annual
Decision making	Not specified. Decision-making powers are allocated in the CETA Joint Committee
Early results	• The RCF held its first meeting in December 2019 and adopted a work plan covering five areas for co-operation: Consumer product safety, "Cosmetic-Like" Drug Products, Pharmaceutical Inspections, Cybersecurity, and Animal Welfare. • In November 2018, an administrative agreement was signed between Canada and the European Commission to exchange information between the EU RAPEX alert system and RADAR, Canada's consumer product incident reporting system. The exchange of information started on June 5, 2019 providing Canadian and European regulators detailed consumer product safety information. This allows for easier access to important information related to recalled products, better capacity for coordination of recall and/or surveillance activities, and improved collaboration between regulators of both jurisdictions in order to keep citizens safe.

Chile – Uruguay Trade Agreement

Overview

Signature	4 October 2016	
Entry into force	13 December 2018	
Parties	Chile and Uruguay	
Structure of the Agreement	20 Chapters	
GRP/IRC provisions	Chapter 5 Sanitary and phytosanitary measures Chapter 6 on Technical Barriers to Trade	
GRP/IRC chapter	Chapter 15 on Regulatory Coherence (*Coherencia Regulatoria*)	
Sectoral Annex with GRP/IRC provisions	No	
Trade Agreement	Name of Body	Free Trade Commission (*Comisión de Libre Comercio*)

Administrative Body	Functions	• Secure compliance and correct application of the agreement; • Assess the results achieved in the application of the agreement; • Contribute to solve controversies pursuant to Chapter 18; • Oversee the work of all Committees and other bodies established under the agreement; • Carry out negotiations towards the adherence of members of ALADI to the agreement; and • Oversee any other issue that may affect the functioning of the agreement

Identification of approaches used to promote GRPs and regulatory coherence

Title	**Regulatory Coherence (*Coherencia Regulatoria*)**
Scope	Regulatory measures that each party determines for itself (positive list type of approach). Regulatory measures are defined as mandatory measures of general application adopted by regulatory authorities. Each Party determines the regulatory measures covered by the agreement aiming to achieve significant coverage. A list of regulatory measures covered needs to be provided no later than three years after the date of entry into force of the agreement.
Focus	The chapter seeks to promote the implementation of core good regulatory practices among parties and encourage regulatory co-operation.
Legal standing	Best efforts.
GRP/ IRC mechanisms promoted	GRPs promoted at domestic level: • Regulatory coherence across levels of government • Regulatory oversight • Regulatory Impact Assessment • Early notice of planned regulatory measures • *Ex post* review IRC mechanisms promoted: • Consideration of international regulations, rules and standards • Exchange of information • Capacity building and technical assistance
Role for specific domestic bodies/authorities	No
Special GRP/IRC body	Yes, Regulatory Coherence Committee
Consultation with stakeholders on Chapter	No
Coverage under dispute settlement provisions	No
Monitoring mechanism for implementation by parties and chapter update	Yes

Interaction with other chapters	In case of discrepancies, other chapters in the agreement prevail

Special GRP/IRC body

Name of Body	**Regulatory Coherence Committee**
Scope	Chapter 15 on Regulatory Coherence
Purpose	Oversees the implementation and functioning of the chapter and promote co-operation among parties
Participants	Government representatives of each party (no indication of seniority or specific authority).
Activities	The Committee: • Considers issues related to the implementation and functioning of the chapter; • Identifies future priorities for co-operation and potential sectoral initiatives; • May consider regulatory coherence issues arising from other chapters of the agreement • Recommends possible chapter amendments to the Free Trade Commission • Sets up mechanisms for stakeholder engagement to promote regulatory coherence
Frequency of meetings	Within the first three year since entry into force of the agreement and as see fit thereafter
Decision making	Consensus
Early results	N/A

Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)

Overview

Signature date	8 March 2018	
Entry into force	30 December 2018	
Parties	Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam.	
Structure of the Agreement	30 Chapters	
GRP/IRC provisions	Chapter 7 on Sanitary and Phytosanitary Measures Chapter 8 on Technical Barriers to Trade	
GRP/IRC chapters	Chapter 25 on Regulatory Coherence	
Sectoral Annex with GRP/IRC provisions	No	
Trade Agreement Administrative Body	Name of Body	Trans-Pacific Partnership Commission
	Activities	The Commission: • considers any matter relating to the implementation or operation of the agreement; • reviews, within three years of the date of entry into force of the agreement and at least every five years thereafter, the economic relationship and partnership among the parties; • considers proposals to amend or modify the agreement;

		• supervises the work of all committees, working groups and any other agreement subsidiary bodies; • considers ways to further enhance trade and investment between the parties.

