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**Committee on Technical Barriers to Trade**

**THEMATIC SESSION ON GOOD REGULATORY PRACTICES**

15 NOVEMBER 2022, 10:00-13:00

*Moderator's Report<sup>1</sup>*

At the Ninth Triennial Review, Members agreed to continue to hold thematic sessions in conjunction with the TBT Committee's regular meetings from 2022 to 2024 to further deepen the exchange of experiences on specific topics. On this basis, the Committee agreed to hold a thematic session on good regulatory practices.<sup>2</sup> The first part of the session focused on the domestic implementation of GRP. The second part focused on GRP in trade agreements. Information about the speakers, presentations, and related materials is available on the WTO website.<sup>3</sup>

**1 DOMESTIC IMPLEMENTATION OF GRP**

**1.1 Guiding questions**

- Considering the decisions and recommendations of the TBT Committee on GRP, what recent progress have Members made in their domestic regulatory frameworks on GRP? Are there any specific examples that have directly contributed to improved and effective implementation of the TBT Agreement?

**1.2 Interventions**

1.1. **Mr. Marcos Heleno Guerson** (Brazil)<sup>4</sup>, in keynote remarks, highlighted the special character of INMETRO as a body that works across the pillars of quality infrastructure, including metrology, conformity assessment and accreditation. In order to face the challenges of Industry 4.0, INMETRO recently launched an overhaul of its regulatory framework based on GRP. This enhances transparency on how INMETRO develops regulations, and established principles that must be followed in any regulatory process. INMETRO received more than 1,400 comments from stakeholders regarding this new regulatory framework, 500 of which INMETRO was able to address in the final framework. As part of enhancing competitiveness and reducing bureaucracy, regulations were consolidated to deal with families of products and sectors. As a result, INMETRO went from having 800 regulations mostly dealing with one single product, to 300 consolidated regulations. These 300 regulations are being further assessed for fitness in a second phase using Regulatory Impact Assessments (RIA). A priority for INMETRO is being fast and flexibility in making regulations, to step up to the challenges posed by Industry 4.0. He stressed that if processes are too slow and take many years, they risk leading to irrelevant regulations. He also highlighted the importance of using international standards as a basis for INMETRO's regulation, regulating based on essential requirements rather than all requirements, undertaking RIA, and using risk assessment and classification of three levels of risk as a basis for regulation.

1.2. **Mr. Alex Hunt** (United States)<sup>5</sup> first explained how the United States uses its Unified Agenda to provide a forward-looking overview of regulatory developments twice yearly (published in spring

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<sup>1</sup> Mr. Don Spedding (Australia). This Report is provided on the Moderator's own responsibility.

<sup>2</sup> [G/TBT/46](#).

<sup>3</sup> [WTO | Thematic Session on Good Regulatory Practice](#).

<sup>4</sup> President, INMETRO.

<sup>5</sup> Chief, Information Policy Branch, Office of Information and Regulatory Affairs, U.S. Office of Management and Budget.

and fall). The regulatory agenda covers approximately 60 ministries, departments, and agencies, describing the timetable for regulatory actions, their legal basis, and potential impacts including on international trade, amongst other information, to help the public understand what is planned and how to engage in the regulatory process. Second, Mr. Hunt explained that under the Executive Order 13609 on Promoting International Regulatory Cooperation<sup>6</sup> agencies need to report on international regulatory cooperation activity that is expected to lead to significant regulation. This reporting is done through the Unified Agenda and a dedicated website<sup>7</sup>, where proposed rules open for public comment are posted and comments are accepted from stakeholders worldwide. Agencies are required to take these comments into account under US law. Third, he highlighted the January 2021 Presidential Memorandum on "Modernizing Regulatory Review," which reaffirmed Executive Order 12866 on Regulatory Review and directed OMB to produce recommendations for modernizing regulatory review, including the need to assess the distributional consequences of regulations to avoid disadvantaging marginalized groups.

1.3. **Ms Miriam Peña Niño** (Peru)<sup>8</sup> presented Peru's progress in the implementation of the RIA methodology, and the importance of related capacity building. On July 2022 the mandatory application of RIA began, and by April 2023, 55 Peruvian agencies would be using the RIA process. Since September 2021 different capacity building activities were provided. There is a probability that in a later phase, the RIA process will be extended to also cover the development of technical regulations. She mentioned an early example from the Ministry of Foreign Trade and Tourism, which conducted an RIA of a proposed regulation, and looked at issues of productivity and competitiveness. She underscored the importance of capacity building for the regulatory quality officials and their teams, responsible for implementing RIA, so that they can rely on best practices. Peru had already trained 632 civil servants from the 55 agencies, including multi-day training with case studies. Ten pilot projects were underway with agencies that have proposed regulation in the pipeline. Peru has also developed guidelines for early notice and regulatory agenda, as well as an Ex-Ante RIA evaluation criteria handbook for those entities that are preparing RIAs.

