



Global Trends in Good Regulatory Practice

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Overview

- What is Good Regulatory Practice?
- Principles for GRP
 - International Work
 - U.S. Guidelines
- GRP in Trade Agreements
 - NAFTA, TPP, T-TIP
- Case Study: North America

What are Good Regulatory Practices?

GRP refers to internationally recognized processes and procedures that can be used to improve the quality and cost-effectiveness of domestic regulations

Good Regulatory Practice

GRPs include administrative procedures that govern intragovernmental coordination of rulemaking activity, impact assessment, regulatory transparency, participation, and accountability.

U.S. Endorsement of GRP

- 2005 APEC-OECD Checklist on Regulatory Reform
- 2011 APEC Leaders Statement: The Honolulu Declaration – Toward a Seamless Regional Economy
- 2012 Recommendation of the Council on the OECD on Regulatory Policy and Governance

APEC-OECD Checklist on Regulatory Reform

- There is no single model of regulatory reform, but this does not mean that standards, goals and well-structured institutions do not matter.
- The checklist is a voluntary tool that member economies may use to evaluate their respective regulatory reform efforts.

APEC-OECD Checklist on Regulatory Reform

- Four parts to the checklist
- (A) Horizontal questionnaire
- Three specific policy areas:
 - (B) Regulatory policies
 - (C) Competition policies
 - (D) Market openness policies

2011 APEC Leaders Statement: The Honolulu Declaration

- Recognizes that regulatory reform can “boost productivity and job creation” while protecting the environment, public health, safety, and security.
- As trade and investment flows increase, greater alignment is required to avoid barriers to growth and employment.

2011 APEC Leaders Statement: The Honolulu Declaration

- Pursue common objectives to prevent technical barriers to trade related to ***emerging green technologies***, including smart grid interoperability standards, green buildings, and solar technologies;
- Strengthen ***food safety systems and facilitate trade***, including by supporting the Global Food Safety Fund – an innovative capacity-building partnership with the World Bank; and
- Ensure implementation of our APEC ***anti-corruption and open government*** commitments by 2014 through deeper cooperation in APEC.

2011 APEC Leaders Statement: Annex

Strengthening Implementation of Good Regulatory Practices

- Develop, use, or strengthen processes, mechanisms, or bodies to ***enable a whole of government approach*** in the development of regulations, including coordination across regulatory, standards, and trade agencies.
- Develop, use, or strengthen ***mechanisms for assessing the impact of regulations***, which involves effective and consistent use of the tools and best practices for developing new regulations and reviewing existing regulations.
- Implement the principles related to public consultation of the ***2005 APEC-OECD Integrated Checklist*** on Regulatory Reform section on regulatory policy and the 2004 Leaders' Statement to Implement the APEC Transparency Standards.

2012 Recommendation of the Council of the OECD on Regulatory Policy and Governance

“The financial crisis, and the pace of social change and environmental challenges highlight the ***importance of sound regulatory frameworks as a basic condition*** for well-functioning markets and societies, protecting the environment and the promotion of economic growth.”

2012 Recommendation of the Council of the OECD on Regulatory Policy and Governance

- Sets out the measures that governments should take to support the implementation and advancement of systemic regulatory reform to deliver regulations that meet public policy objectives and will 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.

2012 Recommendation of the Council of the OECD on Regulatory Policy and Governance

- Sets out 12 recommendations that are elaborated in an Annex.
- Examples:
 - Whole of government approach (#1)
 - Open government, including transparency and public participation (#2)
 - Integrate regulatory impact analysis as early as possible (#4)

Good Regulatory Practice in the United States

- Administrative Procedure Act
- Executive Orders 12866, 13563, 13609, 13610
- OMB Circular A-4
- OMB Circular A-119
- OIRA Memorandum on “Disclosure and Simplification as Regulatory Tools”

GRP and Trade

2011 APEC Leaders' Declaration:

“In addition, as trade and investment flows become more globalized, greater alignment in regulatory approaches, including to international standards, is ***necessary to prevent needless barriers to trade*** from stifling economic growth and employment.”

GRP and Trade

2012 OECD Recommendation

“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***, distributional effects are considered and the net benefits are maximized.”

GRP and U.S. Trade Agreements

- GRPs are an important element of U.S. FTAs, where we seek commitments to GRPs, and establish dedicated fora to further cooperation.
- Generally covered within individual chapters
 - Publication, Notification and Administration of Laws” (NAFTA) or “Transparency” (others)
 - Technical Barriers to Trade
 - Government Procurement
 - Elements of regulatory cooperation: *Pisco Perú*

GRP and Trade: The TPP and T-TIP

- Trans-Pacific Partnership (TPP): Regulatory Coherence is one of four “horizontal” issues, along with competitiveness and business facilitation, small and medium-sized enterprises, and development
- Transatlantic Trade and Investment Partnership: Includes a chapter on Regulatory Coherence and Transparency

The TPP: Regulatory Coherence

- Specific commitments across the agreement to promote regulatory coherence to make trade between TPP countries more business-friendly and efficient and create the conditions necessary to substantially boost trade in the TPP region, while taking into account the legitimate policy objectives of each country.
- Regulatory and other non-tariff barriers increasingly are the major hurdles that companies face. Work to improve regulatory practices, eliminate unnecessary barriers, reduce regional divergence in standards, promote transparency, conduct regulatory processes in a more trade-facilitative manner, eliminate redundancies in testing and certification, and promote cooperation on specific regulatory issues.
- Joint work and additional commitments on food safety, animal, and plant health issues of common concern to enhance consultation and cooperation on these matters.

