



**Asia-Pacific  
Economic Cooperation**

**Advancing** Free Trade  
for Asia-Pacific **Prosperity**

# Traffic Light Score Methodology: A Tool for Ex Post Regulatory Impact Assessment

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## **Executive Summary**

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In 2017, Mexico committed to contributing to the APEC's efforts for increasing the implementation of the ex-post analysis of regulation inside the region. In this regard, during 2017 and 2018 was implemented the project EC 03 2017A that includes the organization of a workshop on ex-post evaluation and the development of a methodology to verify the quality of the ex-post regulatory impact analysis as result of this workshop.

The TLSM workshop was held on 22-23 August 2017 in Ho Chi Minh City, Viet Nam in the margins of SOM3 2017 and had the objective of disseminate among the APEC economies a methodology for evaluating the quality of ex-post evaluation. Likewise, this workshop included the suggestion to the participants to submit case studies applying this methodology and integrating them in a final publication.

In this sense, Mexico is pleased to present in this publication the Traffic Light Score Methodology (TLSM) which aims to evaluate the quality of the Ex Post evaluation of regulations by verifying the content of the three main sections of the Ex Post RIA and provide a final recommendation about the future status of the regulation which was submitted to an ex-post evaluation analysis.

Specifically, the TLSM methodology seeks to become part of the good regulatory practices inside APEC that contribute to the following impacts in the region: an oversight tool to verify if the regulations are delivering the intended impacts and measuring the real costs and benefits; a systematic feedback on the robustness of the assumptions used in the Ex-Ante RIA, which allows regulators to make adjustments, if necessary, to current regulation; a diagnostic tool to identify and seize improvements on public policies, instead of react to external reviews and appraisals.

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## Glossary

Concept	Definition
<b>Evaluations over time</b>	<ul style="list-style-type: none"> <li>● <b>Ex-ante:</b> assessment prior to regulation implementation.</li> <li>● <b>Ex dure:</b> assessment during regulation implementation.</li> <li>● <b>Ex post:</b> assessment after to regulation implementation.</li> </ul>
<b>Impacts of a regulatory proposal</b>	<p>Costs and benefits of the regulation Positive and negative consequences. The overall expectation is that the positive consequences to the businesses, community and individuals exceed its negative consequences in such a way that the <i>status quo</i> is changed.</p> <ul style="list-style-type: none"> <li>● <b>Cost examples:</b> paperwork and fees (regulatory burden); higher input, goods and services prices; stricter product, transportation or marketing standards; entry barriers to markets; etc.</li> <li>● <b>Benefit examples:</b> lessen or end risks and hazards to health, safety and environment; increased utility of goods and services (i.e. quality or another value added); diminished compliance effort; etc.</li> </ul>
<b>Objectives of a regulatory proposal</b>	<p>Expected results to be achieved once the regulation entries into force. Preferably goals are:</p> <ul style="list-style-type: none"> <li>● Indicated in a quantitative manner and in an expected term.</li> <li>● Linked to each situation to be addressed (problem or opportunity area).</li> <li>● Prioritized for their achievement in terms of costs.</li> </ul>
<b>Problematic / opportunity area definition</b>	<p>Contemplates the identification and the evidence presentation of the causes that forces to address the situation. That implies to:</p> <ul style="list-style-type: none"> <li>● Set the magnitude of the situation with evidence of groups and activities involved.</li> <li>● Justify the governmental intervention, noticing the reasons by which the situation would not attend by itself, even considering a non-governmental option.</li> </ul>
<b>Regulation</b>	Any rule or norm approved by government, where there is an expectation of compliance to regulate economic and social activities of citizens and businesses.
<b>Regulatory Reform</b>	A public policy to implement regulation only when shown that its compliance costs are fulfilled through the greatest benefits it offers. In other words, with Regulatory Reform, authority generates clear rules, simple formalities and effective institutions to implement them; facilitating their compliance for a better result and development of economic and social activities.
<b>Regulatory Improvement Process</b>	A filter to reduce the regulatory burden of future governmental actions. Begins at the time the authority provides options to regulate an activity, including non-governmental intervention, which thereafter are assessed through an impact analysis – the RIA – that is transparent to the public opinion and that allows the regulator to choose the best alternative in terms of maximum benefit to society.
<b>Regulatory Impact Assessment (RIA)</b>	<p>A tool for systematic analysis of the potential impacts of regulatory proposals for making rational and transparent government decisions. Thus:</p> <ul style="list-style-type: none"> <li>● Makes the right questions when considering the need of regulatory intervention and during the proposals development.</li> <li>● Collects the information needed to justify governmental intervention.</li> <li>● Organizes the analysis in a series of logical steps and applies the appropriate evaluation methods.</li> <li>● Exchanges information between the regulator and stakeholders (citizens, civil society groups, entrepreneurs, business associations, etc.).</li> </ul> <p>The RIA encourages rigor, innovation and better results from the very design of regulation. This forces to develop the RIA in parallel to the regulatory draft.</p>

## Introduction

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Regulation is defined as the set of provisions that seek to develop the economy and protect the environment and the human welfare, safety and health. The *ex-ante*, *ex-dure* and *ex post* Regulatory Impact Assessment (RIA) play an important role in order to meet the following objectives:

- (i) Increase regulation's quality by verifying its commitment with its original purpose.
- (ii) Avoid deficient regulation, which presents higher social welfare losses than its expected benefits.
- (iii) Ease businesses and social activities or, at the very least, ensure that governmental intervention does not hinder or stifle enterprises and citizens.
- (iv) Determine if the regulation must be issued, modified or removed from current legislation.
- (v) Analyze the regulative problems in order to make pertinent decisions before, during or after issuance.
- (vi) Promote transparency in the regulation making process, through public consultation.

Next to these statements comes the expected question: Do governmental interventions deliver high quality regulation and better compliance results? The answer depends on whom you ask. Nevertheless, no answer will be accurate without a proper evaluation and having in mind the axiom "what is measured can be controlled (improved)".

Thus, the Traffic Light Score Methodology (TLSM) intends to provide a simple and systematic qualifying tool which recommends to improve the regulation that is measured and controlled through the analysis of its real impacts; that is on an *ex post* RIA.

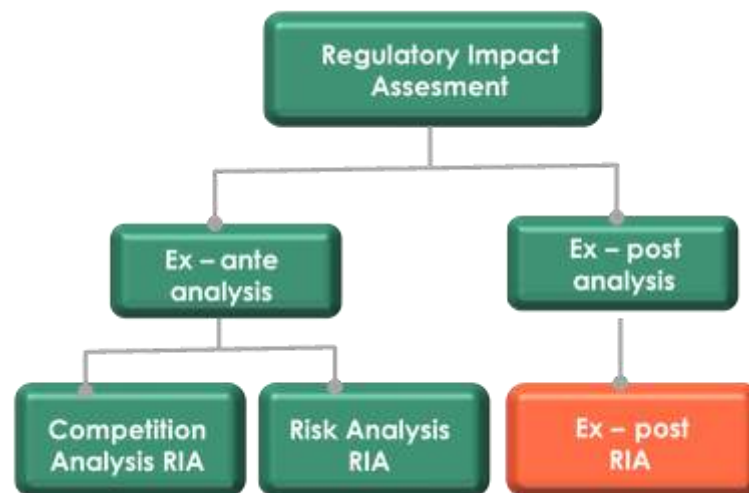


Figure 1. Regulatory Impact

## **1. International Best Practices in the Ex Post Evaluation**

According to OECD (2012), *Evaluating Laws and Regulations: The Case of the Chilean Chamber of Deputies*, page 10, OECD Publishing<sup>1</sup>:

Ex post evaluation is an essential step of the policy and regulatory process. 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.

Hence, only after fulfilled the period for which the regulation will take effect – that is the evaluation horizon where all the expected impacts of the regulation occur – the outputs can be fully assessed, including its regulatory burdens, costs and benefits. This implies to:

- (i) Construct (or secure the existence of) the parameters which measure the achievement of its goals and impacts, parallel to write the blue print of regulation.
- (ii) Collect data and information just after regulation has been implemented.
- (iii) Analyze and evaluate evidence through the most suitable methodology.
- (iv) Have additional resources to permanently monitor the regulation.

In other words, a proper *ex post* evaluation necessarily is a consequence of an *ex ante* advance:

- (v) Identified the expected results to be achieved.
- (vi) Set the goal(s) – preferably quantitatively – in an expected term.
- (vii) Linked each situation to address (problem or opportunity area) to a specific goal.
- (viii) Established the magnitude of the situation, with evidence on groups and activities involved and impacted.
- (ix) Estimated the costs and benefits created by the regulation, in order to appreciate and compare its amount and distribution between groups and activities impacted.
- (x) Foresaw the challenges of execution, stages, deadlines and public servants accountable, so that governmental intervention might accomplish the projected results.

Consequently, a sloppy or careless fill out of the *ex-ante* RIA makes irrelevant conducting an *ex post* evaluation, as the traceability of regulation performance is non-existent by the lack of parameters that measure the improvement of the *status quo*. Contrariwise, the main drawback of the *ex post* RIA lies in its own strength: the need for an *ex ante* RIA (or assessment) in order to ensure that it has full information about the sense of situation change (improvement or weakening) and really assess regulation performance. However, a formal study can assess the regulation performance, but without the swiftness, exactitude, focus, systematization, repeatability and lower cost (budgeted) that offers an *ex post* RIA.

Only through performance measurement, regulation will show compliance with the anticipated impacts, the soundness of its assumptions and – most relevant – the need for adjustments to boost its effectiveness and efficiency.

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<sup>1</sup> <http://dx.doi.org/10.1787/9789264176263-en>

Thus, the reasons stated by the Organization for Economic Cooperation and Development (OECD), more than a decade ago<sup>2</sup>, for conducting an ex post evaluation, have not lost any relevance; instead, they set the stage for improving the quality of the regulation and also put in place the regulatory capability of various levels and branches of government:

There is growing attention being paid to evaluating the outcomes and assessing the performance of regulatory tools and institutions. This reflects three inter-related developments; first, policy makers involved in regulatory policies are being held accountable for the significant economic resources as well as the political capital invested in regulatory management systems now established in most OECD countries. Second, there is a growing interest in exploring how regulatory policies can be more evidence-based and supported by empirical findings. Third, the move toward ex post evaluation is part of the progressive development of regulatory policies, complementing the current dominant focus on ex ante evaluation, and aligning regulatory evaluation with the evaluation of other government policies and activities. The opportunities to conduct ex post evaluations of regulatory policies and to respond to their results with appropriate adjustments are substantially greater than in past years. The accumulation of policy learning in relation to these instruments provides opportunities to “benchmark” existing practices, both in terms of the content of particular tools and in terms of the quality of their practical implementation.

Still and according to Figure 2, periodic ex post evaluation is mandatory for some primary laws, in 9 countries (Austria, Belgium, Canada, Estonia, France, Korea, Poland, Slovenia and Switzerland); for major primary laws, in 2 countries (Australia and Germany); and for all primary laws, in 6 countries (Denmark, Hungary, Italy, Japan, Netherlands and UK).

A brief glance to the international practices (Figure 2) may conclude that establishing criteria for choosing which current regulation must be reviewed is adequate, because not all regulation (i.e. primary laws vs subordinated regulations) have the same impact level on stakeholders and even on public resources to conduct it<sup>3</sup>. The last is more relevant when regulation includes automatic evaluation requirements or sun setting clauses.

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<sup>2</sup> Expert Meeting on Regulatory Performance: Ex post Evaluation of Regulatory Policies held in OECD Headquarters in Paris on 22 September 2003.

