Examination of Principles of Good Regulatory Practice

Kent Shigetomi
Office of the U.S. Trade Representative
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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.
Why is GRP important?

- GRPs contribute to more informed policy decisions and promotes economic efficiency.
- Transparency and accountability address concerns about undue influence and allows 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 (GRP)

Three common principles are:

• Centralized Management and Leadership

• Regulatory Impact Analysis (RIA)

• Transparency and Accountability
Centralized Management and Leadership

• Emphasizes the importance of and adherence to regulatory principles and procedures.

• It helps to ensure that regulations are consistent with the law and with the President’s principles and priorities.

• It promotes coordination among different parts of the Executive Branch.

• It helps to improve and strengthen the analysis underlying rules.
Regulatory Impact Analysis (RIA)

Basic Goals

• 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.
Transparency and Accountability

Transparency and accountability help address concerns about undue influence and allows all interested parties to be heard. The U.S. has three core principles:

• Transparency
  – OIRA Dashboard (www.reginfo.gov) and the international flag
  – Unified Agenda and Regulatory Plan
  – Federal Register

• Participation
  – Public comments
  – Regulations.gov (www.regulations.gov)

• Collaboration
  – Open Government and Open Government Partnership
  – Meetings with outside parties
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.
The financial crisis, and the pace of social change and environmental challenges highlight the \textit{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”
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
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.
Lessons Learned

• It is easier to prevent unnecessary regulatory differences than to remove existing ones.
• Adopting GRPs take time, focus on long-term.
• GRP should endure Administration changes and be used to help inform policy officials.
• If two countries both apply similar GRPs it provides a platform to cooperate to help avoid trade irritants.