## 2 GRP IN TRADE AGREEMENTS

### 2.1 Guiding questions

- Which GRP provisions are being included in recent trade agreements negotiated by Members and why?
- How can these provisions support Members' compliance with WTO obligations? What benefits do they provide (generally and trade-related) and what are the challenges in their implementation?
- Could you share concrete examples of GRP provisions from trade agreements that have been implemented?
- What can Members learn from the regulatory modernization efforts of other Members and available international resources to improve their regulatory practices?

### 2.2 Interventions

2.1. **Ms. Katja Modric Skrabalo** (EU)<sup>9</sup> discussed recent developments on incorporation of GRP principles in EU FTAs. She noted that older FTAs (such as agreements with Singapore and Korea) introduce GRP principles in specific TBT chapters or outside of the TBT chapters, covering a number of specific GRPs. For instance, a key GRP principle which the EU has strived to include in its FTAs is the introduction of impact assessments of planned technical regulations and conformity assessment procedures as well as the assessment of regulatory and non-regulatory alternatives to proposed measures. Other GRPs that have been part of EU FTAs include the use of relevant international standards as the basis for technical regulations and conformity assessment procedures, reviewing technical regulations at regular intervals, and the participation of the public through consultations

<sup>6</sup> <https://www.whitehouse.gov/omb/information-regulatory-affairs/international-regulatory-cooperation/>

<sup>7</sup> <https://www.regulations.gov/>

<sup>8</sup> Undersecretary of Regulatory Analysis and Simplification, Public Management Secretariat, Presidency of the Council of Ministers.

<sup>9</sup> Policy Officer, Regulatory Cooperation and Public Procurement unit, Directorate General for Trade of the European Commission, European Union.

on planned regulatory measures. Finally, there are also general transparency provisions that have traditionally been included in EU TBT chapters.

2.2. More recently, in addition to these provisions, the EU has started to introduce specific chapters that more broadly tackle GRP in FTAs, for instance in the EU-Japan and EU-UK FTAs. These designated GRP chapters aim to promote an effective and transparent regulatory environment as well as building more compatible regulatory approaches between the EU and its trading partners and enhancing regulatory cooperation for discussions at the bilateral level. These provisions tend to enhance coherence of regulation but at the same time do not affect or define each parties' rights to regulate or choose the level of protection they deem necessary and appropriate to achieve their public policy goals. There are also a number of practices in these designated GRP chapters such as early information on planned regulatory measures in the form of a yearly work plan, public consultations, impact assessments, publication of measures in publicly available registers which are easily searchable and finally, retrospective evaluations of measures in order to ensure they are up to date.

2.3. **Ms. Kate Maxwell** (UK)<sup>10</sup> discussed the experience of the UK around GRP provisions in FTAs. She emphasized the UK's focus on developing dedicated GRP chapters as they go forward with their FTA negotiations. The UK strongly believes in the value of standalone GRP chapters and that these have been taken up in their ongoing negotiations. Ms. Maxwell also noted that while this is not an approach adopted by all countries and trading partners, the UK believes that these standalone chapters hold trading partners to a high standard of GRP and increases business confidence, in particular for MSMEs. Similar to the approaches of the EU and US, the UK has incorporated GRPs such as public consultations, publicized information, regulatory registers, retrospective reviews conducted periodically at appropriate intervals, and dedicated contact points to facilitate cooperation and communication with parties. In addition to the completed UK FTAs with Australia; New Zealand; and the trilateral FTA with Norway, Iceland, and Lichtenstein, all of which have standalone GRP chapters, there are ongoing negotiations with Canada, Mexico, and Switzerland. She concluded by reiterating that the UK firmly believes in the value of standalone GRP chapters in FTAs and their importance in giving certainty to businesses so that they need not worry about bureaucratic changes and unpredictability.

