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Economic Cooperation

Supporting the TBT Agreement with Good Regulatory Practices

Implementation Options for APEC Members

APEC Committee on Trade and Investment
APEC Sub-Committee on Standards and Conformance

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Preface

> Building high quality regulatory environments in APEC economies is a key component of APEC's work to promote free and open trade and investment in the region. Since its inception, APEC has promoted the use of good regulatory practices and worked to reduce the negative impact of regulatory divergences on trade and investment. APEC work in this area seeks to embed the concepts of non-discrimination, transparency, and accountability into the regulatory cultures of APEC economies, which will help create jobs and promote economic growth.—2011 APEC Leaders' Declaration, Annex D

For nearly two decades, APEC has been at the forefront of the international work to develop, document, and implement principles and practices for regulatory environments that promote economic growth and enable prosperity across the region. Within APEC, the Economic Committee has worked to identify the principles and procedures that constitute Good Regulatory Practice (GRP), while the work of the Committee on Trade and Investment's Subcommittee on Standards and Conformance (SCSC) has emphasized the ways in which GRP can be used to strengthen implementation of the Agreement on Technical Barriers to Trade (TBT Agreement) of the World Trade Organization (WTO) and reduce unnecessary obstacles to trade. The SCSC also carries the mandate to work to reduce the negative impact of regulatory divergences on trade and investment, and to strengthen the implementation of the WTO principles on nondiscrimination and transparency.

As part of its ongoing work program, the SCSC held its 6th Conference on Good Regulatory Practice in March 2011. This conference kicked off a year of intensive focus and collaboration to advance implementation of GRPs across APEC economies, and culminated in the statement above by APEC Leaders[1] meeting in Honolulu in November 2011. The SCSC Conference examined economies' experiences in implementing GRP and assessed how to continue strengthening GRP in APEC economies. One recommendation of the conference was to develop a document that lays out the principles and practices of GRP as they relate to improving the implementation of substantive obligations under the TBT Agreement. Written by a leading authority on regulatory reform, Mr. Scott Jacobs of Jacobs & Associates, in consultation and collaboration with SCSC members over the year, this study seeks to plow new ground to promote understanding of the relationship between the TBT Agreement and the body of work known as Good Regulatory Practice.

As noted in the study, the work of the trade community and the regulatory reform community has been developed on parallel and largely separate channels over the years. These channels have increasingly been converging. This study is a first effort to bridge the work of these communities, in the hope that this can provide a further impetus towards achieving goals that are mutually supportive and constructive. SCSC members believe this study is an excellent start in helping policymakers in the two communities better understand the relationship between TBT and GRP, and further work will be needed. SCSC members expect to review experience with this document at the SCSC's 7th Conference on Good Regulatory Practice to be held in 2013 and incorporate improvements.

Julia Doherty
2011 SCSC Chair

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[1] See http://www.apec.org/Meeting-Papers/Leaders-Declarations/2011/2011_aelm.aspx.

Executive Summary

APEC's Committee on Trade and Investment's Subcommittee on Standards and Conformance (SCSC) has recognized that good regulatory practices (GRPs) can be used to strengthen implementation of World Trade Organization (WTO) rules and reduce the number of unnecessary obstacles to trade caused by technical regulations.

The WTO Agreement on Technical Barriers to Trade (TBT) is the principal agreement establishing multilateral rules governing standards-related or technical regulation measures. To ensure that the work of the SCSC is based on current GRP, and to provide a complete user-friendly document for Member economies, this document explores the relationship between TBT obligations and current GRPs used around the world. These recommended GRPs demonstrate choices available to WTO Members for implementation of practices that support trade-friendly regulation and implementation of their WTO commitments.

Application of the GRPs should not, however, follow a rigid checklist. In fact, no economy follows all of the good regulatory practices, and an economy can achieve good results by following something different from established good practice, or by applying well only a few selected GRPs particularly relevant to its priorities and needs or by starting with a few GRPs and progressively adopting others over time. Results in good regulation are more important than practices. Regulatory transparency, trade-friendliness, and consistency are important in all APEC economies. The specific GRPs presented here should be seen as choices that have worked well in achieving results, and should be considered as good options by APEC economies.

Regulatory quality is important to the global trade and investment regime. Good regulatory practices, even if crudely measured, are positively linked to macroeconomic performance. Pro-growth regulation in one economy increases growth in every economy linked to it through trade and investment. The benefits of good regulation are "exported," while the costs of bad regulation are also passed on to trade and investment partners. GRPs are designed to protect public interests and at the same time sustainably cut business costs, reduce market entry barriers, and increase competition by addressing the critical issues of market institutions and incentives.

TBT Obligations Should be Fully Integrated into GRPs

Integration of the TBT obligations with the mainstream GRPs is already well underway. "Technical regulations" are merely mandatory regulations subject to the normal regulatory processes and practices of other regulations. In other words, there is no special category of regulations of interest to trade officials that are not equally of interest to regulatory reformers.

Regulation can be made more trade-friendly through the conscious and explicit integration of trade impacts into GRPs. GRPs already support the implementation of TBT obligations in general, but can be significantly improved by making fairly small changes to how the GRP is designed and implemented.

The 21 GRPs included in this reference document fall into three categories: (1) internal coordination of rulemaking activity; (2) regulatory impact assessment; and (3) public consultation mechanisms. These core GRPs are strongly supportive of the goals of the TBT Agreement and support compliance

with certain TBT Agreement obligations. They support market openness in regulatory regimes through a variety of channels, including

- Better coordination with trade offices internal to the government to improve the consistency of government action with TBT commitments;
- Identification and analysis of potential trade impacts and opportunities for lower cost of regulation through options such as recognition of conformity assessment; and
- Improved accessibility to regulatory proposals and more constructive opportunities for dialogue with regulators on trade-friendly options.

At the outset, it is important to make a few distinctions. GRPs provide guidelines and best practices to policymakers on the choice of processes and procedures that can be used to develop and institute a broad array of regulatory measures to improve regulatory quality, while the TBT Agreement sets out legal obligations on WTO Members and is concerned with measures affecting trade in goods. The TBT Agreement has a more limited scope[2] with respect to technical regulations than do GRPs.