Identification of approaches used to promote GRP & regulatory coherence

Title	Chapter 25 on Regulatory Coherence
Scope	Regulatory measures that each Party determines for itself (positive list type of approach). Regulatory measures are defined as mandatory measures of general application related to any matter covered by the agreement adopted by regulatory agencies. Each Party determines the regulatory measures covered by the agreement aiming to achieve significant coverage. A list of regulatory measures covered needs to be provided no later than one year after the date of entry into force of the agreement for that party. For instance, for Japan the scope of covered regulatory measures includes policies which are subject to: • Article 9 of Chapter III of Government Policy Evaluations Act (Act No. 86 of June 29, 2001) which reads: "… Policy pertaining to individual project of research and development, public works, or official development assistance, or any other Policy that meets the following conditions, and to be specified by Cabinet Order. (i) It is expected that administrative act pursuant to the Policy has considerable impact on the lives of people and/or society and the economy, or a large amount of expense is incurred before the aims of the said Policy are achieved. (ii) It is an established knowledge that the method for acquiring information on the Effects of Policy and other methodology required for the conduct of Ex ante Evaluation have been developed." and; • Article 3, paragraph (6) of Cabinet Order for Enforcement of the Government Policy which reads "policies to be prescribed in Article 9 of the Act and specified by the Cabinet Order" as follows; Policy pertaining to introduction and abolishment of regulation (any effects of restricting the rights of the public or imposing obligations on the public (excluding any effects pertaining to taxation, judicial proceedings, procedures for application for subsidies, and other administrative acts to be specified by the Ordinance of the Ministry of Internal Affairs and Communications; hereinafter the same shall apply in this item)), and review of regulation (excluding any minor changes in the kind, reporting items or form of documents to be submitted, and any other changes to be specified by the Ordinance of the Minister of Internal Affairs and Communications as unlikely to have considerable effects on the lives of the public or the social economy) by the enactment, or revision or abolition of a law or a Cabinet Order."
Focus	The chapter seeks to promote the implementation of core good regulatory practices among parties and encourage regulatory co-operation.
Legal standing	Best efforts.
GRP/IRC mechanisms promoted	• Regulatory oversight (Article 25.4 Coordination and Review Processes Mechanisms) • Regulatory coherence across levels of government (Article 25.4 Coordination and Review Processes Mechanisms) • Communication, consultation and engagement

	• Regulatory Impact Assessment (Article 25.5 on Implementation of Core Good Regulatory Practices) • *Ex post* review (Article 25.5 on Implementation of Core Good Regulatory Practices) • Early notice (Article 25.5 on Implementation of Core Good Regulatory Practices) • IRC (Article 25.5 on Implementation of Core Good Regulatory Practices)
Role for specific domestic bodies/authorities	Each party needs to designate a contact point for issues related to the implementation of the chapter (no indication of seniority or specific authority)
Special GRP/IRC body	Yes, Committee on Regulatory Coherence (Committee)
Consultation with stakeholders on Chapter	Yes, the Committee needs to establish appropriate mechanisms to provide continuing opportunities for interested persons to provide input on matters relevant to enhancing regulatory coherence. (Article 25.8 on Engagement with Interested Persons)
Coverage under dispute settlement provisions	No, expressly excluded.
Monitoring mechanism for implementation by Parties and chapter update	Within two years of the entry into force of the agreement and at least every four years thereafter, each party needs to submit to the Committee a notification of implementation describing the steps taken to implement the chapter. At least once every five years after the date of entry into force of the agreement, the Committee considers developments in the area of good regulatory practices and in best practices in maintaining processes or mechanisms set in Article 25.4.1 (Coordination and Review Processes or Mechanisms), as well as the parties' experiences in implementing the chapter with a view towards considering whether to make recommendations to the Commission for improving its provisions to further enhance the benefits of the agreement.