<sup>3</sup> In following chapters is analyzed with more detail the practices of selected countries.

	Periodic ex post evaluation of existing primary laws is mandatory	Primary laws include sunset clauses	Primary laws include automatic evaluation requirements	Ex post evaluations of primary laws				
				Contain an assessment of the achievement of goals	Make comparisons of the actual vs predicted impacts	Identify unintended consequences	Require a consideration of consistency of regulations	Require an assessment of consistency with comparable international standards and rules
Australia	▲	▲	▲	■	▲	■	■	▲
Austria	▲	●	■	■	■	■	●	●
Belgium	▲	▲	▲	■	▲	■	▲	▲
Canada	▲	▲	▲	▲	▲	▲	▲	▲
Chile	●	●	●	▲	▲	▲	▲	▲
Czech Republic	●	▲	●	●	▲	▲	●	●
Denmark	■	▲	▲	■	▲	▲	▲	▲
Estonia	▲	●	▲	■	●	▲	▲	▲
Finland	●	▲	●	●	●	●	●	●
France	▲	▲	▲	●	●	●	●	●
Germany	▲	▲	▲	■	▲	■	▲	▲
Greece	●	●	●	●	●	●	●	●
Hungary	■	●	■	●	■	■	●	▲
Iceland	●	▲	●	▲	●	●	●	●
Ireland	●	●	●	●	●	●	●	●
Israel	●	●	●	▲	●	■	■	■
Italy	■	●	●	■	●	■	■	●
Japan	■	●	■	●	■	●	■	●
Korea	▲	▲	▲	▲	●	●	▲	●
Luxembourg	●	▲	●	■	●	▲	▲	▲
Mexico	●	●	●	■	■	■	■	■
Netherlands	■	▲	▲	▲	▲	▲	●	●
New Zealand	●	▲	▲	●	●	●	●	●
Norway	●	▲	▲	▲	▲	▲	●	●
Poland	▲	●	●	▲	▲	▲	▲	●
Portugal	●	●	●	●	■	▲	●	●
Spain	●	●	●	●	●	●	●	●
Slovak Republic	●	●	●	●	●	●	●	●
Slovenia	▲	●	▲	●	●	●	●	●
Sweden	●	▲	●	▲	▲	▲	■	▲
Switzerland	▲	▲	▲	▲	▲	▲	▲	▲
Turkey	●	●	●	●	●	●	●	●
UK	■	▲	▲	■	▲	■	■	▲
USA	●	●	●	●	●	●	●	●
EU	■	▲	▲	▲	▲	■	■	▲
<b>OECD total</b>								
■ For all primary laws	6	0	3					
▲ For major primary Laws	2	1	3					
▲ For some primary Laws	9	16	11					
● Never	17	17	17					
■ All ex post evaluations				9	5	9	7	2
▲ Ex post evaluations regarding major primary Laws				2	3	1	2	2
▲ For some ex post evaluations				9	10	11	8	10
● Never				14	16	13	17	20

**Figure 2. Requirements for and content of ex post evaluation in OECD countries, 2014.**

Source: OECD (forthcoming), OECD Regulatory Policy Outlook 2015, based on the 2014 OECD Regulatory Indicators Survey results. Information on data for Israel: <http://dx.doi.org/10.1787/888932315602>.

## **1.1 Australia**

The Department of the Prime Minister and Cabinet leads deregulation efforts in Australia, having the Office of Best Practice Regulation (OBPR) at the core of such endeavor. The Australian Government has an extensive agenda for deregulation, of which post-implementation reviews of regulation are important elements.

The principles of regulation are comprised in the Australian Government Guide to Regulation, issued in March 2014. The Guide establishes that “All regulation must be periodically reviewed to test its continuing relevance”. The Legislative Instruments Act 2003 requires regular review of instruments too.

Ex post evaluation is required for all regulations that did not have a compliant Regulation Impact Statement (RIS), regulations whose impact was minor or did not considerably modify previous arrangements, or where the Prime Minister granted an exemption given exceptional circumstances. In such cases, post-implementation reviews are required to be completed within two years after the implementation of the regulation. When a regulation has a substantial or widespread impact on the economy, ex post review should be completed within five years of its implementation. Moreover, as depicted in Figure 2, periodic ex post evaluation is mandatory for major primary laws.

As of April 2016, the Australian Government completed and published 53 post-implementation reviews, comprising regulations in various fields, namely education, employment, communications, environment, health, infrastructure and treasury.

## **1.2 Chile**

The issue of regulatory reform in Chile is complex since the government has not developed a comprehensive regulatory reform program, nor established a centralized oversight body. Chile has implemented a bottom-up approach where several agencies are involved in the rulemaking process. Nevertheless, the Ministry General-Secretariat of the Presidency (SEPGRES), coordinates other public entities, such as the Ministry of Finance, the Ministry of Economy, and the General Comptroller of the Republic.

Since the government of Chile does not have a formal methodology to analyze the impact of new laws and regulations, the legislative branch is pursuing the implementation of a pilot program for ex post evaluations through the creation of the Law of Evaluation Department (LED), carried out by the Chamber of Deputies. LED is responsible for the evaluation of a set of priority primary laws of social nature, observing the effectiveness and the real benefits to Chilean society.

The program is developed in three stages covering the following criteria: (i) technical analysis of selected laws to determine whether the original objectives of the created law were reached; (ii) the citizens’ perceptions regarding the effects of the implementation of the law; and (iii) a final report containing possible corrective measures. This report should be made public for further scrutiny.

One of the main challenges that the Chilean government is facing to develop the former stages in the ex post evaluation is the need to construct a baseline indicator and a formal methodology for analysis. The OECD has recommended the Chilean government to develop an innovative model that establishes clear criteria for analyses; reaches high political support, in order to achieve better coordination between different agencies, and stakeholder's opinions are properly addressed.

### **1.3 European Union**

The European Commission (EC) plays a key role in analyzing the impact of legislation. It ensures that its proposals meet policy goals at minimum cost, deliver maximum benefits to citizens, businesses and workers, while avoiding unnecessary regulatory burdens<sup>4</sup>.

Through its “Better Regulation agenda”, the EC has committed to designing, delivering and supporting the implementation of highest quality interventions. Such agenda is embedded in the *Better Regulation Guidelines*, which set the mandatory requirements and obligations of the whole policy cycle, including evaluation and revision.

In 2012, the EC set the *Regulatory Fitness and Performance Programme (REFIT)* through which it assesses the performance of the already existing laws in the EU, and makes necessary changes to keep them fit for purpose. REFIT pays special attention to small and medium enterprises, since they can be significantly affected by the burden of implementing rules. To guarantee a positive outcome, the EC interacts with the European Parliament, the Council of the EU, EU member states and stakeholders for evaluating and improving legislation.

Furthermore, evaluation is an evidence-based judgment of the extent to which a regulation has been effective, efficient, relevant, coherent with other EU regulations, and has achieved EU added value<sup>5</sup>. To be more effective, evaluation should be undertaken once the regulation has been implemented and enough time has elapsed to allow changes to be identified and measured.

Traditionally, evaluations are carried out to individual regulations. Nonetheless, when an evaluation covers a group of measures that are related to each other it becomes a “fitness check”, whose aim is to identify synergies or inefficiencies within the group of measures. Evaluations of single regulations and fitness checks are complementary tools. Whereas the former provide details on particular elements, the latter provide a more strategic and global view of a given framework of regulations. Since 2012, the EC led the efforts for carrying out 30 evaluations and fitness checks; 39 scheduled in 2016<sup>6</sup>.

### **1.4 Mexico**

The National Commission of Better Regulation (CONAMER) is the Mexican Government agency responsible for the development of the RIA. In Mexico, the RIA applies to all general administrative acts issued by the ministries and decentralized bodies, with the exception of the

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<sup>4</sup> [http://ec.europa.eu/smart-regulation/guidelines/docs/swd\\_br\\_guidelines\\_en.pdf](http://ec.europa.eu/smart-regulation/guidelines/docs/swd_br_guidelines_en.pdf), p. 4.

<sup>5</sup> Ibid., p. 49.

<sup>6</sup> [http://ec.europa.eu/info/law-making-process/evaluating-and-improving-existing-laws/refit-making-eu-law-simpler-and-less\\_en](http://ec.europa.eu/info/law-making-process/evaluating-and-improving-existing-laws/refit-making-eu-law-simpler-and-less_en)



acts, proceedings and resolutions of the Ministries of Navy and National Defense. The acts related to fiscal matters, responsibilities of public servants, labor and agrarian justice, as well as those granted by the public prosecutor on his constitutional duties, are also exempted of the RIA.

In this context, on 28 November 2012, CONAMER enacted the “Agreement by which the Ex-Post Regulatory Impact Assessment is implemented” which created the Ex Post Regulatory Impact Assessment (ex post RIA) as the reviewing tool for regulation with the aim to determine the achievement of its objectives, as well as its efficiency, effectiveness, impact and permanence. The Agreement allowed CONAMER to request an ex post-RIA to ministries and decentralized bodies who issued technical standards (NOMs) accompanied by high-impact RIAs.

Besides, in may 2018 and as result of the publication in the official gazette of the General Law on Better Regulation<sup>7</sup>, was bestowed in the article 70 of this Law the authority to CONAMER to request the regulators the implementation of the Ex Post RIA, also was included the obligation to submit the ex-post RIA to a period of 30 days of public consultation. Additionally, article 77 of this Law conferred to the CONAMER the authority to request an Ex Post RIA to all regulations that have compliance costs, 5 years after their implementation.

### **1.5. New Zealand**

New Zealand has been a pioneer economy in Asia-Pacific in analyzing the impact of regulations. In fact, there has been some form of regulatory impact analysis requirement since 1998.

New Zealand’s regulatory system is complex with a large number of regulatory agencies and many different regimes<sup>8</sup>. However, since 2008 New Zealand has an integrated regulator reform strategy driven from the center, being the Treasury the agency that oversees regulatory management, while reporting to the Minister of Regulatory Reform and the Minister of Finance.

To advance reviews of major regulatory regimes, New Zealand’s Government set in 2009 a Regulatory Review Programme, comprising regulations with significant effects on the economy and on productivity<sup>9</sup>.

In March 2013, the Cabinet established the *Initial Expectations for Regulatory Stewardship*<sup>10</sup>, where it points that departments will “monitor, and thoroughly assess at appropriate intervals, the performance and condition of their regulatory regimes to ensure that they are, and will remain, fit for purpose”<sup>11</sup>.

Periodic *ex post* evaluation is not mandatory for all existing primary laws, but only for some primary laws including sun setting clauses (see Figure 2).

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<sup>7</sup> General Law on Better Regulation [http://www.diputados.gob.mx/LeyesBiblio/pdf/LGMR\\_180518.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/LGMR_180518.pdf)

<sup>8</sup><http://www.productivity.govt.nz/sites/default/files/regulatory-institutions-and-practices-final-cttc.pdf>

<sup>9</sup><http://www.treasury.govt.nz/regulation/informationreleases/programme>

<sup>10</sup> <http://www.treasury.govt.nz/regulation/stewardship>

<sup>11</sup> Initial Expectatives for Regulatory Performance



## **1.6 Russian Federation**

Ex Post Regulatory Impact Assessment (ex post RIA) in the Russian Federation was introduced by the Decree of the Russian Government in 30 January 2015 № 3 «On the Ex Post Regulatory Impact Assessment of regulatory legal acts, as well as on amendments to certain acts of the Government of the Russian Federation».