Recommendations

While these GRPs are support compliance with TBT obligations, in practice each of them could be strengthened to be more supportive of trade flows:

- Internal procedures at several stages of the regulatory process can be better organized at relatively low cost to be more relevant to the specific functionalities of the TBT Agreement. The mechanisms of internal coordination seem well suited to promoting and safeguarding compliance with the requirements of the TBT Agreement, but in practice trade related issues are often neglected. This neglect is partly due to poorly organized processes, such as the failure to routinely include trade offices in regulatory reviews.
- Similarly, regulatory impact assessment (RIA) is, in principle, directly relevant to the implementation of the TBT Agreement, but in practice RIA does not address many of the Agreement's specific obligations. The analytical content of the RIA must be explicitly amended if it is to be more relevant to implementation of the TBT Agreement, and there must be more involvement of trade experts in actually identifying trade-friendly options and costs to be included in the analysis. For example, RIA does not usually assess the kinds of trade-friendly options that are suggested by TBT obligations.
- Public consultation is also directly relevant to the elements of the TBT Agreement, but in practice consultation does not effectively address many of the issues of the Agreement. The strategy of public consultation must be revised if it is to be more relevant to the TBT Agreement. In particular, given the difficulties of quantitative analysis of trade impacts, there must be more involvement of foreign producers and trade experts in the consultation process, and therefore in the RIA process, so that stakeholders can provide regulators with feedback on

[2]For the purposes of the TBT Agreement, a technical regulation is defined as a document that lays down product characteristics or their related processes and production methods, including the applicable administrative provisions, with which compliance is mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking, or labeling requirements as they apply to a product, process, or production method.

how to design effective and efficient measures and so that qualitative assessments can be done of the trade impacts of particular regulatory and nonregulatory options and designs.

Small but significant changes to the implementation of the GRPs can significantly enhance implementation of the TBT Agreement in the day to day process of government regulation. In that sense, this reference document should be seen as a set of trade-enhanced GRPs. The recommended adjustments to GRPs are summarized below.

Internal Coordination of Regulatory Quality

Governments should adopt a set of quality principles for regulation, and should explicitly include trade-friendly principles based on the TBT Agreement, among other sources.

- Given the difficulty of internal coordination between competent authorities in fast-moving regulatory procedures, including between trade policy and regulatory authorities, a good practice that should be considered is explicitly including "coordination with trade and standards authorities" in the mandate of the regulatory management function.
- Governments should include trade authorities in the review of draft regulatory plans where relevant to the identification of potential negative trade effects to be considered in the design of the measure, stakeholder consultation process, and the RIA. Governments should encourage trade authorities to advise on how global supply chains, standards, and trading approaches influence the relevance and effectiveness of the options for addressing the problem to be solved.
- In the regulatory agenda, identify in the description of the proposed action whether there are potential trade effects.
- When organizing a program of regulatory review, the explicit inclusion of review criteria reflecting impacts on trade, investment, or competition would increase the benefits of the reviews.
- Proactive inclusion of the trade community in the stakeholder consultations for regulatory review would be a useful way to identify existing trade problems such as *de facto* discrimination or less trade restrictive solutions, and identify solutions that facilitate trade as well as solve public policy problems.
- More systematic and effective inclusion of trade, standards and competition authorities into at least major regulatory decisions could probably be organized at low cost.
- It may be that training of trade and competition authorities is needed to increase their capacity to assess regulatory instruments, and to identify and recommend more trade and competition friendly alternatives.

Regulatory Impact Assessment

- Based on good international examples of RIA handbooks, such as Vietnam's online RIA manual and the World Bank's manual for RIA Light, develop a RIA handbook for the economy tailored to the highest-priority economic, social, and environmental impacts (which differ from economy to economy), identifying an orderly step by step procedure to carry out RIA within the policy process, and the analytical methods to be used to identify more efficient and trade-friendly regulation and delivering better regulatory outcomes, with templates for the RIA itself.

- In the RIA handbook and in training, regulators should be advised and trained in how to consider the following kinds of criteria in the RIA.
    - Regulatory designs with potential discriminatory impacts,
    - Use or recognition of relevant international standards
    - Consideration of determinations of equivalence with the technical requirements of trading partners
    - Compliance strategies that explicitly include conformity assessment costs, including mutual recognition and use of international systems of conformity assessment.
- Options that have an effect of reducing trade either through less favorable treatment to foreign products, or through regulatory barriers to entry, or other potentially discriminatory effects or unnecessarily trade restrictive effects should be identified in the assessment. To make this analysis operational, however, regulators need a tool to facilitate the identification of these kinds of impacts. Such a tool could be a checklist of poor regulatory designs, or a risk assessment based on the consultation process, or another kind of practical quality check.
- Analysts should recommend only those options in which a reasoned consideration of issues relating to least trade restrictiveness, nondiscrimination, use of relevant international standards or parts thereof, and so forth, have indicated no problems. These kinds of criteria can act as a threshold filter. That is, any option that potentially violates one of these TBT criteria could be eliminated before a cost-effectiveness of benefit cost or net cost test is applied on the remaining options. This positive burden of proof would require the analyst to demonstrate in the RIA, either quantitatively or qualitatively, that each option meets the TBT criteria for quality.

Public Consultation

- To ensure access to all market actors, universal publication for comment should be required, through a law or a central government decree, for all regulatory proposals affecting citizens or businesses. Accessibility would be enhanced if this publication occurred on a central Web portal, rather than on multiple ministerial sites.
- Trade experts and authorities who control implementation resources such as conformity assessment, and those who possess specific expertise such as assessing trade restrictiveness and potentially discriminatory provisions should be included in most consultation opportunities.
- The concerns of foreign firms should be compared to those of domestic firms to see if there are systematic differences that indicate potentially different impacts on the two kinds of firms.

1. Trade Facilitation and Regulatory Reform: Convergence in Good Regulatory Practices

1.1 Introduction

APEC's Committee on Trade and Investment's Subcommittee on Standards and Conformance (SCSC) has recognized that good regulatory practices (GRPs) can be used to strengthen implementation of World Trade Organization (WTO) rules and reduce the number of unnecessary obstacles to trade caused by technical regulations. This document seeks to fill an important gap by integrating good practices from the trade and regulatory reform disciplines, both recognized as critical to economic growth and good governance goals. To ensure that the work of the SCSC is based on current GRP, and to provide a complete user-friendly document for member economies, this reference Document integrates and updates three previous SCSC documents: *Guidelines for the Preparation, Adoption and Review of Technical Regulation* (1996); *Information Notes on Good Practice for Technical Regulation* (2000); and *Principles and Features of Good Practice for Technical Regulation* (2000). A separate report prepared for APEC in 2011—the "Baseline Study of Good Regulatory Practices in APEC Member Economies" —contains many examples of the application of GRPs in APEC economies. Many of those examples are cited below, but the reader might wish to consult that document for economy-specific examples.