Special GRP/IRC body

Name of Body	**Committee on Regulatory Coherence** (Committee)
Scope	Issues associated with the implementation and operation of the Chapter.
Purpose	The Committee considers issues associated with the implementation and operation of the Chapter and identifies future priorities, including potential sectoral initiatives and co-operative activities, involving issues covered by the chapter and issues related to regulatory coherence covered by other chapters of the agreement.
Participants	Government representatives of the parties (no indication of seniority or specific authority)
Activities	• The Committee receives the Implementation Reports by parties. • The Committee is responsible for undertaking the five-year review of the chapter and can propose recommendations to improve it.
Frequency of meetings	Not specified. First meeting will take place within one year of the date of entry into force of the agreement, and thereafter as necessary.
Decision making	No decision making powers specified. Decisions by consensus.
Early Results	Not implemented yet

First Protocol of Amendment to the Additional Protocol of the Pacific Alliance Framework Agreement

Overview

Signature date	10 February 2015	
Entry into force	1 May 2016	
Parties	Chile, Colombia, Mexico and Peru	
Structure of the agreement	• Additional Protocol to the Framework Agreement • First Additional Protocol Modifying Additional Protocol of Framework Agreement of the Pacific Alliance, dated July 2015 • Five Sectoral Annexes	
GRP/IRC provisions	Chapter 6 on Sanitary and Phytosanitary Measures Chapter 7 on Technical Barriers to Trade	
GRP/IRC chapters	Chapter 15 bis on Regulatory Improvement (*Mejora Regulatoria*)	
GRP/IRC provisions in Sectoral Annexes	Five Sectoral Annexes that are pending approval of • Cosmetics • Pharmaceutical products • Organic products • Food supplements • Medical Devices	
Trade Agreement Administrative Body	Name of Body	Free Trade Commission (*Comisión de Libre Comercio*)
	Activities	The Commission: • Oversees compliance and adequate application of the Additional Protocol. • Evaluates the outcomes of the Additional Protocol • Contributes to dispute settlement. • Oversees the work of committees, subcommittees and other bodies under the Additional Protocol • As other functions as decided by the parties

Identification of approaches used to promote GRPs and regulatory coherence

Title	**Chapter 15 on Regulatory Improvement (*Mejora Regulatoria*)**
Scope	Regulatory measures that each Party determines for itself (positive list type of approach). Regulatory measures are defined as mandatory measures of general application related to any matter covered by the agreement adopted by regulatory agencies. Each Party needs to determine the regulatory measures covered by the chapter aiming to achieve significant coverage and no later than three years after the date of entry into force of the chapter. Regulatory measures are defined as "general application measures adopted by regulatory authorities in areas covered by the Additional Protocol and of mandatory observance". The chapter defines Regulatory Improvement as the use of good regulatory practices in the planning, development, promulgation, implementation and review of regulatory measures and the efforts to improve co-operation to promote GRPs.

Focus	Promote regulatory management tools and strengthen regulatory co-operation among parties
Legal standing	Best efforts. Non-binding.
GRP/IRC mechanisms promoted	GRPs promoted at domestic level: • Regulatory oversight • Regulatory coherence across levels of government • Regulatory Impact Assessment • IRC through the consideration of regulatory measures developed in other parties or international fora • *Ex post* review • Early Planning
Role for specific domestic agencies or authorities (i.e. regulatory oversight body or trade body)	Parties are required to designate a contact point for the purposes of the chapter.
Special GRP/IRC body	Yes, Regulatory Improvement Committee (*Comité de Mejora Regulatoria*)
Consultation with stakeholders on Chapter	Yes (Article 15 bis 8)
Coverage under dispute settlement provisions	No
Monitoring mechanism for implementation by Parties and chapter update	Within two years of the entry into force of the chapter and at least every three years thereafter, each party needs to submit to the Committee a notification of implementation describing the steps taken to implement the chapter. There is a detailed description of the content of these "Implementation Reports". The Committee reviews this Reports and can propose assistance or co-operation activities. At least once every three years after the date of entry into force of the chapter, the Committee shall consider developments in the area of international good regulatory practices as well as the parties' experiences in implementing the chapter with a view towards considering whether to make recommendations to the Free Trade Commission for improving the provisions of the chapter to further enhance the benefits of the Additional Protocol.

