



Application of Good Regulatory Practices to Support TBT Implementation

Standards Alliance Workshop

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Overview

- What are Good Regulatory Practices (GRP)?
- Elements of GRP
- GRPs and the TBT Agreement

What are Good Regulatory Practices?

- GRPs refer to internationally recognized processes and procedures that can be used to improve the quality and cost-effectiveness of domestic regulations
- GRPs include administrative procedures that govern intragovernmental coordination of rulemaking activity, impact assessment, regulatory transparency, participation, and accountability.

Why are GRPs Important?

- GRPs contribute to more informed policy decisions and promote economic efficiency.
- Transparency and accountability address concerns about undue influence and allow all interested parties to be heard.
- Facilitate trade and investment by reducing regulatory burdens.
- Improve the quality and cost-effectiveness of regulations.
- Reduce non-tariff barriers to help increase economic growth and trade.

International Good Regulatory Practices

Three key tools:

- Transparency and Public Consultation
- Regulatory Impact Analysis (RIA)
- Internal Coordination of Rulemaking Activity

Why is Transparency Important?

- Contributes to more informed policy decisions and promotes economic efficiency.
- Maximize net benefits to society—or at least ensure that benefits justify costs.
- Promote economic efficiency by regulating only where markets fail, and when regulating, by using cost-effective and market-based approaches.
- Increase the transparency of the regulatory system.

Why is Public Consultation Important?

- **Enhanced Information Quality:** Public consultation allows input from those directly affected by the regulation. It brings in external expertise that can help regulators avoid potential unnecessary costs and inefficiencies
- **Credibility:** Seeking the views of affected parties strengthens the relationship between government and stakeholders
- **Better Implementation and Compliance:** Consultation can identify unintended effects and practical problems. This increases buy-in and facilitates implementation

Why is RIA Important?

- Contributes to more informed policy decisions and promotes economic efficiency.
- Maximize net benefits to society—or at least ensure that benefits justify costs.
- Promote economic efficiency by regulating only where markets fail, and when regulating, by using cost-effective and market-based approaches.
- Increase the transparency of the regulatory system.

Why is Internal Coordination Important?

Internal coordination of rulemaking activity, particularly the ability to manage interagency review and coordinate with trade and competition officials, is an essential part of GRP. Successful internal coordination occurs both before an agency publishes a regulation for public, during the drafting of a final regulation, as well as after its adoption.

- **Enhanced information quality:** By leveraging the knowledge of experts across the government, regulators can help each other refine data and analysis and plan for implementation.
- **Efficiency:** Interagency coordination is essential to planning interagency cooperation where applicable and preventing the implementation of duplicative or overlapping rules. Internal coordination can also facilitate the WTO notification process.
- **Intragovernmental trust:** Interagency coordination promotes awareness across the government enabling a system that sets expectations for regulators and enables interagency differences to be adjudicated.

GRPs: Improve Regulation and Facilitate International Trade

**Improve
Regulatory
Outcomes**



**Facilitate
Trade**

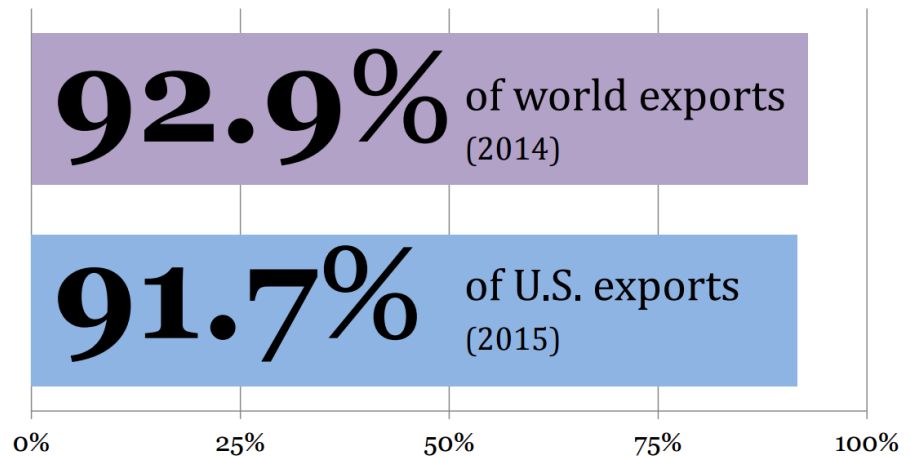
- **Transparency and Public Consultation**
 - Accessibility to regulations and supporting analyses
 - Opportunities for comment by trading partners and interested persons.
- **Internal Coordination of Rulemaking Activity**
 - Inclusion of trade and other relevant ministries
- **Regulatory Impact Analysis (RIA)**
 - Identification and analysis of potential trade impacts