The WTO Agreement on Technical Barriers to Trade (TBT) is the principal agreement establishing multilateral rules governing standards-related or technical regulation measures. It stipulates the rules to be followed by governmental and non-governmental bodies when developing technical regulations, standards, and conformity assessment procedures. Table 1 outlines the key disciplines of the TBT Agreement. Principles at the core of the WTO TBT Agreement are as follows:

- ***Transparency*** - a WTO member planning to introduce a measure that might have an important impact on trade should notify this to the WTO, and take into account comments submitted by other countries on the draft regulation.
- ***Nondiscrimination and national treatment*** - a measure should not discriminate among different importing members or between imports and similar domestic goods.
- ***Proportionality*** - a measure should not be more trade restrictive than necessary to achieve the legitimate goal pursued, and conformity assessment procedure no more strict than necessary to give adequate confidence that a product conforms with applicable requirements.
- ***Use of international standards*** - WTO Members should base their technical regulations on relevant international standards unless these standards do not exist or would be inadequate or ineffective at fulfilling the member's objective.
- ***Equivalence*** -WTO Members should consider accepting technical regulations of other Members as equivalent to their own, provided that these measures adequately fulfill the objectives of the member's own regulations.

Table 1. Key Principles and Provisions of the TBT Agreement

Principles	Provisions
Nondiscrimination and national treatment	Non-discrimination: • The Agreement states that "in respect of their technical regulations, products imported from the territory of any Member [shall] be accorded treatment no less favorable than that accorded to like products of national origin and to like products originating in any other country." (Art. 2.1) • The Agreement requires Members to ensure that "conformity assessment procedures are prepared, adopted and applied so as to grant access for suppliers of like products originating in the territories of other Members under conditions no less favorable than those accorded to suppliers of like products of national origin or originating in any other country, in a comparable situation." (Art. 5.1.1) • The Agreement requires that Members ensure that related fees are equitable (Art. 5.2.5) • The Agreement requires Members to respect the confidentiality of information about the results of conformity assessment procedures for imported products in the same way they do for domestic products. (Art. 5.2.4)
Avoidance of unnecessary obstacles to trade	• When preparing or applying a technical regulation, a Member must ensure that the regulation is not more trade-restrictive than necessary to fulfill the Member's legitimate objective. (Art. 2.2) • The Member's obligation to avoid unnecessary obstacles to trade applies also to conformity assessment procedures. These procedures must not be stricter than necessary to provide adequate confidence that products conform with applicable requirements. (Art. 5.1.2)
Better alignment of technical regulations, standards, and conformity assessment procedures	• The Agreement calls on Members to use relevant international standards, or the relevant parts of them, as a basis for their technical regulations and to use relevant international recommendations and guides, or relevant portions of them, as the basis for their conformity assessment procedures. The Agreement, however, does not require the use of relevant international standards, guides and recommendations if they would be ineffective or inappropriate to fulfill the Member's "legitimate objectives." (Arts. 2.4 and 5.4)
Transparency	• To help ensure transparency, the Agreement requires Members to publish a notice at an early stage and notify other Members through the WTO Secretariat when it proposes to adopt a technical regulation or conformity assessment procedure and to include in the notification a brief indication of the purpose of the proposed measure. These obligations apply whenever a relevant international standard, guide, or recommendation does not exist or the technical content of a proposed technical regulation or conformity assessment procedure is not in accordance with the technical content of relevant international standards, guides, or recommendations. • In such circumstances, Members must allow "reasonable time" for other Members to comment on proposed technical regulations and conformity assessment procedures, which the TBT Committee has recommended to be "at least 60 days" (G/TBT/26), and take comments it receives from other Members into account. (Art. 2.9 and 5.6) • The Agreement requires that all technical regulations and conformity assessment procedures be promptly published. (Art. 2.11 and 5.8) • The Agreement requires each Member to establish an inquiry point to answer all reasonable questions from other Members and interested parties and to provide documents relating to technical regulations, standards, and conformity assessment procedures adopted or proposed within its territory. (Art. 10.1)
Use of performance-based requirements	• Whenever appropriate, product requirements should be set in terms of performance rather than design or descriptive characteristics. (Art. 2.8)
Use of international systems of conformity assessment	• Members shall, whenever practicable, formulate and adopt international systems for conformity assessment and become members thereof or participate therein. (Art. 9.1)
Acceptance of technical regulations as equivalent	• Alongside harmonization, the Agreement encourages Members to accept technical regulations that other Members adopt as "equivalent" to their own if these regulations adequately fulfill the objectives of their own regulations. (Art. 2.7)
Mutual recognition of	• The Agreement requires each Member to recognize "whenever possible" the results of conformity assessment procedures (*e.g.* test results or certifications), provided the Member is satisfied that

Principles	Provisions
conformity assessment	those procedures offer an assurance of conformity that is equivalent as its own. (Art. 6.1) (Without such recognition, products might have to be tested twice, first by the exporting country and then by the importing country.) • The Agreement recognizes that Members may need to consult in advance to arrive at a "mutually satisfactory understanding" regarding the competences of their respective conformity assessment bodies. (Art. 6.1) • The Agreement encourages Members to enter into negotiations to conclude agreements providing for the mutual recognition of each other's conformity assessment results (i.e., mutual recognition agreements or MRAs). (Art. 6.3)

The value added by this document is that it explores more systematically the relationship between the TBT Agreement and GRP, and lays out these relationships in a more operational approach than the previous SCSC documents. This document updates those documents and relates more substantively the TBT obligations with actual GRPs that might be considered by APEC members. This document does not contain legal interpretations of the obligations of the TBT Agreement nor do the GRPs discussed in this document extend or alter the legal obligations of the TBT Agreement. Rather, the array of GRPs demonstrate the choices available to WTO Members for the development and implementation of regulatory measures that more consistently support trade-friendly regulation. The focus here is on practical results. It is possible to get good results by implementing some of these practices, rather than adopting all of them, and by starting with a few, and building a more complete regulatory quality system over time. By supporting trade facilitative approaches, members can better achieve a trade and investment environment that enables economic growth and development.

1.2 Relevance of Mainstream GRP to Implementation of TBT Agreement

For some years, the work of trade institutions and the work of regulatory reform on GRPs moved in separate but eventually converging channels. Regulatory reformers focused on domestic procedures and impacts, while trade institutions focused on international procedures and impacts. The two communities interacted too rarely. National governments were reluctant to open domestic regulatory processes to international scrutiny (see Box 1), while international trade negotiations, on the other hand, rarely involved experts in good regulatory practices. Domestic regulatory reforms were based on principles of economics and new public management, while the trade community used international economics and juridical principles to implement progressive liberalization to enable growth in international trade. The two communities often had different, but in fact complementary, objectives. Trade officials pursued global economic growth through progressive liberalization of tariff and nontariff trade-related measures as their primary mission, while regulatory reformers focused on macro issues of domestic economic performance such as consumer welfare and productivity, including micro issues of increasing regulatory effectiveness in achieving public policy goals while reducing negative effects on cost of doing business, innovation, domestic job creation, small- and medium-size enterprise (SME) performance, or business start-ups.