Comprehensive assessment system of regulatory legal acts allows the revision of ineffective regulatory acts in order to improve existing regulation in the context of excluding unreasonable obligations, prohibitions and restrictions in the sphere of entrepreneurial and other economic activities.

The ex post RIA procedure consists of 4 main stages as follows:

- 1) Formation of a draft plan for the ex post RIA of regulatory legal acts, its public consultations and approval by the Government Commission for administrative reform (Commission);
- 2) Preparation of ex post RIA report of regulatory legal acts and its public consultations;
- 3) Preparation of ex post RIA conclusion made by the Ministry of Economic Development of the Russian Federation;
- 4) Consideration of the report and the ex post RIA conclusion by Commission and on its basis Commission makes a decision.

The key idea of the ex post RIA mechanism is the analysis of the achievement of the stated goals, which were set during the adoption of a regulatory legal act. As a result it reveals the correlation between the objectives of adopting a regulatory legal act and the effect that will happen after its adoption.

## **1.7. United Kingdom**

The Regulatory Policy Committee (RPC) is an independent body established in 2009, and became an independent advisory non-departmental public body in 2012. Under its mandate it has the responsibility to review the evidence and analysis supporting new regulatory proposals.

The United Kingdom's independent regulator carries out ex post evaluations, based on previously gathered evidence (during ex ante RIA), under the notion that regulations can be improved while significant concerns will be attended before the final regulation is published or placed before the UK Parliament, while in the first stages of the consultation process.

In 2014, the United Kingdom acknowledged the right of businesses to enquire for an independent review of the regulations if they differ with the regulator's assessment. This was considered through the expansion of the scope of the "accountability for regulator impact scheme", which establishes a guideline for the assessment of regulations.

The above mentioned guideline defines the type of proposals that should trigger an assessment, defining that evaluation as necessary, when there is a "significant increase or decrease in the

burden of business”, considered for example, if the capacity of businesses is affected on a particular sector, size, or type of business.

The guideline includes recommendations in the case that the impact is not properly defined by the RPC, in which case, the business’ representatives should try to resolve the issues with the regulator in good faith based on shared evidence.

## **1.8. United States**

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The Office of Information and Regulatory Affairs (OIRA), part of the Office of Management and Budget (OMB) within the Executive office of the President, is the central authority for the review of drafts of proposed and final subnational regulations under a variety of sectors, which include agriculture, energy, transportation, information technology, housing, manufacturing, immigration, food safety, health care, public health, occupational safety and health, environmental protection and criminal justice.

The rulemaking process in the United States is governed by the Administrative Procedure Act, which requires agencies to perform public consultation prior issuing new or revising existing regulations. Through Executive Order 13610, “Identifying and Reducing Regulatory Burdens”, the United States performs ex post RIA, in order to assess in a periodic manner that the prevailing rules are justified and do not impose extra burdens and costs to society.

Government agencies in the United States are accountable for designing a regular review program on the status of their regulation programs and should report to OIRA, describing the progress of their efforts including a timetable for actions, when applicable.

## **2. Methodologies for assessing the Ex Post RIA**

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In accordance with Australian Government 2007, *Best Practice Regulation Handbook*, (pages 57 and 58), Canberra<sup>12</sup>:

The post-implementation review should focus on the way the policy was implemented, whether the implementation is proving effective in meeting the policy objectives, and whether implementation or ongoing delivery methods might be adjusted to manage the policy's ongoing delivery more efficiently and/or effectively.

The review should be similar in scale and scope to what would have been prepared for the decision-making stage. However, it should be noted that the precise nature of each review will depend on the individual problem and regulations that were put in place to address that problem. Where departments or agencies are unsure of what is required, they should contact the OBPR for more information. However, all post-implementation reviews should:

- identify the objective of government action;
- consider the impacts of the regulation (whether the regulation is meeting its objectives); and
- consider whether the policy objectives could be achieved in a more efficient and effective way.

For regulations that would have required the quantification of compliance costs (that is, regulations with medium-level compliance costs), the post-implementation review will require an estimation of the incurred and ongoing compliance costs. Agencies are expected to consult with stakeholders when preparing for, or undertaking, a post-implementation review.

For that purpose some of the most important assessment methodologies would be reviewed as follows; highlighting the fact that the same ones are applicable for the *ex-ante* RIA; which is paramount in order to make possible the stages comparison and conclude an improvement on respect of the *status quo* shift.

### **2.1 Quantitative Assessments**

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#### **2.1.1 Cost Benefit Analysis (CBA)**

Compares the costs of different regulatory options in order to select the one that exhibits the highest net benefit. Therefore, CBA expresses the benefits and costs in monetary terms, including those that do not have market prices or where the prices do not fully reflect the benefits and social costs; either because they are difficult to capture or inadequate to measure the impacts.

#### **Use**

When it is possible to quantify or monetize the main costs and benefits of regulation.

#### **Advantages**

- Evaluates the costs and benefits from the perspective of society and their groups, so it takes into account a broad range of impacts.

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<sup>12</sup>[http://regulationbodyofknowledge.org/wp-content/uploads/2013/03/AustralianGovernment\\_Best\\_Practice\\_Regulation.pdf](http://regulationbodyofknowledge.org/wp-content/uploads/2013/03/AustralianGovernment_Best_Practice_Regulation.pdf)

- The monetization of impacts can compare all alternatives to choose the best cost-benefit ratio. That is, if the regulatory proposal provides net social benefits and whether they are greater than those covered by the other options.
- If market prices exist and are adequate, it is easy to calculate the costs and benefits.
- Consider the value of money over time; namely can be express, in present value, all future costs and benefits. This is because the impacts of regulation happen or ripen with different periodicities starting from entrance into force of governmental intervention.

### **Disadvantages**

- The crux of the CBA is to monetize the costs and benefits, as market prices are not always available or are inadequate due to the intervention or market failures (generating incomplete information):
- When market prices exist but are inadequate, it is necessary to calculate the "shadow prices"; namely, prices that reflect real costs and benefits.
- When there are no market prices, or have impacts that are difficult to capture (i.e. the value of human life), there are techniques to indirectly monetize costs and benefits (i.e. the statistical value of life).

Therefore, the CBA can be total or partial:

- **Complete CBA:** should be used when the most important part of the costs and benefits can be quantified and monetized (i.e. costs and benefits arising directly from the regulation) and when there is a degree of choice over what objectives must be met (as a function of the costs associated with the proposed actions).
- **Partial CBA:** should only be used when a portion of the costs and benefits can be quantified and monetized. The resulting net benefits should be considered along with the qualitative assessment of another costs and benefits.

### **2.1.2 Cost-effectiveness Analysis (CEA)**

Compares the costs of different regulatory options. It is mainly applied in the areas of health, safety, transportation or education; where benefits cannot be expressed in monetary terms, but in physical units (i.e. fewer deaths from disease). Thus, the CEA sets costs to achieve a specific volume of attended items (i.e. avoided fatalities) and this allows to classify options according to its cost efficiency.

### **Use**

When it is not possible to clearly quantify or monetize the main benefits of regulation, but it can be assumed that, the benefits generated by options have the same unit of measure.

## **Advantages**

- Does not require a measurement or estimate of the benefits as accurate as the CBA.
- Useful for limited budgets or those that require redistribution to develop and implement a regulation, since the decision is to identify the regulatory option that generates lowest costs per profit unit.

## **Disadvantages**

- Can only be used to compare alternatives of governmental intervention which similar expected results (i.e. options that only seek to control risk but not eliminate it).
- Attends to a single benefit: the main intended effect of the measure; so it will lead to an incomplete result as not assess all other direct effects (those derived from regulation).

## **2.2 Qualitative Assessments**

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### **2.1.1 Multi Criteria Analysis (MCA)**

Method applicable to measurable combinations and unquantifiable costs and benefits. Its main feature is that their results fall in the weighting and aggregation of the various evaluation criteria, giving various ways to break down a complex problem and even compare scenarios. Their results are presented in a *performance matrix*, which uses quantitative and qualitative criteria to assess impacts and comparing the options.

#### **Use**

Mainly, when the impacts are a mixture of qualitative, quantitative and monetary data, and also vary their degrees of certainty. The MCA allows to reach a conclusion based on an explicit set of objectives and associated criteria.

#### **Advantage**

- Allows a simple comparison and analysis of different data types, with different levels of certainty under a single framework (performance matrix) to facilitate comparison.
- Easy to understand for decision makers and stakeholders.
- Provides a transparent presentation of the key issues at stake and allows compensation in the criteria to outline scenarios using sensitivity analyzes.

#### **Disadvantages**

- Requires various decision criteria, unlike previous methods.
- Includes elements of subjectivity, especially in the weighting stage, when the importance of the criteria is decided intuitively or subjected to the recommendation of experts (i.e. bias).

- Interested parties differently value the importance of the criteria.

### **2.1.2 SWOT Analysis**

Identifies the Strengths, Weaknesses, Opportunities and Threats in relation to an organization/project (regulation) and how such an assessment will change over time. Analyzes internal variables (strengths, weaknesses) that are under control of the organization and external variables (opportunities and threats) that escape from the any control and depends on the macro-environment.

#### **Use**

In the context of evaluation, this method can help to assessing the services, formalities, aids, subsidies, goods or welfares provided by regulation, through a SWOT matrix.

#### **Advantages**

- Can transform weaknesses into a constructive learning process.
- Brainstorming tool for creating new ideas to improve actual performance.
- The ideal result is that it can be very valuable to maximize strengths and minimize weaknesses, so that the organization/regulation can take advantage of external opportunities while overcoming the identified threats.

#### **Disadvantages**

- Not an analytical tool *per se*. Instead it is an empirical way to synthesize preceding analyses and use them for developing a strategy.
- Because the SWOT analysis is simple premise, it is not presented regularly to a critical consideration.

### **3. TLS Methodology to assess the quality of Ex Post RIA**

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Regulatory quality and public services are paramount not only to ensure the creation of new businesses, attract capital investment and sustain growth of the competitiveness of the economic agents, but also to extend the life cycle of small and medium-size enterprises that daily are affected by regulatory constraints. Therefore, the construction of an indicator on the regulation performance –under the traffic light score– will generate:

- i) A sufficient oversight of whether the regulations are delivering the intended impacts.
- ii) A systematic feedback on the robustness of the assumptions used in the ex-ante RIA, both at relevant economic sectors.

Finally, the diagnostic will enable regulators to identify and seize improvements proactively on public policies, instead of majorly react to external reviews and appraisals.

#### **3.1 Considerations**

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This priority contributes to the first RAASR pillar “more open, well-functioning, transparent and competitive markets”, because better regulation encourages competition, efficiency and transparency by improving regulation and government services. By regulating appropriately in a way that is both effective (achieves goals) and efficient (does so at minimum economic cost), there is the potential for economies to unlock significant productivity gains. In particular, ex post RIA will present real data—and not only merely estimations—to sustain that regulation is indeed both effective and efficient.

In this sense, the ex post evaluation purpose is to check the achievement of structural reforms due to their importance for Members’ competitiveness. Thereby, derived from the structural reforms, the RIA allows linking all regulation, from its very design, considering the relevant statistics and indicators to sustain the achievement of the structural reform goals.

It follows then, that the concept of Regulatory Quality will be fulfilled in the life cycle of regulation (proposed and current), with the aim to provide the highest benefits to society at the lowest possible cost through the formulation and oversight of rules and incentives that encourage innovation, legal certainty, business productivity, competitiveness for growth, general welfare and human development.