Why are GRPs relevant to trade?

Regulations impact international trade

- **Technical regulations impact international trade**
- **Technical regulations are pervasive**
- **Different regulations can create challenges for exporters**

Goods exports covered by WTO notifications



Calculations based on WTO notifications from January 1, 2006 to August 18, 2015 by all WTO members

(Source: WTO notifications from WTO I-TIP database; 2015 U.S. export data from U.S. Department of Commerce; and 2014 global exports data from UN Comtrade.)

GCC: Active Regulators and Notifiers

WTO notifications 2006-2015

European Union

1,198

China

949

Saudi Arabia

857

United States

856

ISRAEL

694

Uganda

502

South Korea

498

Brazil

445

Kenya

423

Qatar

390

Bahrain

390

Japan

335

Canada

310

Ecuador

310

Calculations based on WTO notifications from January 1, 2006 to August 18, 2015 by all WTO members.

* includes notifications made by the EU and its member states.

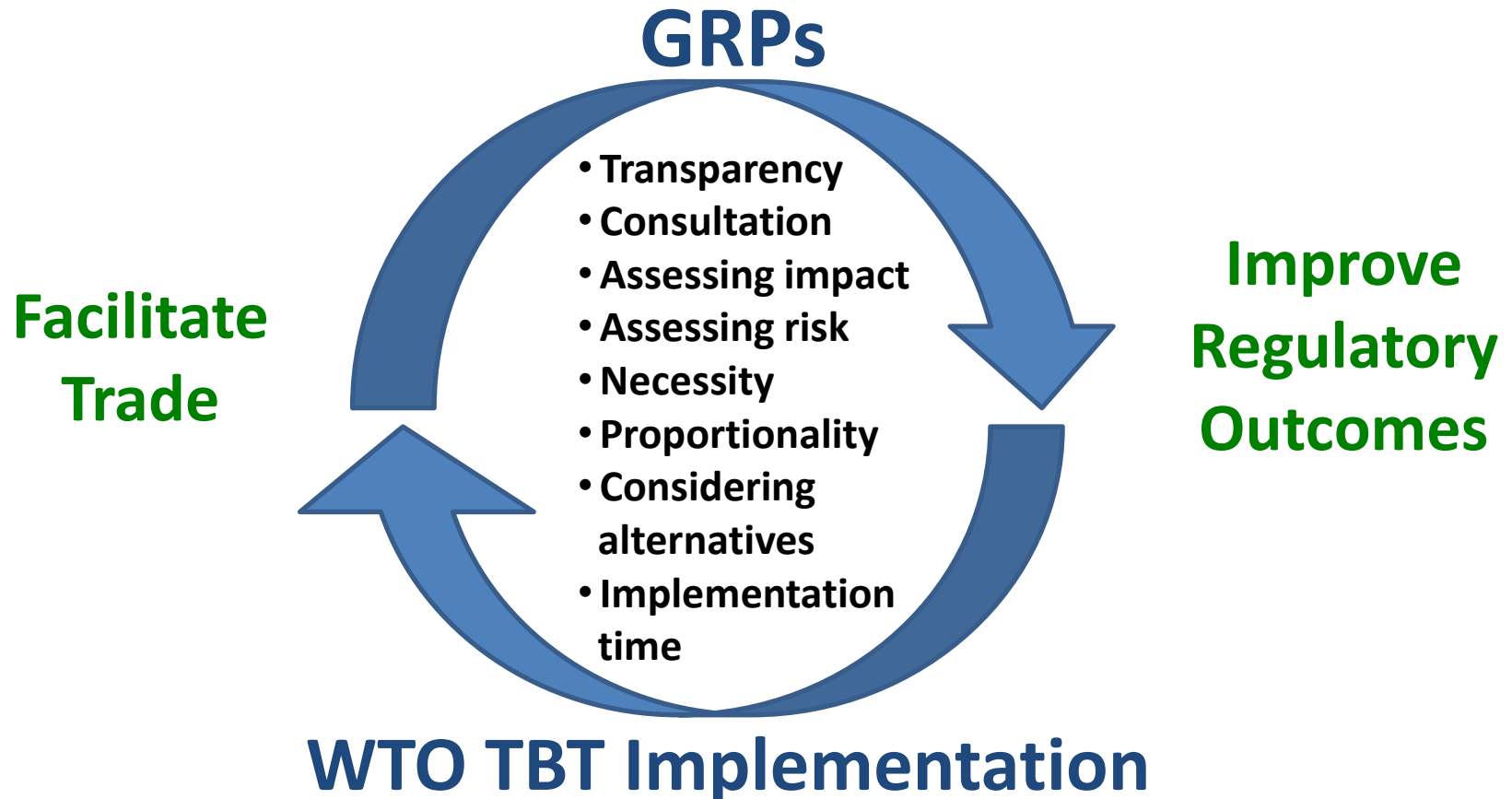
excludes Hong Kong and Macao, which made a combined 25 notifications.