The TBT Agreement is the main international agreement governing technical regulations. (The Agreement on Sanitary and Phytosanitary Measures, or SPS Agreement governs regulations and standards related to food safety and plant and animal health.) Generally speaking, the procedural and other obligations of the TBT Agreement aim to ensure that domestic regulations, standards and testing, and other certification procedures do not create unnecessary obstacles to international trade. Coincidentally, the TBT Agreement was adopted in the treaty establishing the WTO in 1995, the same

year that Organization of Economic Co-operation and Development (OECD) formally adopted the first set of international recommendations on good regulatory practices (the 1995 OECD Recommendation on the Quality of Government Regulation).[3]

Box 1. What are "good regulatory practices?

Across many governments, a huge body of diverse and rich experiences with various aspects of regulatory reform is now available. This pool of information greatly reduces the risk of reform failure. How? International experience allows the reform community to identify "good practices."

More precisely, this means that governments with similar values or goals agree that specific reforms have performed well enough across diverse conditions to be accepted as "good practices" that can be reliably linked to desirable outcomes.

Good practices are not based on an ideal model, but present a practical benchmark of practices that have produced good results in multiple economies. They leave ample room for diversity, innovation, and adaption to specific economy contexts. The key is the result in terms of good regulation, not the practice itself

The 1995 OECD recommendation on the quality of government regulation noted that regulatory quality is a shared value among OECD members, because the quality of regulation in one member affects the wealth of other members connected by trade or investment. That was the logic behind the creation of both the OECD country review program in 1997 and the APEC regulatory quality program. Internal procedures previously viewed as being of purely national or even only ministerial interest were redefined as being of legitimate interest across borders with impacts far beyond those originally understood. This insight created a shared pool of experience in which good practices underlying regulatory quality were, over the past 15 years, identified and refined into internationally recognized GRPs. If several economies can demonstrate that results of a new approach in terms of regulatory quality are good, this new approach might be agreed as a new GRP.

The TBT Agreement focuses on transparency as a key tool to reduce the costs of technical regulations. The Agreement does not explicitly cite many of the good regulatory practices already in widespread use in many OECD and transition economies. Instead, it lays out legal obligations such as nondiscrimination and least-trade restrictiveness. Implementation of these obligations is left to individual WTO Members to put in place the domestic processes and institutions to comply with these obligations. WTO Members engage one another through the various WTO bodies to ensure implementation of the TBT obligations. For its part, the OECD 1995 Recommendation does not contain binding legal obligations and only makes passing mention to trade issues.

In addition, the OECD agreement expresses some skepticism about harmonization, noting that while harmonization can produce efficiency gains by removing regulatory barriers to trade, over-harmonization can cause inefficiencies as well. The OECD has encouraged implementation of the 1995 recommendation through a series of country reviews of regulatory practices, which has included an assessment of implementation of those good regulatory practices particularly relevant to trade facilitation. In 2005, the OECD updated the 1995 Recommendation in the OECD Guiding Principles for Regulatory Quality and Performance[4], and in 2012 the OECD is further updating its framework for GRPs.[5] Because the field of GRPs is dynamic, and evolving as economies change, this document should be likewise be seen as a statement of good practice at this time. It should be updated regularly to reflect advancements in GRPs and their implementation.

[3] At http://acts.oecd.org/Public/Info.aspx?lang=en&infoRef=C(95)21/FINAL

[4] http://www.oecd.org/dataoecd/24/6/34976533.pdf

[5] See the Draft Recommendation on Regulatory Policy and Governance at http://www.oecd.org/document/33/0,3746,en_2649_34141_48081633_1_1_1_1,00.html

After 1995, the two communities found themselves working on increasingly similar issues. Both trade authorities and the OECD greatly expanded their work into the common areas of trade and GRPs. Trade authorities realized that moving behind the borders to address the emerging class of barriers to trade required deeper influence on domestic rulemaking across a wide range of policy areas, and that domestic regulatory reforms had already created the opportunity to do that. Deeper integration of global, regional, and national economies brought the two communities closer together. For their part, regulatory reformers realized, to some (and still inadequate) extent, that integrating trade impacts into domestic rulemaking strengthens compliance with international obligations, strengthens their case for "good regulation" tools, and increases the domestic benefits of regulatory reform. In addition, globalization has had a profound impact on the effectiveness and efficiency of the tools available to regulators to achieve public policy objectives (product safety for example), and understanding modern supply chains can enable better domestic regulation.

The framework of the TBT Agreement has been elaborated further by institutions interested in strengthening implementation of the Agreement's obligations. At the forefront of this work is the WTO TBT Committee itself, which was created and tasked by the TBT Agreement with monitoring implementation across the WTO membership. Over the years, the TBT Committee has stressed the importance of GRPs in implementation of the TBT Agreement (see G/TBT/26.) Similarly, APEC's Committee on Trade and Investment's Subcommittee on Standards and Conformance has worked over the last decade to promote implementation of GRPs to facilitate trade and investment in the Asia-Pacific region. [6] The GRPs cited by the SCSC are an evolving mix of tools from the "better regulation" toolbox developed in 1995 and 2005 by the OECD instruments, and since expanded and diversified by a wide range of institutions and economies.

The body of norms and practices of interest to both the trade and regulatory reform communities now seems to overlap almost completely. In the WTO context, trade officials refer to "Technical regulations," which are simply known to regulatory officials as "regulations." According to the WTO website:[7]

> Technical regulations and standards in the TBT Agreement: Technical regulations and standards set out specific characteristics of a product — such as its size, shape, design, functions and performance, or the way it is labelled or packaged before it is put on sale. In certain cases, the way a product is produced can affect these characteristics, and it may then prove more appropriate to draft technical regulations and standards in terms of a product's process and production methods rather than its characteristics per se. The TBT Agreement makes allowance for both approaches in the way it defines technical regulations and standards…While conformity with standards is voluntary, technical regulations are by nature mandatory.

Article 2.2 of the TBT Agreement states that legitimate objectives of technical regulations may include, among other policies, national security requirements; the prevention of deceptive practices; and protection of human health or safety, animal or plant life or health, or the environment. The WTO

[6] APEC Sub Committee on Standards and Conformance: A brief overview of its role and work program. 4 February 2010, Wellington, New Zealand

[7] http://www.wto.org/english/tratop_e/tbt_e/tbt_info_e.htm

website[8] further elaborates some of the potential policy purposes of regulations that can create unnecessary barriers to trade as follows:

- Protection of human safety or health. The largest number of technical regulations and standards are adopted to aim at protecting human safety or health.
- Protection of animal and plant life or health.
- Protection of the environment.
- Prevention of deceptive practices. Most of these regulations aim to protect consumers through information, mainly in the form of labeling requirements.
- Other objectives. Other objectives of regulations are quality, technical harmonization, or simply trade facilitation.