#### **3.2 Evaluation method**

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The TLSM is conformed of three cards. The *Traffic Light Directive Card* (Figure 3) that sets the ex post RIA variables<sup>13</sup> and its qualification criteria, while the *Traffic Light Recommendation Card* (Figure 5), and according to the assessment of the ex post RIA, sets optional action courses on regulation. Finally, the *Traffic Light Score Card* (Figure 6) states the resultant score of the ex post RIA and the given recommendation on regulation. The two first cards may be run per regulation or even per group or activity touched by regulation. However the insight level must be

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<sup>13</sup> In the Mexican case, factors are stated from the Agreement mentioned in Chapter 1.7.

aligned to information and data cost-availability relation<sup>14</sup>. The results must be weighed and identified in the *Traffic Light Score Card*.

The methodology is based on traffic light colors and its meaning:

- **Green.** Go, good performance.
- **Amber.** Slow and check, room for improvement.
- **Red.** Stop, serious weaknesses on performance, overhaul or cancel.



### 3.2.1 Explanation of the Traffic Light Directive Card (TLDC)

Figure 3

CARD 1.		Traffic Light Directive Card for an ex post RIA							
SCORE ACTION I	PROBLEMATIC					REGULATORY IMPACT		ENFORCEMENT	
	CHANGE OF STATUS	LIST OF UPGRADES	STATISTICS AND INDICATORS	RISK ANALYSIS	RED TAPE ANALYSIS <sup>1</sup>	COST-BENEFIT ANALYSIS		VERIFICATION	PENALTIES
<b>RED</b>	Got worse or lack of evidence	Lack of list	Lack of data or 60% aggravation of ex ante indicators or statistics	Lack of risk related data or 60% aggravation of ex ante risk related indicators or statistics	Opportunity undetected for simplifying formalities	No data or: $C_{ante} < C_{post}$	No data or: $\frac{B_{post}}{C_{post}} < 1$	Verification not realized	Appeals against regulation
<b>AMBER</b>	Without change	List without evidence	Without change in ex ante statistics or indicators	Without change in risk related ex ante statistics or indicators	Opportunity detected for simplifying formalities	$C_{ante} > C_{post}$	$\frac{B_{post}}{C_{post}} = 1$	Verification not differentiated by risk or enterprise size	Penalties not applied
<b>GREEN</b>	Got better	List with evidence	Improvement in 40% of ex ante statistics or indicators	Improvement in 40% of risk related ex ante statistics or indicators	Opportunity rejected for simplifying formalities	$C_{ante} = C_{post}$	$\frac{B_{post}}{C_{post}} > 1$	Verification differentiated by risk or enterprise size	Penalties applied

#### Columns of Figure 3

1. **Score Action I.** stands for the traffic light mark (red, amber or green) that each sub-column cell can obtain from the evaluation.
2. **Problematic.** Refers to the causes that motivate addressing the situation (issues or opportunities areas).

<sup>14</sup> The benefits and costs distribution should allow to know who assumes the P&L of regulation compliance. Equity and inclusion should be objectives of regulations.



3. **Regulatory impact.** Shows the monetized impacts (actual and projected) of regulation.
4. **Enforcement.** Denotes the degree of compliance with the regulation.

### Sub-columns of Figure 3

1. **Change of Status.** Is opportunity or problem solving achieved?
2. **List of upgrades.** Are improvements attained and traceable? The list of achievements (i.e. situations solved or mitigated) need to sustain on proofs nor on suppositions.
3. **Statistics and Indicators.** Do parameters for regulation measurement of goals and impacts exist?
4. **Risk Analysis.** Do parameters related to threats reflect their attendance along with their consequences? (i.e. diminishing, control or elimination)
5. **Red Tape Analysis.** Refers to simplification of requirements, deadlines, submission forms or any other element of formalities contained in regulation, but paramount to ease the attention of the obligations imposed.
- 6/7. **Cost Benefit Analysis.** Do actual and projected comparisons of costs is possible, and if so is favorable? Do actual benefit-cost ratio is at least equal to one for performance acceptance? See Figure 4.

Criteria	Traffic Light	Criteria	Traffic Light
$C_{ante} < C_{post}$	<b>Red.</b> Costs were underestimated, or even nor of them were accounted (i.e. no data available).	$\frac{B_{post}}{C_{post}} < 1$	<b>Red.</b> Costs surpass benefits, or even nor of them were accounted (i.e. no data available).
$C_{ante} > C_{post}$	<b>Amber.</b> Costs were overestimated.	$\frac{B_{post}}{C_{post}} = 1$	<b>Amber.</b> Costs equal benefits. Net benefit is zero.
$C_{ante} = C_{post}$	<b>Green.</b> Costs were budgeted correctly.	$\frac{B_{post}}{C_{post}} > 1$	<b>Green.</b> Benefits surpass costs. Thus, a net benefit exists.

$C_{ante}$	Refers to estimated costs of regulation compliance.	$B_{post}$	Refers to acquired and ongoing benefits of regulation compliance.
$C_{post}$	Refers to incurred and ongoing costs of regulation compliance.		

Figure 4. Cost Benefit performance

8. **Verification.** Was regulation enforced for all? Are schemes applied in the same way for all subjects and regulated activities or a different application is contemplated depending on risks attendance and impacts absorption?

9. **Penalties.** Simple, no one under or above the law. Sanctions encourage compliance.

### Notes on Figure 3:

- In sub-columns 1 to 4, the answer on each cell depends on the sense of situation change (improvement or weakening) and the evidence to sustain that modification.
- In sub-columns 3, 4, 6 and 7, the information and data stated on each cell will be relevant if parameters were systematically fed since regulation became mandatory.

### 3.2.2 Explanation of the Traffic Light Recommendation Card (TLRC)

#### Columns of Figure 5

1. **Score Action II.** Stands for the traffic light mark (red/cancel, amber/modify or green/bear out) that each sub-column cell can obtain from the evaluation.
2. The bottom half of the TLRC gives possible action courses, according to the number of lights made.

CARD 2.		Traffic Light Recommendation Card for regulation							
SCORE ACTION II	PROBLEMATIC			REGULATORY IMPACT				ENFORCEMENT	
	CHANGE OF STATUS	LIST OF UPGRADES	STATISTICS AND INDICATORS	RISK ANALYSIS	RED TAPE ANALYSIS	COST-BENEFIT ANALYSIS		VERIFICATION	PENALTIES
RED	Cancel	Cancel	Cancel	Cancel	Modify	Cancel	Cancel	Bear out	Modify
AMBER	Modify	Modify	Modify	Modify	Modify	Modify	Modify	Modify	Modify
GREEN	Bear out	Bear out	Bear out	Bear out	Bear out	Bear out	Bear out	Bear out	Bear out
From 8 to 9 green lights	OUTSTANDING RIA.			Maintain. Regulation meets its objectives with sound results.					
From 6 to 7 green lights	SATISFACTORY RIA.			Nevertheless, the regulation has room from improvement and therefore achieve with clarity its objectives and expected results.					
Equal or less than 5 green lights	UNSATISFACTORY RIA.			The regulation needs overhauling on its objectives, mandatory actions and expected results. Otherwise consider its cancellation.					

Figure 5

### 3.2.3 Explanation of the Traffic Light Score Card (TLSC)

Basically corresponds to a summary card, which integrates the scores of cards 1 and 2, along with the given recommendation on regulation.

#### Rows of Figure 6

1. **Score I.** Each cell is filled with the results from “Score Action I” sub-columns of Card 1 (TLDC).
2. **Light.** Each cell is filled with the correspondent light to “Score Action I” results.
3. **Notes on C 1.** States more information, if necessary, of “Score 1” raw.
4. **Score II.** Each cell is filled with the results from “Score Action II” sub-columns of **Card 2 (TLRC).**
5. **Final Note.** In accordance with the green lights obtained, states the grade of RIA (outstanding, satisfactory or unsatisfactory) and the given recommendation on regulation (maintain, room for improvement, overhauling or cancellation).

#### Notes on Figure 6

- Only consider to cancel regulation when further evaluation and/or information do not reverse the score.
- Regulatory Reform is an iterative process, so lights (and cards) might change until a final opinion is issued by an oversight body.

CARD 3.		Traffic Light Score Card for an ex post RIA							
SCORE ACTION	PROBLEMATIC					REGULATORY IMPACT		ENFORCEMENT	
	CHANGE OF STATUS	LIST OF UPGRADES	STATISTICS AND INDICATORS	RISK ANALYSIS	RED TAPE ANALYSIS	COST-BENEFIT ANALYSIS		VERIFICATION	PENALTIES
SCORE I									
LIGHT									
NOTES ON C 1									
SCORE II									
FINAL NOTE									

Figure 6

In Chapter 4 a case of study will be fully developed, nevertheless is worth looking the following example (Figure 6.a), just with the purpose of understanding the filling up of TLSC:

CARD 3.		Traffic Light Score Card for an ex post RIA							
SCORE ACTION	PROBLEMATIC					REGULATORY IMPACT		ENFORCEMENT	
	CHANGE OF STATUS	LIST OF UPGRADES	STATISTICS AND INDICATORS	RISK ANALYSIS	RED TAPE ANALYSIS	COST-BENEFIT ANALYSIS		VERIFICATION	PENALTIES
<b>SCORE I</b>	Got better	List with evidence	Without change in ex-ante statistics or indicators	Without change in ex-ante statistics or indicators	Opportunity detected for simplifying formalities	Lack of data	Lack of data	Verification differentiated by risk or enterprise size	Penalties applied
<b>LIGHT</b>	Green	Amber	Amber	Amber	Amber	Red	Red	Green	Green
<b>NOTES ON C 1</b>	---	---	Data mining is still on process	Data mining is still on process	---	---	---	Considers different motor vehicle configurations	---
<b>SCORE II</b>	Bear out	Modify	Modify	Modify	Modify	Cancel	Cancel	Bear out	Bear out
<b>FINAL NOTE</b>	RIA UNSATISFACTORY.								

Figure 6.a Example

### 3.3 User quick guide

This guide provides regulators – and generally to all interested – a brief explanation and rapid support for the use of the TLSM. The explanation intended to be short, simple and in language that allows anyone, without having a background in legal, social or economic sciences, to understand and assess the design of regulation. Therefore, as far as possible, avoids using specialized terminology.

#### Steps to run the TLSM

1. Identify a current regulation which has an ex ante RIA. Preferably a RIA developed in parallel to its then regulatory proposal.
2. Make sure the RIA incorporates specific goals (statistics and indicators), along with the measurements on the initial condition and the expected results.
3. Confirm that data and information collection started just after regulation was implemented.
4. Preferably obtain data and information of an ex post RIA or alternatively from the original sources.
5. Fill up Card 3 (TLSC) rows (Figure 6.c):
  - 5.1. **Score I.** Each cell is filled with the results from “Score Action I” sub-columns of Card 1 (TLDC).
  - 5.2. **Light.** Each cell is filled with the correspondent light to “Score Action I” results.

- 5.3. **Notes on C 1.** State more information, if necessary, of “Score 1” row.
- 5.4. **Score II.** Each cell is filled with the results from “Score Action II” sub-columns of Card 2 (TLRC).
- 5.5. **Final Note.** In accordance with the green lights obtained, state the grade of RIA (outstanding, satisfactory or unsatisfactory) and the given recommendation on regulation (maintain, room for improvement, overhauling or cancellation).
6. Proceed to cancel regulation when further evaluation and/or information do not reverse the score.
7. The TLSM may be run per regulation or even per group or activity touched by regulation. However the insight level must be set in line to information and data cost-availability relation.
8. Regulatory Reform is an iterative process, so lights and cards might change until a final opinion is issued by an oversight body.