Special GRP/IRC body

Name of Body	**Regulatory Improvement Committee (*Comité de Mejora Regulatoria*)**
Scope	Implementation of Chapter 15 bis on Regulatory Improvement and identification of priorities for regulatory improvement in other sectors covered under other chapters of the Additional Protocol.
Purpose	Overseeing the implementation of Chapter 15 bis
Participants	Representatives of the parties, no entity specified.
Activities	• Oversees implementation of the Chapter • Identifies priorities of work on regulatory improvement • Recommends amendments of the Chapter to the Commission
Frequency of meetings	Within the first year since entry into force of the chapter and afterwards as parties see fit.
Decision making	Consensus
Early results	Not yet implemented

United States-Mexico-Canada Agreement (USMCA)

Overview

Signature date	Signed November 30, 2018	
Entry into force	July 1, 2020	
Parties	Canada, Mexico and the United States	
Structure of the Agreement	30 Chapters Sectoral annexes on chemical substances, cosmetic products, information and communication technology, energy performance standards, medical devices, and pharmaceuticals.	
GRP/IRC provisions	Chapter 9 Sanitary and Phytosanitary Measures Chapter 11 Technical Barriers to Trade	
GRP/IRC chapters	Chapter 28 on Good Regulatory Practices	
GRP/IRC provisions in Sectoral Annexes	Chapter 12 Sectoral Annexes on chemical substances, cosmetic products, information and communication technology, energy performance standards, medical devices, and pharmaceuticals.	
Trade Agreement Administrative Body	Name of Body	Free Trade Commission (Commission)
	Purpose	The Commission: • considers matters relating to the implementation or operation of the agreement; • considers proposals to amend or modify the agreement; • supervises the work of committees, working groups, and other subsidiary bodies established under the agreement; • considers ways to further enhance trade and investment between the parties; • adopts and update the Rules of Procedure and Code of Conduct applicable to dispute settlement proceedings; and • reviews the roster established under Article 31.8 (Roster and Qualifications of Panellists) every three years and, when appropriate, constitute a new roster.

Identification of approaches used to promote GRPs and regulatory coherence

Title	Chapter 28 on Good Regulatory Practices
Scope	Regulations defined as “a measure of general application adopted, issued, or maintained by a regulatory authority with which compliance is mandatory”. Regulatory authority are defined as “an administrative authority or agency at the Party’s central level of government that develops, proposes or adopts a regulation” it does not include legislatures or courts. A special Annex 28-A contains additional provisions concerning the scope of “Regulations” and “Regulatory Authorities”. For all countries, general statements of policy or guidance that do not prescribe legally enforceable requirements are not Regulations.
Focus	The chapter sets out specific obligations with respect to good regulatory practices, including practices relating to the planning, design, issuance, implementation, and review of regulations.
Legal standing	Contains a number of legally binding provisions
GRP/IRC mechanisms promoted	• Regulatory oversight (Article 28.3 on Central Regulatory Coordinating Body)

	• Regulatory coherence (Article 28.4 on Internal Consultation, Coordination, and Review among domestic regulatory authorities) • Regulatory quality (Article 28.5 Information Quality) • Early Planning (Article 28.6). Each party shall publish annually a list of regulations that it reasonably expects within the following 12 months to adopt or propose to adopt. • Communication, consultation and engagement (Articles on transparency, use of plain language, publication) • Regulatory Impact Assessment (Article 28.11) • *Ex post* review (Article 28.13 on Retrospective Review) • IRC (Article 28.17 on Encouragement of Regulatory Compatibility and Cooperation). Reference to WTO disciplines and other fora for IRC.
Role for specific domestic agencies or authorities (i.e. regulatory oversight body or trade body)	Yes. Specific mention of participation of representatives of regulatory oversight body and regulatory agencies in the GRP Committee.
Special GRP/IRC body	Yes, Committee on Good Regulatory Practices (GRP Committee)
Consultation with stakeholders on Chapter	Yes
Coverage under dispute settlement provisions	Yes
Monitoring mechanism for implementation by Parties and chapter update	• Annual Report of activities to the Free Trade Commission. • The GRP Committee can make recommendations to the Commission for improving the operation and implementation of the chapter.