As these definitions show, "technical regulations" are merely a subset of mandatory regulations and are subject to the normal regulatory processes and quality controls of other regulations, such as consultation and impact assessment. In other words, there is no special category of regulations of interest to trade officials that is not equally of interest to regulatory reformers. That both trade and regulatory officials are focused on the same subset of legal instruments and the same regulatory processes is an important conclusion because it fully integrates the GRPs used by the regulatory reform community and those recommended by the trade community.

The TBT Agreement addresses another important aspect of regulatory practice—the enforcement of regulatory requirements. Under the TBT Agreement, conformity assessment procedures are described as follows:

> Conformity assessment procedures include, inter alia, procedures for sampling, testing and inspection; evaluation, verification and assurance of conformity; registration, accreditation and approval as well as their combinations.

Like the trade community, regulatory reformers are interested in compliance and enforcement strategies. For market actors in general, enforcement choices can be a barrier to entry to new firms or to firms innovating or entering new markets. Enforcement can be used strategically by governments to favor certain businesses, and to punish others. Even if applied uniformly, enforcement that is poorly organized or implemented can impose unnecessarily large costs and risks on productive activities. Part of the regulatory reform agenda is to reduce the cost of enforcement by better and simpler design of regulations, first, and then by more transparent, predictable, and risk-based approaches to enforcement. For example, voluntary cooperative arrangements for conformity assessment can, in some cases, provide the basis for cost effective enforcement strategies. This report recommends that trade-friendly options for compliance and enforcement be included in the options section of the RIA, and then of course included in the public consultation and internal coordination discussions.

To summarize, while the trade community and regulatory reformers often use different terminology and actually do sometimes have different intermediate goals, both communities are interested in the pursuit of sustainable economic growth, improved consumer welfare and innovation, while enabling governments to achieve their legitimate public policy goals. For both communities, this goal can be achieved through regulation that achieves legitimate public policy purposes while reducing

[8] http://www.wto.org/english/tratop_e/tbt_e/tbt_info_e.htm

transactions costs, other compliance costs and risks, and indirect costs such as reduced innovation and productivity incentives. Both communities focus on the same regulatory instruments of government. Table 2 summarizes the similarities between the TBT objectives and those of regulatory reformers.

Table 2. Objectives of Trade and Regulatory Reforms Compared

Objectives Relating to Preventing Technical Barriers to Trade (as contained in the SCSC terms of reference)	Parallel Regulatory Reform Objectives
Reduce negative effects on trade due to different standards, technical regulations and conformity assessment procedures	Reduce transactions costs of regulations so as to reduce the cost of production and increase productivity
Promote greater alignment of national standards with international standards and consistency of approaches to conformity assessment	Reduce transactions costs by removing regulatory inconsistencies, but balance harmonization with the efficiencies of regulatory diversity and competition
Progress mutual recognition of conformity assessment	Reduce transactions costs of assuring quality and safety while preserving consumer choice in a more diversified market
Promote good regulatory practices and transparency of standards, technical regulations and conformity assessment procedures	Promote good regulatory practices and transparency of standards, technical regulations and conformity assessment procedures
Encourage cooperation on the development of technical infrastructure	Reduce transactions costs of economic actors and enforcement costs to governments, and enable confidence and reliability in enforcement strategies
Promote regulatory dialogue	Reduce policy risks by increasing policymaking transparency, and improve the information used by regulators to find efficient ways to regulate
Encourage business involvement in standards and conformance activities	Use the resources of businesses to generate a better information base for making good regulatory decisions

1.3 Recommended GRPs

There is no “one-size-fits-all model” and no “hard rules” for good regulation across the diverse economies in APEC. Work by APEC and other institutions has documented a wide variety of practices, the use of many of which can produce excellent results. Some of these practices have been developed and used by large or affluent economies, while others have been successfully applied by very small economies or economies still in transition to a market system. Within these diverse countries, the GRPs in the APEC-OECD Checklist are, if applied, likely to yield significant benefits across the APEC region. These practices have been correlated with better outcomes over many years in many diverse economies, and represent an important collective asset of APEC.

One of the most important lessons of international experience is that GRPs cannot produce sustained and significant benefits unless they are implemented systematically right into the machinery of government. A recent view of “regulatory governance” arrangements across developed and developing economies found that “It is easy to make small changes to the huge and dysfunctional regulatory jungles seen in most countries, but it is more important, more relevant to markets, and

more difficult to change how regulation is made and implemented in the future."[9] While Member economies will tailor the actual design of the GRPs to their situations, short-term or *ad hoc* solutions such as one-off regulatory reviews are not likely to produce the sustained benefits of more investment, jobs, trade or other aspects of good economic performance. Whatever GRP design is chosen, it is essential to institutionalize the mechanisms used for Good Regulatory Practice into the machinery of policymaking, including through laws, regulations, procedures, guidance, as well as through the creation and empowerment of institutions in Member economies that are committed to improving the quality of government regulation.

The GRPs below follow the standard approaches of accepted international practice, but have been adapted to strengthen the awareness of trade impacts in policy design and to encourage the use of designs that minimize adverse trade impacts.. Each GRP supports the implementation of TBT obligations in general, but can be significantly improved by making fairly small changes to how the GRP is designed and implemented. In other words, regulation can be made more trade-friendly through the conscious and explicit integration of trade impacts into GRPs.

The GRPs (21 good practices) in this reference document are meant as choices for APEC economies to achieve good results. Results are more important than the practices. Developing economies should choose mechanisms and practices that can achieve good results in their institutions and regulatory cultures. But it is not necessary to always reinvent the wheel. Where particular practices have shown good results across a range of economies, those practices should be considered. As APEC economies develop, use and strengthen GRPs, it is expected that a diverse range of GRP designs will be implemented across economies, and the recommended GRPs will evolve with that experience.

1.4 Report Organization

The GRPs in this document fall into three categories and practices: (1) internal coordination of rulemaking activity; (2) regulatory impact assessment; and (3) public consultation mechanisms. These categories are not comprehensive—other good practices have been recommended internationally. But these three are the core of "better regulation" and each is directly relevant to the trade agenda. These kinds of regulatory quality controls are most effective if integrated through the whole policy process through carefully planned organizational and procedural checks. The OECD calls for a "pro-active quality assurance role" for the regulatory functions of government. The function of these organizations and procedures is to protect the core values of the regulatory system. These core values must be identified explicitly so that both the government administration and the public understand the quality commitment of the government.