CARD 3.		Traffic Light Score Card for an ex post RIA							
SCORE ACTION	PROBLEMATIC					REGULATORY IMPACT		ENFORCEMENT	
	CHANGE OF STATUS	LIST OF UPGRADES	STATISTICS AND INDICATORS	RISK ANALYSIS	RED TAPE ANALYSIS	COST-BENEFIT ANALYSIS		VERIFICATION	PENALTIES
SCORE I									
LIGHT									
NOTES ON C 1									
SCORE II									
FINAL NOTE									

Figure 6.c

## 4. Study Cases Report

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### 4.1 Case 1 of Mexico Introduction

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As stated in Chapter 1.7, the “Agreement by which the Ex-Post Regulatory Impact Assessment is implemented” allows CONAMER to request an ex post RIA to ministries and decentralized bodies who issued technical standards (NOMs) accompanied by high-impact RIAs. Therefore, this chapter contains an example of the TLSM on a NOM: “**NOM-012-SCT-2-2014**, on the maximum weight and dimensions with which the motor transport vehicles may travel on the general routes of communication under Federal Jurisdiction”.

In accordance with article 40, section XVI, of the Federal Act on Metrology and Standardization<sup>15</sup>, the aim of NOMs is to establish the features and/or specifications to be met by devices, networks and communication systems, as well as vehicles, equipment and related services; in order to protect the general means of communication and safety of its users. NOM-012-SCT-2-2014 is in itself a safety standard, to which the TLSM, assesses using the information derived from the “Ex-post Evaluation Report on the draft called Mexican Official Standard NOM-012-SCT-2-2014”<sup>16</sup>.

The following is a brief summary of NOM-012-SCT-2-2014:

#### *Purpose*

- (i) Update technical specifications.
- (ii) Attend the recommendations of an expert panel.
- (iii) Ensure safety of users of general routes (an annual profit of 36,308 USD per accident).
- (iv) Ensure the conservation of those routes infrastructure.
- (v) Promote competitiveness and productivity of transport sector, decreasing the Vehicle Operating Costs (VOC) in about a range of 1,544 and 2,574 million USD/year.

#### *Characteristics and specifications:*

- (i) Maximum weight of 75.5 tons for full tractor trailers (FTT).
- (ii) Restrict circulation for FTT on “B” type roads, except on connectivity in lower specification roads (up to 50 Km).
- (iii) Removal of differentiation in simple configurations and single-unit vehicles, regardless the usage of pneumatic suspension systems.

### **Assessment**

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In accordance with the methodology described in Chapter 3.2, the final results on “NOM-012-SCT-2-2014, on the maximum weight and dimensions with which the motor transport vehicles

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<sup>15</sup>[http://www.diputados.gob.mx/LeyesBiblio/pdf/130\\_181215.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/130_181215.pdf)

<sup>16</sup><http://www.cofemersimir.gob.mx/expediente/13391/recibido/49222/B0014006899>

may travel on the general routes of communication under Federal Jurisdiction” are identified in the Traffic Light Score Card.

The explanation of each section of NOM-012-SCT-2-2014 card is presented in the following sections of this chapter.

<b>CARD 3.</b>		<b>Traffic Light Score Card for an ex post RIA</b>							
<b>SCORE ACTION</b>	<b>PROBLEMATIC</b>					<b>REGULATORY IMPACT</b>		<b>ENFORCEMENT</b>	
	CHANGE OF STATUS	LIST OF UPGRADES	STATISTICS AND INDICATORS	RISK ANALYSIS	RED TAPE ANALYSIS	COST-BENEFIT ANALYSIS		VERIFICATION	PENALTIES
<b>SCORE I</b>	Got better	List with evidence	Without change in ex-ante statistics or indicators	Without change in ex-ante statistics or indicators	Opportunity detected for simplifying formalities	Lack of data	Lack of data	Verification differentiated by risk or enterprise size	Penalties applied
<b>LIGHT</b>	Green	Amber	Amber	Amber	Amber	Red	Red	Green	Green
<b>NOTES ON C 1</b>	---	---	Data mining is still on process	Data mining is still on process	---	---	---	Considers different vehicular configurations	---
<b>SCORE II</b>	<b>Bear out</b>	<b>Modify</b>	<b>Modify</b>	<b>Modify</b>	<b>Modify</b>	<b>Cancel</b>	<b>Cancel</b>	<b>Bear out</b>	<b>Bear out</b>
<b>FINAL NOTE</b>	RIA UNSATISFACTORY.								

**Figure 8. NOM-012-SCT-2-2014**

## CHANGE OF STATUS

*Score: Got better (green) / recommendation: bear out*

In the ex-ante RIA of NOM-012-SCT-2-2014, the regulator (in this case, the Ministry of Communications and Transportation –SCT-), exhibited the following problem that led to governmental intervention:

- (i) In 1995 was envisaged a benefit to the economy by increasing the maximum weight allowed for all modes of freight vehicles. However, the increase was conditioned only for freight vehicles with air suspension, this with the purpose to decrease the damage to road infrastructure.

Among the effects derived of regulation, the following were found:

- (i) Freight vehicles without air suspension had lost competitiveness because of restrictions in its maximum weight.
- (ii) The safety of users of federal highways decreased, due to a greater number of accidents involving cargo vehicles; likewise, an increase in the damage of road infrastructure, particularly in cases where infrastructure was not designed for traffic of freight vehicles doubly articulated.

Additionally, in the ex post RIA the regulator stated that after a one-year period of regulation enforcement, the problem still persisted. Still, the regulator also indicated the following elements to determine an improvement of the situation that gave rise to the problem of origin:

- (i) A decrease in the proportion of accidents caused by excessive speed.

(ii) A decrease of the number of accidents, injuries and victims involving freight vehicles.

It is also noteworthy that the regulator informed to CONAMER that its areas responsible for generating statistics of accidents on roads, currently are working to update and clarify the data on the type of vehicles responsible of road accidents, which can improve the analysis of the regulation performance (the addressing of the main problem).

Therefore, it can be envisaged, despite the lack of accurate statistics, an improvement in the initial status of problem identified.

## **LIST OF UPGRADES**

*Score: List with evidence (amber) / recommendation: modify*

In the ex post RIA, the regulator provided the following list of improvements generated by regulation and those who helped to mitigate the problems identified:

- (i) Increase in the competitiveness of freight vehicles operators without air suspension, due the elimination of the previous maximum weight restrictions for these vehicles.
- (ii) Enhancement on the safety of road users by introducing restrictions on the traffic of double articulated vehicles, on roads not having a suitable infrastructure for these vehicles.
- (iii) Only traffic of freight vehicles used in the construction industry is allowed in all type of roads, under the condition of having adequate security measures.
- (iv) Increase in productivity and competitiveness of buses operators, by allowing the circulation of buses with dimensions of 15 meters long.
- (v) Special connectivity permits, granted only for double trailers operators that require the usage of unsuitable roads for this type of transport. The permits are only granted for efficiency reasons regarding to production facilities location, thus these are limited to a range of 50 kilometers and only under the compliance with certain security measures.

Therefore, it can be concluded that the regulator made a qualitative list of improvements to the initial problem. However, an area of opportunity exists because the quantitative evidence must cover all the improvements listed and related to the main problem and for this case such condition was not met.

## **STATISTICS AND INDICATORS**

*Score: Without change in ex-ante statistics or indicators (amber) / recommendation: modify*

In the ex post RIA, the regulator provided statistics comparing the status of the problem at two stages: at the time that was presented the ex-ante RIA and at the time of regulation performance assessment. Thus, the following comparative data for the period covering April 2014 to January 2016 was presented:

- (i) The total national freight vehicle fleet increased by 2.5%, from 841,236 to 862,244 units; of this total, the major increase was registered in the two-axle freight vehicles, due that regulation allowed an increase in the weight permitted for these vehicles.
- (ii) The number of double articulated freight vehicles (measured by the number of Dolly converters) experienced a decrease, going from 35,000 to 29,000 converters registered.



Additional data was presented comparing the status prior to the implementation of the standard (2014) against the implementation period (2015):

- (i) Monthly statistics on infringements of the provisions of NOM-012-SCT-2-2014 by vehicles with dual semi-trailer, showed that in all months considered in the comparative data versus 2015 (year of implementation of the standard) were lower than the previous year (2014).
- (ii) The 2014 statistics of the causes of accidents showed that for all type of roads, the main reason was the immoderate speed; compared with the data of 2015, although the immoderate speed remained as the main cause of accidents, its stake has been reduced among the causes of accidents.

Although the regulator provided comparative data, an area of opportunity exists in order to generate and display more detailed accident statistics that soundly explain how accurate the problem is faced. Still, it is important to recall that the regulator acknowledged to be currently working in obtaining further information on infringements, this for the purpose already explained.

## **RISK ANALYSIS**

*Score: Without change in risk related ex ante statistics or indicators (amber) / recommendation: modify*

In the ex-ante RIA, the regulator identified three types of risks which are mitigated or prevented due the regulation implementation:

- (i) Accidents that provoke fatalities and injuries to users of federal highways.
- (ii) Security of population, through preservation of life, health and containment of economic costs.
- (iii) Early damage to road infrastructure causing an economic cost to the country through fatalities, injuries and property damage.

In the case of the first risk identified, the regulator provided data for 2013 and 2014 on the participation of freight vehicles in total accidents on federal roads, highlighting an increase in its percentage of total (30.15 % in 2013 and 30.34% in 2014). Due data corresponded to a previous stage of regulation implementation, CONAMER requested additional information on the ex post RIA, to which the regulator answered that, although currently data on accidents in 2015 exists, the information was under review and homologation, reason that did not allow its timely delivery on the ex post RIA.

On regards of the second risk identified, the regulator showed for the period 2013 and 2014 the following data in the ex post RIA about the percentage share of freight vehicles in the total accident figures for the following four areas: 1) dead, 2) injured, 3) injury accidents and 4) damage. In these four areas, there was a slight increase in the percentage share of freight vehicles in total; however, the data did not improve the analysis because figures belonged to a previous period of regulation implementation.

Aware of the above, the regulator showed other data for 2015 (year of implementation of the regulation) about the volume of cargo and the number of passengers carried. Among these

data, highlights a notable increase in cargo transported from 511 million tons in 2014 to 523 million tons in 2015, along with the number of passengers going from 3,459 million of passengers in 2014 to 3,558 million of passengers in 2015. The absence of 2015 statistics about accidents to explain the second risk is due of the same reason provided by the regulator for the case of the first risk identified.

In relation to the third risk identified, the regulator showed data to demonstrate that the damage risk to road infrastructure was reduced with the regulation, particularly presenting data for 2013, 2014 and 2015 on the average vehicle weight of freight vehicles subjected to regulation. The data showed a significant increase in the average weight of cargo during the year of implementation of the regulation, which in the regulator view, the major weight did not cause an anticipated damage to the road infrastructure. Thus, the data demonstrated that with regulation implementation the risk initially detected was mitigated.

It is concluded that, although the regulator provided data for 2015 (the year of regulation implementation), by no means were sufficient to prove the status of risks after governmental intervention and merely can be demonstrated that regulation avoided a greater damage to infrastructure. Still, the regulator justified the absence of data due information under review and homologation, reason that did not allow data to be on timely delivery for the *ex post* RIA submission.