(Source: WTO notifications from WTO I-TIP database)

How to ensure GRPs also address trade concerns?

TBT Implementation

“Good regulatory practice is about implementation of the TBT Agreement. Effective implementation through best practices is seen as an important means of avoiding unnecessary obstacles to trade.” *G/TBT/1/Rev.12*



Brief overview of TBT Agreement

Objective:

Imposes disciplines on technical regulations, standards, or conformity assessment to avoid unnecessary obstacles to trade while preserving Members' rights to adopt legitimate measures

TBT Measures:

Standards: Document approved by a recognized body, that provides, for common and repeated use, rules, guidelines or characteristics for products or related processes and production methods, with which compliance is not mandatory.

Technical regulations: Document which lays down product characteristics or their related processes and production methods, including the applicable administrative provisions, with which compliance is mandatory.

Conformity assessment procedures: Any procedure used, directly or indirectly, to determine that relevant requirements in technical regulations or standards are fulfilled.

Coverage: All products (industrial and agricultural)

WTO TBT Agreement: A Balance

avoiding
unnecessary
obstacles to
international trade



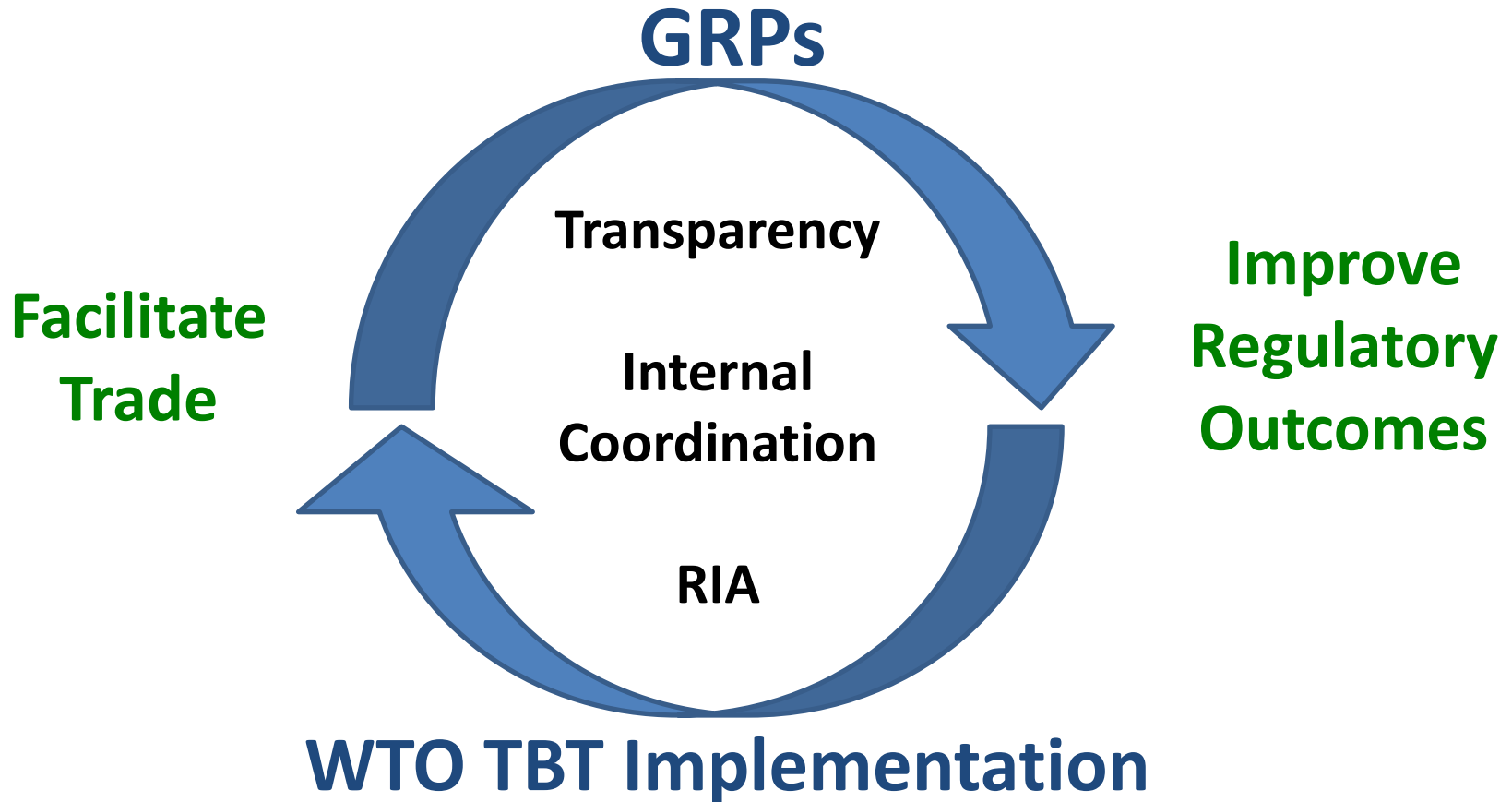
allowing for regulatory
autonomy to protect
legitimate interests

Members have the right to regulate at levels they deem appropriate to achieve legitimate objectives, provided that they do not discriminate in an arbitrary or unjustified manner

Key TBT Agreement Obligations

- **National Treatment/Most Favored Nation:**
 - Reflect GATT obligations
- **Not Trade Restrictive:**
 - Standards
 - Technical regulations
 - Conformity assessment
- **International Standards:**