The purpose of ***internal coordination of rulemaking activity*** (Chapter 2) is to develop regulations through policy processes that explicitly consider important impacts on trade and competition, and encourage the participation in regulatory decisions of expert authorities able to bring specific perspectives of trade or trade related principles such as competition. Chapter 2 highlights GRPs from the APEC-OECD Checklist (A4, A5, B1, D1, D2) as follows:

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[9] Scott Jacobs and Peter Ladegaard (2010), Regulatory Governance in Developing Countries, Investment Climate Advisory Services/World Bank Group, Washington, D.C. at http://www.fias.net/ifcext/fias.nsf/Content/BRG_Papers

1. Establish overarching and publicly available "good regulation" principles to guide good regulatory governance. Include trade principles in those overarching principles.
2. Create effective interministerial mechanisms for managing and coordinating regulatory reform across ministries/agencies.
3. Publish an economy-wide, cost-sensitive, and forward-looking regulatory agenda that is issued on an annual basis. Ensure that trade officials review the agenda to identify any issues with potentially negative trade impacts.
4. Systematically review existing regulations to improve their effectiveness and reduce burdens. Include trade impact criteria in these reviews.
5. Integrate competition and market openness impacts into regulatory quality systems. Create a systematic process by which draft RIAs and legal texts are shared at an early point with competition trade, and standards offices.

The purpose of ***regulatory impact assessment*** (Chapter 3) is to provide information in the policy process so that a government understands the consequences of regulatory actions, and is able to choose regulatory and nonregulatory solutions that will clearly achieve public policy goals at lowest cost to economic and consumer welfare, including trade impacts. Chapter 3 highlights GRPs from the APEC-OECD Checklist (A8, B2, B3, B6, C1) as follows:

6. Require RIA for all regulatory proposals with non-trivial effects on citizens or businesses.
7. Do the RIA early.
8. Develop, adopt, and use a RIA Handbook
9. Follow a standard format for RIA.
10. When deciding to regulate, clearly identify the need for a regulatory proposal, describing the nature and significance of the problem, and its causes or drivers, particularly if it is a result of a government failure or a market failure.
11. Set the goals of government policy.
12. Examine feasible options for solving the problem, including less burdensome alternatives involving market-based or voluntary solutions, for addressing the problem. As part of this step, assess any discriminatory effects of the options, possibility of using international standards, and various conformity assessment options.
13. Systematically compare the negative (costs) and positive (benefits) consequences of each option. Compare both the quantitative and qualitative costs and benefits of each option, including the effects on trade. Assess whether less trade restrictive alternatives exist that are available to make an equivalent contribution to the achievement of the objective at the level of protection sought.
14. Publish the RIA for public comment, and respond to the comments in the revised RIA. Compare the comments of foreign firms with those of domestic firms to determine if there are impacts on these firms that are not felt by domestic firms.
15. Identify the reasons why the alternative selected best achieves the policy objective. Apply a "trade impact" filter to eliminate any options that are not consistent with obligations under the TBT Agreement.

The purpose of ***public consultation mechanisms*** (Chapter 4) is to develop an effective, efficient, and practical means of channeling information from civil society into the policymaking process during the development of new regulatory actions, collecting particularly information needed to understand the problem and choose solutions that achieve public policy goals at lowest cost to economic development and consumer welfare, and to ensure that affected interests are informed of possible upcoming regulatory actions. Chapter 4 highlights GRPs from the APEC-OECD Checklist (B2, B5, D1, D4) as follows:

16. Require a minimum standard of consultation for all regulatory proposals that affect citizens or businesses.
17. Plan the consultation in advance.
18. Establish procedures that provide all public stakeholders with an early and meaningful opportunity to comment on regulatory proposals. Consult widely throughout the process of developing a new policy or revising an existing policy.
19. Identify stakeholders: Identify all of the stakeholder groups and individuals that should be consulted.
20. Provide plainly written, clear, and concise draft measures for public comment with adequate time for review so that stakeholders and government can have a meaningful dialogue that leads to improved regulatory outcomes. Prepare the consultation document and clarify key questions that affected interests should answer, such as whether less costly options are available.
21. Ensure that regulators are publicly accountable for how they consider public comments. Integrate the evidence into the final RIA, and the recommendations. Provide feedback to stakeholders.

2. Internal Coordination of Rulemaking Activity

Members of the SCSC have stressed the importance of effective internal policy coordination, including among regulators, standardizing bodies and trade officials implementing the TBT Agreement. Regulatory reformers also stress the importance of good internal coordination in the policy process. Whatever internal policy mechanism is used, the result should be this:

Regulations should be developed through policy processes that explicitly consider important impacts on trade and competition, and encourage the participation in regulatory decisions of expert authorities able to bring in specific perspectives of trade or trade related principles such as competition.

2.1 Internal Coordination and the TBT

Internal coordination procedures are, in theory, directly relevant to the principles of the TBT Agreement, but in practice procedures in place today do not address many of the specific obligations of the TBT Agreement. One of the conclusions of this report is that internal procedures at several stages of the regulatory process can be better organized at relatively low cost to be more relevant to the specific functionalities of the TBT Agreement.

Table 3 assesses, point by point, how internal regulatory coordination procedures support various TBT functionalities. This assessment indicates that, while the mechanisms of internal coordination seem well suited to promoting and safeguarding compliance with the requirements of the TBT Agreement, in practice trade related issues are often neglected. This neglect is partly due to poorly organized processes, such as the failure to routinely include trade offices in regulatory reviews, but also due to the difficulty of assessing trade impacts and concepts like “equivalence” of technical standards and conformity assessment procedures, and finally to the need for highly technical information that most regulators simply lack.

The recommendations for internal coordination of regulation below attempt to compensate for these weaknesses by recommending, at critical points, to develop or use mechanisms that enable more explicit involvement of trade and competition offices in the regulatory policy process, and more explicit inclusion of the key principles of the TBT Agreement in the overarching principles guiding regulatory quality efforts.

Table 3. Relevance of Internal Coordination of Rulemaking Activity to Preventing Technical Barriers to Trade