Special GRP/IRC body

Name of Body	**Committee on Good Regulatory Practices** (GRP Committee)
Scope	Chapter 28 on Good Regulatory Practices
Purpose	The GRP Committee aim to enhance communication and collaboration among parties in matters relating to the chapter, including encouraging regulatory compatibility and regulatory co-operation, with a view to facilitating trade between the parties.
Participants	Government representatives from each party, including representatives from their central regulatory coordinating bodies as well as relevant regulatory agencies.
Activities	• Monitoring the implementation and operation of the chapter, including through updates on each Party's regulatory practices and processes; • Exchanging information on effective methods for implementing the chapter, including approaches to regulatory co-operation, and relevant work in international fora; • Consulting on matters and positions in advance for meetings in international fora that are related to the work of the chapter; • Considering suggestions from stakeholders regarding opportunities to strengthen the application of GRPs; • Considering developments in GRPs and approaches to regulatory co-operation with a view to identifying future work for the GRP Committee or making recommendations as appropriate to the Commission for improving the operation and implementation of the Chapter.
Frequency of meetings	Annual, unless the parties decide otherwise, the GRP Committee shall meet at least once a year.
Decision making	Not specific decision making powers are mentioned. Decisions are taken by consensus.
Early results	Not implemented yet

Annex B. The 2012 OECD Recommendation of the Council on Regulatory Policy and Governance

The 2012 Recommendation sets out the measures to support the implementation and advancement of systemic regulatory reform to deliver regulations that meet public policy objectives and have a positive impact on the economy and society. These measures are integrated in a comprehensive policy cycle in which regulations are designed, assessed and evaluated *ex ante* and *ex post*, revised and enforced at all levels of government, supported by appropriate institutions. To these effects, the 2012 Recommendation includes the following principles:

1. **Explicit Policy on Regulatory Quality**. Commit at the highest political level to an explicit whole-of-government policy for regulatory quality. The policy should have clear objectives and frameworks for implementation to ensure that, if regulation is used, the economic, social and environmental benefits justify the costs, the distributional effects are considered and the net benefits are maximised.
2. **Communication, consultation and engagement.** Adhere to principles of open government, including transparency and participation in the regulatory process to ensure that regulation serves the public interest and is informed by the legitimate needs of those interested in and affected by regulation. This includes providing meaningful opportunities (including on-line) for the public to contribute to the process of preparing draft regulatory proposals and to the quality of the supporting analysis. Governments should ensure that regulations are comprehensible and clear and that parties can easily understand their rights and obligations.
3. **Regulatory oversight.** Establish mechanisms and institutions to actively provide oversight of regulatory policy procedures and goals, support and implement regulatory policy, and thereby foster regulatory quality.
4. **Integrated regulatory impact assessment (RIA**). Integrate RIA into the early stages of the policy process for the formulation of new regulatory proposals. Clearly identify policy goals, and evaluate if regulation is necessary and how it can be most effective and efficient in achieving those goals. Consider means other than regulation and identify the trade-offs of the different approaches analysed to identify the best approach.
5. ***Ex post* evaluation**. Conduct systematic programme reviews of the stock of significant regulation against clearly defined policy goals, including consideration of costs and benefits, to ensure that regulations remain up to date, cost justified, cost effective and consistent, and deliver the intended policy objectives.
6. **Reviewing performance of regulatory reform programmes and regulatory policy.** Regularly publish reports on the performance of regulatory policy and reform programmes and the public authorities applying the regulations. Such reports should also include information on how regulatory tools such as RIA, public consultation practices and reviews of existing regulations are functioning in practice.

7. **Organisation of regulatory agencies**. Develop a consistent policy covering the role and functions of regulatory agencies in order to provide greater confidence that regulatory decisions are made on an objective, impartial and consistent basis, without conflict of interest, bias or improper influence.
8. **Administrative and judicial review.** Ensure the effectiveness of systems for the review of the legality and procedural fairness of regulations and of decisions made by bodies empowered to issue regulatory sanctions. Ensure that citizens and businesses have access to these systems of review at reasonable cost and receive decisions in a timely manner.
9. **Risk and regulation**. As appropriate apply risk assessment, risk management, and risk communication strategies to the design and implementation of regulations to ensure that regulation is targeted and effective. Regulators should assess how regulations will be given effect and should design responsive implementation and enforcement strategies.
10. **Regulatory coherence.** Where appropriate promote regulatory coherence through co-ordination mechanisms between the supranational, the national and sub-national levels of government. Identify cross-cutting regulatory issues at all levels of government, to promote coherence between regulatory approaches and avoid duplication or conflict of regulations.
11. **Regulatory management capacity at sub-national level.** Foster the development of regulatory management capacity and performance at sub-national levels of government.
12. **International regulatory co-operation.** In developing regulatory measures, give consideration to all relevant international standards and frameworks for co-operation in the same field and, where appropriate, their likely effects on parties outside the jurisdiction.