## **RED TAPE ANALYSIS**

*Score: Opportunity detected for simplifying formalities (amber) / recommendation: modify*

In the *ex post* RIA, the regulator showed the following areas of opportunity in four formalities created within the regulation:

- (i) Formality "Authorization Request to using roads not suitable for double trailer to arrive or depart from its production plan".
  - Redesign the format to avoid user confusion and unnecessary data request.
  - Develop a database with the opinions issued by technical areas, in order to speed up the response time of the procedure.
- (ii) Formality "Application for special permit for vehicles transporting passengers or cargo having up to 4.5 meters high".
  - Redesign the format to avoid filling unnecessary sections.
  - Generate a database of bridges and tunnels of the routes, as these are requested to users and the data is difficult to obtain.
  - Develop a database with the opinions issued by technical areas.
- (iii) Formality "Approval of self-regulatory process with use of platform scales and measuring of dimensions".
  - Outline the process to be followed by users to ship and weight the vehicles, in order to make clear the steps and avoid further confusion.
- (iv) Formality: "Approval of verification units of weight and dimensions"

- Issue an announcement that promotes the existence and participation of verification units, operated by third parties, certified and approved by the regulator.

Therefore, it can be concluded that the regulator found areas of opportunity to improve the implementation of the formalities procedures by means of the following actions: improvement in formats, reduction of requirements, clarification of the processes, database generation and the issuance of announcements.

## **Regulatory Impact**

### **COST-BENEFIT ANALYSIS**

*Score: There are no updated data of costs or benefits (red) / recommendation: cancelation*

For this category, the regulator was unable to set any data on the ex post RIA in order to make possible a comparison with the projected costs and benefits stated in the ex-ante RIA and then to conclude if the expected costs and benefits of the regulation were achieved. It should be noted, that the five year span stated for the valuation of costs and benefits of the ex-ante RIA corresponds to the period which the NOM is in effect; thus, a precise comparison of projections and results can occur until the end of the evaluation horizon. However the availability of data for the first year of implementation could have improved the projection or even more, give relevant information that would have allowed to check the quality of regulation in terms of quantitative achievements.

Aware of the above, the regulator justified the absence of data because besides that these were under development by different areas, the delivery date of the results of the ex post RIA did not allow an appropriate approval of the data. On this, it is also important to note that within transport statistics, there are various bodies responsible for its collection and processing, making it difficult to capture and process in a timely way.

Therefore, it can be concluded that an area of opportunity exists to improve the internal processes of data collection and analysis, considering that the CBA can be completed and improved until the evaluation horizon ends.

## **Enforcement**

### **VERIFICATION**

*Score: Verification differentiated by risk or enterprise size (green) / recommendation: bear out*

In the ex post RIA, the regulator explained that, in order to verify the compliance with the restrictions on weight and dimensions of the cargo, 66 fixed verification centers were distributed throughout the country; along with verification operations taking place 24 hours a day, requiring the coordination with Federal Police, because of the extent of their legal competence in monitoring the roads of federal jurisdiction. According to the regulator, in the year of regulation implementation (2015), a total of 183,888 verifications were conducted from a total of 135,444 scheduled.

Finally, the regulator also noted that prior to the implementation of the regulation, was issued a notice for the subjects regulated regarding the format infringement in order to know it in advance and details about the new restrictions that could be subject to penalty.

Therefore, it can be concluded that the regulator provided the verification data. Nonetheless, an area of opportunity exists by disaggregating the verification information with greater detail for the improvement of the analysis of this section.

## **PENALTIES**

*Score: Penalties applied (green) / recommendation: bear out*

In the ex post RIA was noted that in 2015 were registered 2,753 penalties from a total of 183,888 revisions. However, there is an area of opportunity if the regulator can disaggregate with more detail the information on fines. This would improve the analysis of the outcome of regulation in the obligated subjects.

## **4.2 Case 2 of Mexico**

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### **Introduction**

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TLSM on the AIR of high impact with competition impact analysis, on the “Administrative provisions of a general nature in the field of open access and provision of transportation services for the ducting and storage of natural gas”

As of the Constitutional Decree<sup>17</sup> on energy, transportation, storage and distribution of hydrocarbons by pipelines and other means of distribution (activities previously reserved to the state) will also be carried out by the private sector through a permit issued by the Energy Regulatory Commission (CRE) for its Spanish acronym. The permits of transport and distribution permits through pipelines will have the obligation to give open access to their facilities and services, subject to the capacity of their system, in terms of the regulation issued by the CRE.

This regulation seeks establish the conditions for the service is provided in the new condition of the market (when changing from a market with monopolistic characteristics to a scheme with a high degree of private participation). TLSM, assesses using the information derived from the “Administrative provisions of a general nature in the field of open access and provision of transportation services for the ducting and storage of natural gas”<sup>18</sup>.

The following is a brief summary of regulatory proposal: Administrative provisions of a general nature in the field of open access and provision of transportation services for the ducting and storage of natural gas:

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<sup>17</sup>[http://www.dof.gob.mx/nota\\_detalle.php?codigo=5327463&fecha=20/12/2013](http://www.dof.gob.mx/nota_detalle.php?codigo=5327463&fecha=20/12/2013)

<sup>18</sup><http://www.cofemersimir.gob.mx/mirs/38283>

## **Purpose**

- (i) Establish the concepts, criteria and guidelines to which the permits of the provision of transport services for natural gas pipeline and storage should adhere, under conditions of open access and not unduly discriminatory.
- (ii) Provide legal certainty to permits, establishing clear rules for the provision of services.
- (iii) Develop the regulation established by the Hydrocarbons Law (LH) for its Spanish acronym, and the regulation of activities of the hydrocarbons law (Regulation), in regards to the obligation and conditions to ensure open access, and not improperly discriminatory to their facilities and services, the modalities of open seasons<sup>19</sup>, TA for its Spanish acronym and the implementation of electronic bulletins.

## **Characteristics and specifications:**

- (iv) Establishment of the necessary provisions to regulate the provision of transport services by pipelines and storage of natural gas.
- (v) Give legal certainty to the permits, as well as the procedures and formats necessary to request the respective permits.
- (vi) Instruct the permit permits to have an electronic bulletin to keep public the relevant information of the services and thereby promote open access.
- (vii) Establish the basis for permits to carry out open season procedures.
- (viii) Establish that the Terms and Conditions for the Provision of Services (TCPS) for its Spanish acronym, should be aligned to the principles of open access.

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<sup>19</sup> The Open Season is a scheme that allows the allocation of petroleum transport and storage capacity through an auction mechanism.

## Assessment

In accordance with the methodology described in Chapter 3.2, the final results on “Administrative provisions of a general nature in the field of open access and provision of transportation services for the ducting and storage of natural gas” are identified in the Traffic Light Score Card.

The explanation of each section of AIR card is presented in the following sections of this chapter

**Figure 9. Administrative provisions of a general nature in the field of open access and provision of transportation services for the ducting and storage of natural gas.**

CARD 4.		Traffic Light Score Card for an ex post RIA							
SCORE ACTION	PROBLEMATIC					REGULATORY IMPACT		ENFORCEMENT	
	CHANGE OF STATUS	LIST OF UPGRADES	STATISTICS AND INDICATORS	RISK ANALYSIS/ ECONOMIC COMPETITION	RED TAPE ANALYSIS	COST-BENEFIT ANALYSIS		VERIFICATION	PENALTIES
SCORE I	Got better	List with evidence	Sufficient statistics and indicators (indicate change)	Increased economic competition	Opportunity detected for simplifying formalities	Non-comp arable data	Statistics and data reveal increased competition	Verification differentiated by risk or enterprise size	Penalties applied
LIGHT	Green	Green	Green	Green	Amber	Red	Green	Green	Green
NOTES ON C 1	---	---	Data mining is still on process	Data mining is still on process	---	---	---	---	---
SCORE II	Bear out	Bear out	Bear out	Bear out	Modify	Cancel	Bear out	Bear out	Bear out
FINAL NOTE	RIA SATISFACTORY.								

### CHANGE OF STATUS

Score: Got better (green) / recommendation: bear out

In the ex-ante RIA Administrative provisions of a general nature in the field of open access and provision of transportation services for the ducting and storage of natural gas, exhibited the following problem that led to governmental intervention:

In December 2013 Constitutional Decree on energy, transportation, storage and distribution of hydrocarbons by pipelines and other means of distribution was. With these Decree activities previously reserved to the state will also be carried out by the private sector.

Among the effects derived the Constitutional Decree, the following were found:

- Arises the need for a new rules for the entry of new market entrants.
- Due to the nature of natural monopoly of activities including in the present regulation (transportation services for the ducting and storage of natural gas) and with the aim of reducing market asymmetries of information it is necessary to implement a regulation according to the needs of the market.
- In the ex post RIA, the regulator stated that after one year and ten months of application of the regulation, the problem no longer persisted, the regulator indicated the following

elements to determine the improvements of the situation that gave rise to the problem of origin

- The necessary provisions were established to regulate the provision of Natural Gas Transportation and Storage services that ensure an efficient supply, as well as open access and no undue discrimination.
- The regulated subjects were provided with legal certainty by issuing the provisions, as well as the procedures and formats necessary to request the respective permits.
- The regulated subjects were instructed to have an Electronic Bulletin in order to keep the relevant information about the service public and available to interested parties.
- The bases were established for the regulated subjects to carry out the Open Season procedures, thus reflecting the demand for access to the services.
- It was established that the Terms of the Contracts for the Provision of Services (TCPS) for its Spanish acronym, should be in accordance with the principles of effective open access and not unduly discriminatory for the use of the Systems.

Even so, the regulator also indicated that new areas of opportunity were opened after the implementation.

Therefore, it can be envisaged, an improvement in the initial status of problem identified.

## **LIST OF UPGRADES**

*Score: List with evidence (green) / recommendation: bear out*

In the ex post RIA, the regulator provided the following list of improvements generated by regulation and those who helped to mitigate the problems identified:

In the ex-ante RIA Administrative provisions of a general nature in the field of open access and provision of transportation services for the ducting and storage of natural gas, exhibited the following problem that led to governmental intervention:

- (i) Arises the need for a new rules for the entry of new market entrants.
- (ii) Due to the nature of natural monopoly of activities including in the present regulation (transportation services for the ducting and storage of natural gas) and with the aim of reducing market asymmetries of information it is necessary to implement a regulation according to the needs of the market.

In the ex post RIA, the regulator stated that after one year and ten months of application of the regulation, the problem no longer persisted, the regulator indicated the following elements to determine the improvements of the situation that gave rise to the problem of origin:

- (i) Regulated subjects were given legal certainty by issuing the provisions.

- (ii) New permits were granted for the pipeline transport service in the open access modality.
- (iii) The Electronic Bulletin was implemented, as a monitoring mechanism and presentation of the relevant information of each licensee so that participants have more complete and updated information.
- (iv) The Permits sent requests for approval of their Terms and Conditions for the Provision of the Service.
- (v) The number of unattended requests was recorded.
- (vi) Open Season procedures were received and approved.
- (vii) All permits sent their inventory of facilities to the Commission.
- (viii) The procedures for the transfer of capacities were defined. A decrease of the number of accidents, injuries and victims involving freight vehicles.

In addition, the regulator presented the statistics that show in depth the results obtained.

## **STATISTICS AND INDICATORS**

*Score: Got better (green) / recommendation: bear out*

In the ex post RIA, the regulator provided statistics comparing the status of the problem at two stages: at the time that was presented the ex-ante RIA and at the time of regulation performance assessment. Thus, the following comparative data the situation of the years prior to the entry into force of the regulation and before to the existence of any regulation:

- The number of permits granted was increased by 21%, from 28 to 34.
- The TA made were increased 925%
- 100% of the permits presented the inventory of their facilities.
- 29% of regulated subjects has Electronic Bulletin.
- Was allocated by TA 37% of capacity Of Integrated National Natural Gas Transportation and Storage System, SISTRANGAS for its Spanish acronym.