2.4. **Ms Renee Hancher** (United States)<sup>11</sup> presented the United States' perspective on how GRP provisions in trade agreements support Members' compliance with WTO obligations. She noted that the TBT Agreement came first before Members started to negotiate GRP provisions in free trade agreements (FTAs). Thus, most of the GRP provisions in FTAs build on the TBT Agreement. In particular, the transparency obligations in the TBT Agreement (especially those related to the notification of draft measures, and the provision of adequate time for comments) fulfil an important objective as they permit trading partners to understand the rationale behind other Members' proposed measures. For this reason, the United States attaches significance to transparency provisions in the GRP provisions included in their FTAs. Other important GRP provisions that are in line with the TBT Agreement relate to the importance of harmonizing regulations with international standards and having a retrospective review of regulations.

2.5. Ms Hancher noted that regulatory cooperation in FTAs can also help to build trust between trading partners, which can reduce differences in regulatory requirements and facilitate trade. One example is the agreement to recognize conformity assessment results in the context of the USMCA. Moreover, given that regulatory requirements are the main trade irritants for US stakeholders, GRPs can help reduce trade concerns discussed in the TBT Committee. They also enhance predictability for traders both about existing regulations and proposed ones (especially when information can be accessed online). GRP provisions, which started with the TBT Agreement, have contributed enormously to facilitating trade and may eventually reduce the workload of the TBT Committee.

2.6. **Ms Juliana Ghizzi Pires** (Brazil)<sup>12</sup> shared Brazil's perspective on how GRP provisions in trade agreements support Members' compliance with WTO obligations. GRP provisions provide numerous benefits, such as enhancing predictability for traders and providing the opportunity to stakeholders to comment on proposed measures. The sharing of experiences is particularly important in Brazil as

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<sup>10</sup> Assistant Director, Good Regulatory Practice and SME Trade Policy, Department for International Trade, United Kingdom.

<sup>11</sup> Director, Regulatory Policies, USTR.

<sup>12</sup> Coordinator, General Regulatory Convergence and Export Barriers, Ministry of Economy.

it permits regulators to spread expertise among ministries and government agencies. Moreover, transparency tools can be used by regulators to choose the least burdensome option when they regulate. For example, Brazil undertook a regulatory stocktaking exercise to determine which requirements should be kept. Regulatory Impact Assessments (RIAs) are also a helpful tool to establish internal processes that lead to better regulations (e.g. assessing why there is a need to regulate). She concluded by noting that regulatory agencies in Brazil regularly share among each other their experience in adopting regulation with a view to improve the implementation of TBT and GRP tools.

2.7. **Mr. Moses Ngosa** (Zambia)<sup>13</sup> presented on GRP and regulatory cooperation within the Southern African Development Community (SADC). He noted that the SADC Protocol on Trade contains a TBT Annex which aims at developing a common technical regulation framework and, to this end, establishes regional cooperation structures for addressing various TBT issues. The objective of this framework is to identify, prevent and eliminate unnecessary TBTs amongst SADC member states and other regional and international trading blocs through harmonized regulatory measures. He noted that regulatory cooperation and harmonization plays an important role in addressing global challenges such as COVID-19 and the transition to a low-carbon economy and helps to avoid regulatory fragmentation. To illustrate how GRP provisions under the SADC Protocol on Trade are being implemented in practice, Mr. Ngosa described how the SADC member states harmonized a technical regulation on road vehicles inspection and testing for used motor vehicles for road worthiness.

2.8. **Ms. Carolina Ramirez Joignant** (Chile)<sup>14</sup> described how Chile integrated GRP provisions in its FTAs. She noted that Chile has been incorporating GRP provisions as part of TBT sections in its FTAs for a long time, and in its most recent FTAs, it included standalone GRP chapters. Currently Chile has GRP chapters in its FTAs with Pacific Alliance, Uruguay, Ecuador, and Brazil (in force) and with the European Union, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and Paraguay (not yet in force). The objective of such chapters is to promote GRP and the adoption of a transparent regulatory environment with predictable procedures. These GRP chapters also envisage establishment of coordination mechanisms, public consultations, reporting and transparency obligations. Such GRP chapters are not subject to dispute settlement mechanisms under Chile's FTAs.

2.9. She also noted that the OECD recently analysed the domestic regulatory environment in Chile and based on this assessment, suggested that Chile (i) adopt criteria for systematic implementation of consultation practices in its rule-making process; and (ii) set out criteria for conducting RIA. Based on these recommendations, Chile took steps to embed stakeholder engagement and RIA into its rule-making process.