 - Required as a basis for regulation and conformity assessment procedures
 - Measures based on international standards - rebuttably presumed not to create obstacles to international trade
- **Transparency:**
 - Notification
 - Allow comments, and take them into account
 - Reasonable interval of time for implementation

GRPs: How can they specifically support TBT implementation?



Transparency and Public Consultation: Integrating TBT Commitments

Key TBT transparency obligations:

- Establish and maintain a national inquiry point
- Publish a notice at an early appropriate stage
- Notify draft regulations/amendments to the WTO
- Provide copies of relevant documents (upon request)
- Allow for *reasonable time* for comments so that amendments can be still be introduced
- Take written comments/discussions into account in the final regulation
- Allow a *reasonable interval* between publication and entry into force so producers may adapt

Internal Coordination: Integrating TBT Implementation

Inclusion of trade ministries can help:

- Identify negative trade effects including potential discrimination
- Identify less trade restrictive solutions
- Ensure transparency practices are consistent with TBT Agreement obligations

Regulatory Impact Analysis: Integrating TBT Implementation

Questions that can be addressed during an RIA:

- **Not an Unnecessary Obstacle to Trade:** Are there less trade restrictive alternatives that could fulfill the measure's objective?
- **National Treatment/Most Favored Nation:** Does the measure treat an imported product less favorably than a like domestic product or a like imported product from another country?
- **International Standards:** Does the measure use a relevant international standard as a basis, unless such standard is ineffective/inappropriate to fulfill the objective?
- **Transparency:** Is the regulatory process transparent for stakeholders?