In this sense the CRE have shown that statistically the achievement of objective of the regulation.

## **ECONOMIC COMPETITION ANALYSIS**

*Statistics and indicators reveal a reduction of the restrictions to competition that were going to be solved by regulation.*

*Score: Got better (green) / recommendation: bear out*

In the ex-ante RIA, the regulator identified three aspects of regulation for increasing the competition with the regulation implementation:



- (iv) Open access. Establishes the bases for a dynamic and competitive natural gas market and not improperly discriminatory.
- (v) Electronic bulletins. Permits must report the transactions, volumes and prices of natural gas, in order to guarantee access to accurate and updated information for the benefit of market participants.
- (vi) Interconnection. It is technically defined what should be understood as interconnection, which gives certainty about what will constitute the limit of liability and custody of the product to guarantee open access on non-discriminatory conditions.

Among the open access the CRE has received 40 application with DACG's specifications and 41 open season procedures, 28 inventory of the installations, and was assigned 2,236 MMPC<sup>20</sup> of capacity of SISTRANGAS.

In the case of electronic bulletins the regulator inform that after of the implementation of the regulation has received 10 electronic bulletins of permits.

In relation with the interconnection the regulator not provide evidence.

It is concluded the regulator provided data that show an improvement in the competition from the sector he entry into force of this Regulation however exist an opportunity area in the interconnection case.

## **RED TAPE ANALYSIS**

*Score: Opportunity detected for simplifying formalities (amber) / recommendation: modify*

In the ex post RIA, the regulator showed the following areas of opportunity in four formalities created within the regulation:

- (i) Define the different types of capacity allocation in the secondary market, as well as the procedures to carry out the allocation of capacities.
- (ii) Formality "Modify the times the approval of open season procedures".
  - Emit a format by present results.
  - Reduce the number of approvals.
- (iii) Formality "Standardizing the layout of electronic bulletin".
- (iv) Formality "Include a separate section by storage service".
- (v) Formality: "Standardized format of TCPS to expedite the approval process"
- (vi) Modify the current regulation to request the report of service requests not attended only when they exist.

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<sup>20</sup> Million cube feet.

(vii) Establish the criteria for what is considered as Own Uses<sup>21</sup>.

Therefore, it can be concluded that the regulator found areas of opportunity to improve the implementation of the formalities procedures by means of the following actions: improvement in formats, reduction of requirements, and clarification of the processes.

## **Regulatory Impact**

### **COST-BENEFIT ANALYSIS**

*Score: There are no updated data of costs or benefits (red) / recommendation: cancelation*

For this category, the regulator presented different ways to measure the cost / benefit of regulation.

In the ex-ante RIA, the regulator it took into account the infrastructure, the types of transportation of natural gas and the investment costs in new infrastructure against the market available to the service providers, which resulted in an estimate of 7, 505, 632 million pesos of net annual benefit.

In the ex post RIA the regulator considered the costs of compliance with TA, TCPS, the report of service requests not addressed and the cost of carrying out the inventory of the facilities against the benefits associated with the allocation of capacity in TA of CENAGAS, resulting in a net benefit of 18,678,086.57 pesos from the entry into force of the regulation.

Therefore, it can be concluded that an area of opportunity exists to improve the internal processes of data collection and analysis.

## **Enforcement**

### **VERIFICATION**

*Score: Verification (green) / recommendation: bear out*

In the ex post RIA, the regulator explained that, this Resolution establishes the criteria to which the permit holders of natural-gas storage shall be subjected, in regards to the obligation and conditions to ensure open access, and not improperly discriminatory, to their facilities and services, the modalities of open seasons and the implementation of electronic bulletins.

The regulator showed the impact of regulation on the increase of market participants, the number of permits granted was increased by 21%, from 28 to 34, the TA process made were increased 925%, 100% of the permits presented the inventory of their facilities, besides was allocated by TA 37% of capacity Of Integrated National Natural Gas Transportation and Storage System, SISTRANGAS.

Therefore, it can be concluded that the regulator provided the verification data.

## **PENALTIES**

*Score: Penalties applied (green) / recommendation: bear out*

So far no sanctions have been presented to permit holders.

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<sup>21</sup> Conditions for the transport or storage of petroleum products owned by the permit holder

## 4.3 Case 3 of Viet Nam

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### **Introduction**

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Decree 36/2014/ND-CP of the Government of Viet Nam dated 29 April 2014 on raising, processing and exporting pangasius was issued on 29 April 2014 and took effect on June 2014. This Decree is applied to any Vietnamese or foreign entity involved in raising, processing, and exporting pangasius within Viet Nam's territory.

The Decree 36/2014/ND-CP adds in two notable indicators to reflect quality of pangasius products, including the ice-glazing ratio and water content. The justification for this requirement is that the quality of pangasius products will be improved, whilst helping screen out the technical capacity of various fishery processors.

Besides, the registration of export contracts is deemed to help avoid excessive price undercutting by the exporters which in turn may be treated as anti-dumping in importing economies.

TLSM, assesses using the information derived from the "Decree 36/2014/ND-CP on raising, processing and exporting pangasius"

### **Purpose**

Planning for raising and processing pangasius must comply with the specified rules, and cover minimum contents such as analysis of natural conditions and socio-economic impacts that affect the raising, processing, and consumption of pangasius.

### **Characteristics and specifications:**

- (i) Specify requirements for commercial pangasius farms and for processing facilities.
- (ii) Stipulate requirements for quality, food safety and hygiene of processed pangasius products. In particular, for processing of frozen pangasius fillets, (a) the chemicals, additives, and other substances used must be conformable with Viet Nam's law and regulations of importing countries; (b) the ice-glazing ratio (ratio of ice glaze to gross weight) of exported pangasius products must be conformable with regulations of importing countries. In other cases, the ice-glazing ratio must not exceed 10%; and (c) The amount of water must not exceed 83% of net weight.
- (iii) For exporting pangasius, the Decree specifies requirements for exporting pangasius products, including owning or contracting with a qualified processing facilities, and registration of export contract with Viet Nam Pangasius Association.
- (iv) Determine penalties and related control/monitoring measures against violations during export of pangasius products.
- (v) Finally, the Decree stipulates that the Ministry of Agriculture and Rural Development, the Ministry of Industry and Trade, and the Ministry of Finance are responsible for providing

guidelines for implementation of this Decree within their given tasks in this Decree and relevant laws

## Assessment

In accordance with the methodology described in Chapter 3.2, the final results on “Decree 36/2014/ND-CP on raising, processing and exporting pangasius” are identified in the Traffic Light Score Card.

The explanation of each section of AIR card is presented in the following sections of this chapter.

**Figure 10. Decree 36/2014/ND-CP on raising, processing and exporting pangasius.**

CARD 4.		Traffic Light Score Card for an ex post RIA							
SCORE ACTION	PROBLEMATIC					REGULATORY IMPACT		ENFORCEMENT	
	CHANGE OF STATUS	LIST OF UPGRADES	STATISTICS AND INDICATORS	RISK ANALYSIS/ ECONOMIC COMPETITION	RED TAPE ANALYSIS	COST-BENEFIT ANALYSIS		VERIFICATION	PENALTIES
<b>SCORE I</b>	Lack of evidence	List without evidence	Lack of data or statistics and indicators that reveal a worsening of the initial problem	No data or the final costs generated by the regulation	Opportunity detected for simplifying formalities	Statistics reveal a reduction or elimination of the risks	Lack of data or statistics and indicators that reveal a worsening of the initial problem	The inspection was adequate differentiating it by the potential risk.	There were appeals in tribunals
<b>LIGHT</b>	Red	Amber	Red	Red	Amber	Green	Red	Green	Amber
<b>NOTES ON C 1</b>	---	---	---	---	---	---	---	---	---
<b>SCORE II</b>	Cancel	Modify	Cancel	Cancel	Modify	Bear out	Cancel	Bear out	Bear out
<b>FINAL NOTE</b>	RIA UNSATISFACTORY								

## CHANGE OF STATUS

Score: Lack of evidence (red) / recommendation: Cancel

Decree 36/2014/ND-CP of the Government of Viet Nam dated 29 April 2014 on raising, processing and exporting pangasius was issued on 29 April 2014 and took effect on June 2014. This Decree is applied to any Vietnamese or foreign entity involved in raising, processing, and exporting pangasius within Viet Nam’s territory.

Among the effects derived of Decree, the following were found:

(i) Planning for raising and processing pangasius must comply with the specified rules, and cover minimum contents such as analysis of natural conditions and socio-economic impacts that affect the raising.

(ii) The decree also specifies requirements for commercial pangasius farms and for processing facilities.

In the TLSM directive card, the regulator stated that after of application of the regulation, the problem persisted, the regulator indicated the following problems in the implementation:

- (i) The majority of processors and exporters just finished a new round of investment in processing technology. However, their investment targeted different markets with different requirements, rather than just high-income markets demanding high quality.
- (ii) The regulation appeared to violate the principle of controlling product quality as under the Law on product quality.
- (iii) The number of pangasius export contracts is quite large and Viet Nam Pangasius Association does not seem to possess adequate capacity to handle such registration.
- (iv) There is no clear justification from the authority as to whether the higher processing standard really induces an improvement in environmental quality.

## **LIST OF UPGRADES**

*Score: List with evidence (amber) / recommendation: modify*

In the TLSM directive card, the regulator provided list without evidence

- (vi) The Decree 36/2014/ND-CP adds in two notable indicators to reflect quality of pangasius products, including the ice-glazing ratio and water content. The justification for this requirement is that the quality of pangasius products will be improved, whilst helping screen out the technical capacity of various fishery processors. Enhancement on the safety of road users by introducing restrictions on the traffic of double articulated vehicles, on roads not having a suitable infrastructure for these vehicles.
- (vii) The registration of export contracts is deemed to help avoid excessive price undercutting by the exporters which in turn may be treated as anti-dumping in importing economies. Increase in productivity and competitiveness of buses operators, by allowing the circulation of buses with dimensions of 15 meters long.

Therefore, it can be concluded that the regulator made a qualitative list of improvements to the initial problem. However, an area of opportunity exists because the quantitative evidence must cover all the improvements listed and related to the main problem and for this case such condition was not met.

## **STATISTICS AND INDICATORS**

*Score: Lack of data or statistics and indicators: (red) / recommendation: cancel*

The regulator not provided statistics comparing the status of the problem at two stages.

## **RISK ANALYSIS**

*Score: Without change in risk related ex ante statistics or indicators (amber) / recommendation: modify*

After the first 6 months of implementation, 200 enterprises had registered 15,000 contracts with total volume of 500,000 tonnes.

Unfortunately the Viet Nam Pangasius Association does not seem to possess adequate capacity to handle such registration. In this sense the registration of export contract does not help the exporters.

### **RED TAPE ANALYSIS**

*Score: Opportunity detected for simplifying formalities (amber) / recommendation: modify*

The regulator showed the following areas of opportunity in four formalities created within the regulation:

The registration of export contract does not help the exporters. In addition, the fee for appraising commercial capacity is effectively a cost to firm.

### **Regulatory Impact**

#### **COST-BENEFIT ANALYSIS**

*Score: There are no updated data of costs or benefits (red) / recommendation: cancelation*

Since the introduction of Decree 36/2014/ND-CP, all the processors and exports of pangasius products complained about the costs created by the regulation. First, the majority of processors and exporters just finished a new round of investment in processing technology.