2.10. **Mr. Alberto Morales** (OECD)<sup>15</sup> discussed trends relating to the implementation of GRP provisions in FTAs. First, he noted that economies increasingly incorporate standalone GRP chapters in their FTAs, as opposed to the traditional approach of narrower GRP provisions embedded in TBT chapters. These standalone GRP chapters tend to be more ambitious in their scope and encompass additional tools such as regulatory oversight, *ex post* evaluation of regulations and cooperation on regulatory enforcement. In addition, standalone GRP chapters tend to have more binding language and some of them are even subject to dispute settlement mechanism under FTAs. Second, he pointed out that FTA partners with a similar level of regulatory policy uptake tend to include concrete management tools for GRP cooperation in their FTAs, while partners with significant differences in their regulatory policy practices tend to agree on a minimum acceptable level of GRP.

2.11. **Ms Anisyah** (Indonesia)<sup>16</sup> described Indonesia's regulatory system reform in the food sector. The aim of this reform was to ensure consumer protection, encourage competitiveness of the food industry including MSMEs, and increase law enforcement and technology-based supervision. To this end, Indonesia implemented GRP in its regulatory development process. The first step of regulatory development process in Indonesia is planning prior to drafting regulations, which includes assessment of potential needs and policy objectives. In this process, Indonesia engages various

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<sup>15</sup> Policy Analyst, Regulatory Policy Public Governance, OECD.

<sup>16</sup> Director, Processed Food Standardization at Indonesian Food and Drug Authority.

stakeholders, including private sector and academia. The second step is the development of draft regulations which consists of collecting data, consultations and discussions with stakeholders.

2.12. In addition, Ms Anisyah noted that Indonesia relies on Codex standards when developing its domestic regulatory measures. The use of Codex standards helps to improve harmonization of national food safety regulations and reduce barriers to trade. In this context, she added that the Association of Southeast Asian Nations (ASEAN) established the ASEAN consultative Committee on Standards and Quality to harmonize national regulations with international standards and implement mutual recognition arrangements on conformity assessment.

### 3 COMMENT BY THE MODERATOR

3.1. I noted a number of key takeaways from the thematic session, in no particular order:

- In terms of the **domestic implementation of GRP**, one clear message was the role of GRPs in creating a business-friendly, transparent, and stable regulatory environment. Transparency and predictability give businesses confidence and enhance their competitiveness. Implementation of GRPs is particularly beneficial for MSMEs as they have limited resources to overcome regulatory barriers. We heard an example from one Member on how the implementation of GRP and regulatory reforms helped it move up 75 places in the global "ease of doing business" ranking.
- Strong partnerships among governments, businesses and civil society are critical to fostering GRPs. Working together in relevant forums can build confidence between trading partners as well as improve information and experience sharing. Regulatory cooperation can also help unlock opportunities with new trading partners and address global challenges such as COVID-19 and the transition to a low-carbon economy. In this context, it was also mentioned that it is important to engage stakeholders at an early stage in regulatory discussions.
- We heard about how Members use regulatory impact assessments (RIAs) as a GRP. It was noted that RIAs help to develop better, high-quality regulations and modernize existing ones. However, it was important to provide adequate capacity building, training and guidance materials for regulatory agencies that carry out RIAs. The use of forward-looking regulatory agendas was also discussed as a GRP which can help businesses, civil society, and the public to better engage in the regulatory process.
- With respect to **GRP provisions in trade agreements**, many speakers highlighted that these are founded on the disciplines of the TBT Agreement. These include GRP provisions in FTAs such as transparency and notification of draft regulations, clearly providing the rationale for measures, use of relevant international standards, and retrospective review of technical regulations, which are all rooted in the TBT Agreement. In this respect, speakers noted that GRP provisions in FTAs can build mutual confidence and improve Members' compliance with WTO TBT obligations. They can also help to facilitate trade at regional level by overcoming unnecessary regulatory divergences. At the same time, it was stressed such provisions do not limit the right of Members to regulate or determine levels of protection they deem to be appropriate.
- We also discussed incorporating GRP provisions on retrospective periodic review of regulations in FTAs. We also heard some useful examples of domestic procedures for *ex post* evaluation of regulations.
- We saw that the role of GRP in FTAs is evolving, and Members increasingly incorporate standalone GRP chapters in their FTAs, as opposed to the traditional approach of narrower GRP provisions embedded in TBT chapters. These standalone chapters tend to be more ambitious in their scope and encompass additional tools such as regulatory oversight, regulatory cooperation, and cooperation on enforcement. Standalone GRP chapters help create more predictable and stable trade and investment environments for FTA partners and businesses, including MSMEs.

3.2. I found the discussions to be very rich, and I would like to express my appreciation for the insightful contributions from our speakers. They left us with a lot to reflect on for further work in the Committee on the topic of GRP.