How Internal Coordination Promotes Implementation of TBT Agreement	Weaknesses in Implementation of Internal Coordination Processes
Elements of the TBT Agreement Relevant to Regulatory Design	
Nondiscrimination: Products imported from the territory of any Member [shall] be accorded treatment no less favorable than that accorded to like products of national origin and to like products originating in any other country.	
Avoidance of unnecessary obstacles to trade: When preparing or applying a technical regulation, a Member must ensure that the regulation is not more trade-restrictive than necessary to fulfill the Member's legitimate objective. (Art. 2.2)	
The obligation to avoid unnecessary obstacles to trade applies also to conformity assessment procedures. They must not be stricter than necessary to provide adequate confidence that products conform with applicable requirements. (Art. 5.1.2)	
Alongside harmonization, the Agreement encourages Members to accept technical regulations that other Members adopt as "equivalent" to their own if these regulations adequately fulfill the objectives of their own regulations. (Art. 2.7)	
Use relevant international standards, or the relevant parts of them, as a basis for their technical regulations and to use relevant international recommendations and guides, or relevant portions of them, as the basis for their conformity assessment procedures unless they would be ineffective or inappropriate to fulfill the Member's "legitimate objectives." (Arts. 2.4 and 5.4)	
Use performance-based requirements: Whenever appropriate, product requirements should be set in terms of performance rather than design or descriptive characteristics. (Art. 2.8)	
Establish overarching and publicly available "good regulation" principles. These kinds of specific and even technical principles are often ignored in regulatory processes ruled by narrow mission goals and inadequate information. The creation of overarching and publicly available "good regulation" principles provides a mechanism for safeguarding these principles across multiple regulatory agencies and missions. An example is the inclusion in several regulatory principles and RIA guidance of the requirement for performance-based design of regulations. This has significantly helped increase the attention of regulators to innovative regulatory designs that they otherwise would not have considered.	In practice, even when governments have defined "good regulation" principles, they have not normally included specific principles drawn from the TBT Agreement. Principles like non-discrimination, least trade restrictiveness, acceptance of technical standards, use of relevant international standards, and recognition of conformity assessment are not normally included in national guidance on regulatory quality.
Create effective interministerial mechanisms for managing and coordinating regulatory reform across ministries/agencies. This whole of government mechanism could be an effective channel for ensuring that regulatory quality principles that are not included in narrow regulatory missions are fully considered an integrated. In fact, promoting a consistent whole of government approach to regulation is one of the key goals of such a mechanism.	In practice, these interministerial mechanisms often do not sufficiently include the specific perspectives of trade or trade related principles such as competition.
Publish a forward-looking regulatory agenda that is issued on an annual basis. This mechanism also would promote implementation of the functionalities of the TBT Agreement by permitting trade authorities to identify much earlier in the policy process issues with potential trade impacts, and to plan the appropriate involvement.	In practice, even where such agendas are published, they are not routinely used by trade authorities to identify issues of potential concern. Trade authorities are not normally involved in their development or their review.
Systematically review existing regulations to improve their effectiveness and reduce burdens. Regulatory reviews are an ideal mechanism to deal with concerns about trade impacts that emerge through the WTO TBT and SPS Committee processes, or are the subject of complaints by	Regulatory reviews are usually done in an ad hoc fashion, with unclear review criteria that usually neglect specific trade impacts.

How Internal Coordination Promotes Implementation of TBT Agreement	Weaknesses in Implementation of Internal Coordination Processes
trading partners.	
Integrate competition and market openness impacts into regulatory quality systems. Regulatory quality systems which intervene at numerous points in the life cycle of a regulation are well-placed to ensure that competition and market openness principles are observed.	Because competition and market openness impacts are hard to assess without extensive technical information, regulatory quality systems normally do not include specific tests. Trade and competition offices are often distant from the day-to-day policy process, and unable to intervene to identify potential problems.
Elements of the TBT Agreement Relevant to Enforcement	
Members to ensure that "conformity assessment procedures are prepared, adopted and applied so as to grant access for suppliers of like products originating in the territories of other Members under conditions no less favorable than those accorded to suppliers of like products of national origin or originating in any other country, in a comparable situation." (Art. 5.1.1)	
Mutual recognition of conformity assessment. Mutual recognition of conformity assessment: The Agreement requires each Member to recognize "whenever possible" the results of conformity assessment procedures (e.g. test results or certifications), provided the Member is satisfied that those procedures offer an assurance of conformity that is equivalent as its own. (Art. 6.1)	
Integrate competition and market openness impacts into regulatory quality systems.	In practice, regulators are usually unaware of how to prepare, adopt, and apply conformity assessment procedures to comply with these requirements. Regulatory quality systems do not usually provide the information that is needed. While standards bodies can be a repository of information on the principles and practices of efficient, effective conformity assessment procedures, regulators rarely coordinate with standards bodies to get this information.
Elements of the TBT Agreement Relevant to Transparency	
To help ensure transparency, the Agreement requires Members to publish a notice at an early stage and notify other Members through the WTO Secretariat when it proposes to adopt a technical regulation or conformity assessment procedure and to include in the notification a brief indication of the purpose of the proposed measure. Members must allow "reasonable time" for other Members to comment on proposed technical regulations and conformity assessment procedures, which the TBT Committee has recommended to be "at least 60 days" (G/TBT/26), and take public consultation with affected comments it receives from other Members into account. (Art. 2.9 and 5.6)	
Publish a forward-looking regulatory agenda that is issued on an annual basis. In principle, the agenda could be the basis for indicating the future adoption of a technical regulation which would greatly improve transparency as the regulation is developed.	In practice, no regulatory agenda specifically requires the identification of future technical standards.

2.2 Supporting the TBT Agreement: Good Practices in Internal Coordination

Among all of the GRPs recommended by international experience, the mechanisms of internal coordination are the least specific. The reason is that these mechanisms are highly specific to the context of the institutions, traditions, and priorities of each government. The OECD has been reluctant to recommend any specific model for most aspects of internal coordination, and admitted in 2010 that

"There is still little understanding on what specific institutional setup—or more precisely, governance mechanisms to prepare new rules and shape regulatory regimes—should be in place to offer the performance in a specific context."[10]

Despite the wide diversity of practices, broad agreement has been reached on aspects of internal coordination that appear to produce better results. These include the five GRPs discussed below:

1. Establish overarching and publicly available "good regulation" principles to guide good regulatory governance. Include trade principles in those overarching principles.
2. Create effective interministerial mechanisms for managing and coordinating regulatory reform across ministries/agencies.
3. Publish an economy-wide, cost-sensitive, and forward-looking regulatory agenda that is issued on an annual basis. Ensure that trade officials review the agenda to identify any issues with potentially negative trade impacts.
4. Systematically review existing regulations to improve their effectiveness and reduce burdens. Include trade impact criteria in these reviews.
5. Integrate competition and market openness impacts into regulatory quality systems. Create a systematic process by which draft RIAs and legal texts are shared at an early point with competition and trade offices.

These GRPs are aimed at institutionalizing sustainable regulatory quality capacities into the central management and regulatory machinery. These GRPs, where effectively implemented, have greatly strengthened the implementation of the TBT Agreement in regulatory systems. As noted, internal coordination mechanisms are highly contextual to the specific administrative practices of each economy, and that is why these five GRPs are stated very flexibly so that they can be adapted as needed.