However, their investment targeted different markets with different requirements, rather than just high-income markets demanding high quality. Second, the regulation appeared to violate the principle of controlling product quality as under the Law on product quality. As such, the costs appear larger than the benefits for the firms.

### **Enforcement**

#### **VERIFICATION**

*Score: Verification differentiated by risk or enterprise size (red) / recommendation: cancel*

The Master Plan for raising and processing pangasius products did not work out well since it does not specify reasonable resources for implementation, nor does it incorporate flexibility to respond to swift change in such market as pangasius products.

#### **PENALTIES**

*Score: Penalties applied (amber) / recommendation: modify*

No major penalty was recorded. However, Viet Nam Association of Seafood Exporters and Producers constantly interacts with the authority on the need to amend the regulation to reduce compliance costs and/or violations by the firms.

## 5. Other Cases of Study

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The following cases of study about the implementation of ex post evaluation were submitted by the following APEC economies:

### 5.1 Indonesia

#### **Presidential Regulation on Accelerating the Implementation of National Strategic Projects.**

In order to increase economic growth through infrastructure development in Indonesia, the Government has made efforts to accelerate projects that are considered strategic and have high urgency to be realized in a short span of time. In such efforts, the Government through the Coordinating Ministry of Economic Affairs initiated the creation of a mechanism for accelerating the provision of infrastructure and the issuance of related regulations as the legal umbrella that governs them.

#### **Problematic**

Hindered and slow implementation and completion of various National Strategic Projects implemented by ministries / agencies, local governments, and business entities (BUMN, BUMD, Private Enterprise, PT or Cooperative). This can hinder public services to the public and disturb the improvement of the national economy.

Obstacle factor:

- (i) Licensing and non-licensing from ministries/ agencies and local governments,
- (ii) Spatial, land, and land provision,
- (iii) Procurement of goods / services Government,
- (iv) Guarantees of political risk / Government policy, and
- (v) Fears of government officials in taking (criminalization of decisions / policies).

#### **Regulatory impact**

National Strategic Projects can be implemented and resolved so that the community can enjoy the benefits to support the welfare and support the people's economy through the availability of transportation infrastructure (roads, ports, airports, wading), energy infrastructure (electricity, fuel, BBG), and energy-absorbing industries work and the provision of community needs.

Implementation Plan:

- (i) Determination of National Strategic Project list and program.
- (ii) Preparation of pre-feasibility study or feasibility study.
- (iii) Preparation of the National Strategic Project Action Plan for several projects deemed to be completed soon.

In this case it is not possible to carry out an integral analysis, in accordance with the methodology of the TLSM since the regulation is still in the process of being applied.

## 5.2 Papua New Guinea

### Postal Services Regulatory Contract

The Postal Services Industry in Papua New Guinea (PNG), similar to other economies, is vertically integrated. Post PNG Limited ('Post PNG') is the designated postal service provider in PNG established in 1996 through an Act of Parliament, the Postal Services Act. It transports goods and messages (information) from one post office to another. Other players in the industry include missionary or church organisations and a number of private operators including courier and small parcel/postal delivery operators.

The consumers include the households (individuals), businesses and government organisations. It is uncommon for businesses within a single city or town to be involved in the door-to-door pick-up and delivery of letters or mails or parcels within PNG, however, for service to different cities and towns the delivery points are located at the Post PNG post offices.

### Problematic

Postal Service is an essential service in PNG, this service is provided by a sole State Owned Enterprise (SOE). In PNG, Post PNG Limited is the SOE responsible in providing postal services. It is therefore a state monopoly. There is no competition.

This has provoked the government to intervene through the Regulatory Contract hence the control of prices for this essential service by the Independent Consumer and Competition Commission (ICCC).

There are about twelve (12) postal services and products produced in the industry. Of the 12 services, seven (7) services are categorized as Reserved while five (5) are categorized as Unreserved Services under the current legislation.

The seven (7) reserved services include:

- Standard domestic letter mail up to 50 grams;
- Standard international inbound mail up to 50 grams;
- Registered Mail;
- Franked Mail;
- Private letter boxes and private mail bags;
- Salim Moni Kwik; and
- Philatelic Services.

Post PNG has monopoly in standard letter mail up to 50 grams for both domestic and international, philatelic services as well as private letter boxes and private mail bags. These items are currently being regulated through the regulatory contract issued by the Independent Consumer and Competition Commission (ICCC).

There is prevailing and potential competition for reserved services as well as unreserved services. In the past, the ICCC noted that, whilst this is true, the presence of internal cross-subsidies to finance the lower-volume reserved services in order to maintain their service levels or affordability provides that effects of competition may not be material on reserved services. In



other words, Post PNG would still earn economies of scale at the end of production process and hence, maintain sufficient market power in the postal services industry.

### **Purpose**

The main considerations of the Regulatory Contract is summarized below:

(i) **Competitive pressure on Post PNG:** electronic communication is likely to act as a sufficient restraint to prevent Post PNG from exploiting its letter service customers.

However, there could be some customers for whom postal services remain the only realistic form of communication in PNG, especially in rural areas who do not have access to the cellular mobile networks but rely on frequent air transport. Other customers such as Eda Ranu (water utility provider) customers depend on post office boxes to receive their bills;

(ii) **Letter volume decline:** related to the previous finding, Post PNG is indeed facing a significant decline in letter volumes, primarily due to indirect competition from electronic communications available to consumers through email and mobile phone messaging. This appears to put financial constraints on Post PNG hence an urgent need for Post PNG to diversify, re-invent, or restructure its business model;

(iii) **Need for continuing price regulation:** It is not appropriate to remove price regulation entirely at this stage. The incremental benefit of doing so compared to lighter touch regulation is relatively small, but the costs to vulnerable customers could be considerable.

While the threat of re-regulation could reduce these costs, there is likely to be a delay before re-regulation could be put back into practice. Accordingly, the ICCC considers that some form of price regulation is required going forward, to protect vulnerable customers;

(iv) **Form of price regulation:** the approach applied in the 2012-2016 Postal Services Regulatory Contract is no longer appropriate since it seems to constraint commercial flexibility of Post PNG, and the administrative burden that it put on both Post PNG and the ICCC.

Due to the changing market environment, relaxation of Post PNG's price control appears to be appropriate. The ICCC remains of the view that price monitoring is most appropriate form of regulating Postal Services prices for 2017-2021. Full deregulation could leave some vulnerable customers unprotected, while the current system of price regulation denies Post PNG important commercial freedom and is expensive to implement;

(v) **Structure of price regulation:** the Commission prefers annual review of Post PNG's proposed prices through a review process.

### **Regulatory impact**

The benefit of light handed form of regulation is that Post PNG sets its own prices in accordance with the Regulatory Principles and Consumer Price Index calculation agreed in the Regulatory Contract (2017-2021). ICCC only monitors the prices and annual financial statement. This has significantly reduced the administrative costs compared to the past regulatory approach (price control).

The current form of regulation (light handed /monitored) is more effective. Annual price adjustment are set by Post PNG. The ICCC only vets whether or not Post PNG has used the appropriate CPI formula and adhere to the regulatory principles. No expansion of postal offices in areas which Post PNG has not been established because telecommunication has already been established in those areas.

In this case it is not possible to carry out an integral analysis, in accordance with the methodology of the TLSM since the regulation is still in the process of being applied.

### **5.3 Thailand**

Even though RIA has applied RIA since 1998 with the requirement for conducting pre evaluation of ACT prior to introduction of a legislative bill in line with OECD Reference Checklist for Regulatory Decision- Making, the application of RIA generates partial impact on the evaluation of effectiveness and impact regulations on the applied bill has produced due to limited coverage of RIA and capacity of concerned government officials.

On another continuum, ex post evaluation was never been a requirement. The evaluation literally depends on the operating government agencies and organizations concern with performance and development outcome evaluation in general.

Thailand is fully aware of the weakness in practice, and has attempted to reinforce RIA both ex ante and ex post enforcement and effective application in our country. Our recent actions are as follows.

- 1) Thailand's new Constitution B.E. 2560 (2017) that has been officially promulgated emphasizes the significance of ex ante evaluation and consultation process to warrant that any law to be introduced is relevant and produce desirable impacts on society.

Details are as follows.

Article 77 "The State should introduce laws only to the extent of necessity, and repeal or revise laws that are no longer necessary or unsuitable to the circumstances, or are obstacles to livelihoods or engagement in occupations, without delay, so as to abstain from the imposition of burdens upon the public.

The State should also undertake to ensure that the public has convenient access to the laws and are able to understand to them easily in order to correctly comply with the laws.

Prior to the enactment of every law, the State should conduct consultation with stakeholders, analyse any impacts that may occur from the law thoroughly and systematically, and should also disclose the results of the consultation and assessment to the public, and take them into consideration at every stage of the legislative process.

When the law has come into force, the State should undertake an evaluation of the outcomes of the law at every specified period of time, for which consultation with stakeholders shall be conducted, with a view to developing all laws to be suitable to and appropriate for the changing contexts.

The State should employ a permit system and a committee system in a law only in cases of necessity, should prescribe rules for the exercise of discretion by State officials and a period of time for carrying out each step provided by the law in a clear manner, and should prescribe criminal penalties only for serious offences."

2) Royal Decree on Review of Law B.E. 2558 (2015) is also legislated to ensure that ex post evaluation will be incorporated as part of law revision.

It is Thailand's endeavour to ensure that our laws remain up to date, cost effective and consistent and deliver intended policy objectives. Importantly, all government agencies can learn from evaluation results and modify the laws to effectively accommodate the dynamism of socio-economic environment.

Section 5 Subject to section 13, Portfolio Minister shall, in order to improve the provisions of law to be suitable, fair, lessen public burden and compatible with dynamic way of lives of people and rapid changing of technology, cause to have the review of law every five years as from the date that law comes into force or upon the occurrence of any of the following grounds:

- (i) he deems appropriate to improve, revise or repeal law;
- (ii) he obtains written petition or recommendation of interested organization or general public and he deems such petition or recommendation is reasonable;
- (iii) he obtains recommendation of the Law Reform Commission;
- (iv) it appears to him that that law has not been enforced or executed for more than three years as from the date that law comes into force.

Section 9 Subject to section 10 paragraph one, Portfolio Minister shall, during the course of law review, take into account of any or all of the following matters as he deems appropriate:

- (i) justification and necessity to have such law in current context;
- (ii) matter to be improved, revised or repealed for the compliance with the changing of national and global situation in term of economics, social, politics, public administrations, science and technology and environment so as to strengthen national competitiveness capability and to enhance sustainable development;
- (iii) matter to be improved, revised or repealed for the compliance with, or the implementation of, international obligations in which Thailand is bound under international law;
- (iv) matter to be improved, revised or repealed so as to lessen adverse effect to, or burden of, the public arising from that law;
- (v) the supervision or control of activities under the law through committee or commission system, licensing and permission system, registration system or any other similarity shall be employed as necessity;
- (vi) efficient and effective one stop service;
- (vii) measure for prevention and suppression of corruption arising from the enforcement of that law;
- (viii) other matters which are capable to lessen unnecessary burden of the public in living or in practicing occupation, reduce inequality and provide better lives to the public.

Portfolio Minister shall, in the course of review under paragraph one, cause to have consultation with interested organization and individual stakeholder of that law. In this regard, public consultation may also be made.

As the progress in the enhancement of RIA application in Thailand explained, the by-laws that determine criteria, method and law evaluation is being developed to serve as guideline for operating organizations to apply to their evaluation activities.

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