Regional Integration through Regulatory Cooperation: North America

- North America a good candidate for Regulatory Cooperation
- North American Free Trade Agreement (1994)
- Integrated supply chains in many industries: autos, industrial equipment, electronics, petroleum, agriculture
- Geographically contiguous, which affects the environment, movement of people, health, and security

Regional Integration through Regulatory Cooperation: North America

- Three mechanisms for cooperation
 - NAFTA Committees
 - Trilateral processes under the North American Leaders Summit
 - Two bilateral regulatory cooperation frameworks

NAFTA Committees

- Committee on Standards-Related Measures (CSRM), responsible for overseeing the implementation of Chapter 9 (Technical Barriers to Trade)
- Four subcommittees:
 - Land Transportation Standards
 - Telecommunications Standards
 - Automotive Standards
 - Subcommittee on Labeling of Textile and Apparel

NAFTA Committees

Committee on Sanitary and Phytosanitary Measures seeks to facilitate

- the enhancement of food safety and improvement of sanitary and phytosanitary conditions
- activities of the Parties related to international standards and equivalence
- technical cooperation, including cooperation in the development, application and enforcement of sanitary or phytosanitary measures
- consultations on specific matters relating to sanitary or phytosanitary measures.

NAFTA Committees: 20 Years

- Increase in bilateral mechanisms
- Consultative committees on agriculture
- Ad hoc working groups (e.g., Tequila, Sweeteners, Steel)
- Direct engagement (e.g., Organic equivalency)

Trilateral Processes Under the NALS

- Generally held every year, most recently in April 2012 (Washington) and February 2014 (Guadalajara)
- Summits have included cooperation on a wide range of issues, including borders, energy, environment, and public health
 - North American Pandemic Influenza Plan

Trilateral Processes Under the NALS

- 2012: Leaders agreed to complement the two bilateral efforts with a trilateral agenda that included four sectors:
 - Certain vehicle emission standards
 - Railroad safety
 - Globally Harmonized System of Classification and Labeling of Workplace Chemicals
 - Aligning principles of our regulatory approaches to nanomaterials
- 2014: Leaders agreed to include observers from Canada or Mexico in the regulatory cooperation framework the United States has with the other country

Bilateral Regulatory Cooperation Councils

- Mexico, May 2010: President Obama and then-Mexican President Calderón agreed to create a High-Level Regulatory Cooperation Council (HLRCC)
- Canada, February 2011: President Obama and Canadian Prime Minister Harper announced the Regulatory Cooperation Council (RCC).
- Both programs are designed to “increase regulatory transparency; provide early warning of regulations with potential bilateral effects; strengthen the analytic basis of regulations; and help make regulations more compatible.”

Bilateral Regulatory Cooperation Councils

- Both Canada and Mexico are committed to GRP
- Both have administrative bodies with executive authority (similar to the U.S. executive branch) over the development and implementation of regulations
- Consistent approaches to regulatory transparency, public participation, analysis, evidence-based decision-making, use of standards, and conformity assessment
- OMB's Office of Information and Regulatory Affairs (OIRA) serves as the U.S. chair for both initiatives. Canada's Privy Council Office (PCO) and Mexico's Commission for Regulatory Improvement (COFEMER) have the lead for their countries.

Canada: Regulatory Cooperation Council

- 2011: Joint Action Plan
- 29 initiatives in four broad sectors
 - Agriculture and Food
 - Health and Consumer Products
 - Transport
 - The Environment

Canada: Regulatory Cooperation Council

- Key Achievements
 - Common Electronic Submission Gateway for pharmaceutical and biological products
 - Regulatory Oversight Regime on the Great Lakes & St. Lawrence Seaway
 - Zoning for Foreign Animal Diseases
 - Crop Protection Products
- August 2014: Joint Forward Plan: Long term goal to include regulatory cooperation within regular planning and operations of regulatory authorities

Mexico: Regulatory Cooperation Council

- Launched May 2010
- Workplan finalized in February 2012:
 - Food
 - Transportation
 - Nanotechnology
 - E-Health
 - Offshore Oil and Gas Development Standards
 - Accreditation of Conformity Assessment Bodies

Lessons Learned

- **High-level commitment** to, and support of, the RCC provides needed strategic direction to advance regulatory cooperation.
- **Relationships matter** for successful international regulatory cooperation, and open communication between colleagues helps establish a trust and rapport that is essential for implementing specific initiatives.
- Regulatory cooperation does not encompass all regulatory activities within agencies. **Focus on areas where benefits can be realized** by regulated parties, consumers, and/or regulators without sacrificing outcomes such as protecting public health, safety and the environment. The identification of these priorities needs to be the product of careful consideration.

Lessons Learned (cont.)

- Reliance and **agreement on good regulatory practices is an essential foundation** for successful regulatory cooperation.
- Regulatory divergences are not necessarily due to different regulatory objectives, and **additional planning, coordination, and communication at all stages of rulemaking, including development and implementation, can help avoid unnecessary differences.**
- **Stakeholders have a critical role** to play in identifying unnecessary differences that create costs and challenges, as well as in suggesting opportunities for new initiatives. Meaningful and consistent opportunities for stakeholder engagement are important to success.

Global Trends in Good Regulatory Practice: Conclusions

- GRPs provide the basis for the sound functioning of markets, economic growth, and an increase in trade.
- GRPs were previously addressed through individual chapters in trade agreements, but more recent U.S. FTAs seek regulatory coherence across chapters
- Regulatory Cooperation is like a marathon: it requires lots of hard work and takes a long time

Thank You!