Example: Evaluating if regulations are “Not More Trade Restrictive Than Necessary”

2.2 Members shall ensure that technical regulations are not prepared, adopted or applied with a view to or with the effect of **creating unnecessary obstacles to international trade**. For this purpose, technical regulations shall **not be more trade-restrictive than necessary to fulfil a legitimate objective**, taking account of the risks non-fulfilment would create.

Restrictive?

Necessary?

**Achieves
legitimate
objectives?**

**Risk
Assessment**

Example: Evaluating if conformity assessment procedures are “Not More Strict Than Necessary”

5.12: conformity assessment procedures are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade. This means, inter alia, that conformity assessment procedures shall not be more strict or be applied more strictly than is necessary to give the importing Member adequate confidence that products conform with the applicable technical regulations or standards, taking account of the risks non-conformity would create.

Obstacles?

Necessary?

**More strict
than
necessary?**

**Risk
Assessment**

Example: Use of International Standards

TBT Article 2.4: Where technical regulations are required and relevant international standards exist or their completion is imminent, Members shall use them, or the relevant parts of them, as a basis for their technical regulations except when such international standards or relevant parts would be an ineffective or inappropriate means for the fulfilment of the legitimate objectives pursued, for instance because of fundamental climatic or geographical factors or fundamental technological problems.

TBT Article 2.5: ...Whenever a technical regulation is prepared, adopted or applied for one of the legitimate objectives explicitly mentioned in paragraph 2, and is in accordance with relevant international standards, it shall be rebuttably presumed not to create an unnecessary obstacle to international trade.

**Does an
international
standard
exist?**

**Relevant?
Appropriate?**

**Could
multiple
standards
fulfill
objective?**

What constitutes an international standard?

Not the source, but the process

- TBT Agreement does not define “international standard” or “international standardizing body”
- TBT Agreement does not name specific sources of international standards
- TBT Committee adopted a Decision in 2000, considered a “subsequent agreement,” which “clarifies and strengthens the concept of international standards under the Agreement.”
- Committee Decision has been applied in WTO jurisprudence and recent trade negotiations to determine if a standard is “international”

Applying the 2000 TBT Committee Decision's Six Principles of International Standards Development

- **Transparency:** Notification/Publication of Standards and Standardization Activities
- **Openness:** Ensuring Access to the Process
- **Impartiality and Consensus:** Ensuring Fairness
- **Effectiveness and Relevance:** Ensuring Market Relevance and the Use of Sound Science
- **Coherence:** Avoiding Duplication and Overlap
- **Development Dimension:** Encouraging Participation in Standards Development

Is the standard relevant and appropriate?

- International standards – no automatic compliance
- No single standardizing body can produce international standards that are relevant, appropriate and effective in every case
- Must assess relevance – does the standard respond to regulatory and market needs and include state of the art scientific and technological developments

Multiple standards can achieve regulatory objectives and facilitate trade

REGULATORY OBJECTIVE

Reference to multiple standards, when appropriate, can achieve regulatory objectives...



...while also creating economic linkages for local investors, importers and exporters

MULTIPLE STANDARDS APPROACH

In summary...

- GRPs are critical for improving regulatory outcomes and facilitating trade
- GRPs, including RIA, transparency and consultation, and internal coordination can be consciously designed to effectively deliver regulatory and trade benefits.
- Good regulatory practice is about implementation of the TBT Agreement. GRPs support TBT implementation, and TBT implementation supports effective GRPs and improved regulation.