Where an administrative system does not yet have coherent and organized regulatory governance systems, there is a particular challenge in developing and instituting these GRPs. It is difficult to impose high-quality regulatory procedures onto a general policy process that is disorganized and unpredictable. In these cases, a step by step approach is necessary. A regulatory agenda can be a low-cost and effective management tool that permits the government to see the entirety of regulatory actions across the government, and choose the most important regulatory proposals for coordination, impact assessment or consultation. A regulatory agenda can be published online so that affected parties have a much clearer sense of what the government will propose to do in the future. An online consultation opportunity will permit affected parties to identify those future regulatory actions of most concern. In other words, transparency is probably the first priority, while the other GRPs can be built or piloted over time on a case-by-case or step-by-step basis, starting from a few cases and gradually moving to institutionalize the lessons learned.

[10] Cordova-Novion, C. and S. Jacobzone (2011), "Strengthening the Institutional Setting for Regulatory Reform: The Experience from OECD Countries," OECD Working Papers on Public Governance, No. 19, OECD Publishing.

1. Establish overarching and publicly available "good regulation" principles to guide good regulatory governance. Include trade principles in those overarching principles.

Development of a guiding set of explicit regulatory quality principles that will improve the results of the regulatory activities of governments has been underway for two decades. The OECD recommends that governments "Establish principles of "good regulation." drawing on the 1995 OECD Recommendation on Improving the Quality of Government Regulation." This GRP is stated in the APEC-OECD Checklist as "Such a policy often takes the form of a statement setting out principles to govern regulatory reform which provides strong guidance and benchmarks for action by officials, and also sets out what the public can expect from government regarding regulation." Many countries have adopted such explicit principles (see Box 2).

The purpose of such principles is stated in the Checklist: explicit quality principles are to provide a basis for guiding government decisions on regulation across the government. If a government does not have a clear statement of what the quality of regulation means, how can it expect that ministries and regulators across the entire government know how to design and implement good regulation? A statement of the regulatory quality that is expected increases accountability and performance across the government, while acting as a public government commitment to its citizens that its regulatory activities will meet defined quality standards.

Inclusion of trade-friendly principles in such government-wide principles would be a major step in promoting more consistent application of the TBT Agreement in the development, valuation, implementation, and revision of regulations. Improving consideration of trade impacts was, from the beginning, a priority in the development of such principles. The OECD in its 1995 Checklist asked governments to pay "particular attention to regulatory quality and transparency with respect to regulations that may have impacts on other countries, or affect international trade, investment, or other aspects of international relations."

Yet few APEC members with explicit regulatory quality principles have included principles on trade openness or competition, or compliance with trade and investment commitments. One exception is Japan, which has adopted the principle that "Regulation shall be modified so as to conform to international standards." Another major exception to this rule is the TBT obligation to use performance oriented designs for regulation whenever possible. Several governments have adopted this principle to guide regulatory design, and it has been thoroughly embedded in the RIA process.

Governments should adopt a set of quality principles for government regulation, and should explicitly include the obligations contained in the TBT Agreement. Trade-related principles that have been adopted by APEC countries and that are related to the TBT Agreement include the following:

- Foreign producers shall not be treated less favorably than domestic producers in the design and application of regulations;
- Impacts on trade shall be the minimum needed to attain a clearly defined policy objective;
- Performance Standards should be used rather than Design Standards; and
- International standards shall be used unless there is evidence that they would not achieve a defined public policy goal.

Box 2. Good Regulatory Principles Adopted in APEC Member Economies

CANADA: When regulating, the federal government states that it will:

- Protect and advance the public interest in health, safety and security, the quality of the environment, and the social and economic well-being of Canadians, as expressed by Parliament in legislation;
- Promote a fair and competitive market economy that encourages entrepreneurship, investment, and innovation;
- Make decisions based on evidence and the best available knowledge and science in Canada and worldwide, while recognizing that the application of precaution may be necessary when there is an absence of full scientific certainty and a risk of serious or irreversible harm;
- Create accessible, understandable, and responsive regulation through inclusiveness, transparency, accountability, and public scrutiny;
- Advance the efficiency and effectiveness of regulation by ascertaining that the benefits of regulation justify the costs, by focusing human and financial resources where they can do the most good, and by demonstrating tangible results for Canadians; and
- Require timeliness, policy coherence, and minimal duplication throughout the regulatory process by consulting, coordinating, and cooperating across the federal government, with other governments in Canada and abroad, and with businesses and Canadians.

JAPAN: The guiding principles for regulatory reform are:

- As a rule, economic regulations shall be lifted and social regulations minimized as regulations are abolished or otherwise relaxed;
- Regulatory arrangements shall be rationalized, such as by the transfer of inspection functions to the private sector;
- Regulation shall be simplified and rendered more specific;
- Regulation shall be modified so as to conform to international standards;
- Regulatory procedures shall be speeded up; and
- Transparency shall be increased in the procedures for introducing new regulations.

RUSSIA: The concept of regulatory reform includes:

- Performance: introduction of measures in implementing the activities of executive bodies according to the principles and procedures for management performance by the evaluation of results of their work;
- Quality: Implementation of standards for government and municipal services;
- Low-cost: development and implementation of administrative regulations and electronic administrative regulations;
- Anti-corruption: creation and implementation of specific regulatory mechanisms in the areas vulnerable to corruption;
- Regulatory review: completion of a review of redundant and overlapping functions of executive bodies and the elimination of inefficient government intervention in the economy;
- Regulatory institutions: reform of the regulatory bodies, development of outsourcing of administrative and management processes;
- Transparency and participation : ensuring the transparency and efficiency of interaction of bodies of executive power with civil society.

SINGAPORE: The six guiding principles state that regulations should:

- Not cost more than they have to.
- Be balanced and imposed only after listening to stakeholders.
- Foster self regulation and market discipline as far as possible.
- Contain or prevent risks through risk management approaches.
- Bring together departments and agencies to work as one Government and stem from a stakeholder-centric perspective.

2. Create effective interministerial mechanisms for managing and coordinating regulatory reform across ministries/agencies.

The APEC-OECD Checklist asks, “To what extent are there effective interministerial mechanisms for managing and coordinating regulatory reform and integrating competition and market openness considerations into regulatory management systems?” One of the most visible elements of the OECD regulatory quality framework is the institutionalization of responsibilities for good regulation within the traditional management structures of a government. There is widespread acceptance that some kind of whole of government oversight of regulatory quality improves results. However, there is wide

diversity in the design of such oversight mechanisms, and economies have gotten good results from very different approaches. In most economies, however, these oversight mechanisms have not yet proven to be an effective approach to integrating competition and market openness principles into regulatory quality.

Many APEC economies already have mechanisms for managing and coordinating regulatory reform. But how can economies develop and institute these practices in the first place? How can governments promote awareness and understanding of the need for these mechanisms? The OECD recently published a report[11] that recognizes that "the transition to effective regulatory oversight often represents a breakthrough in terms of constitutional, traditions and faces bureaucratic opposition. It may either be gradual, or happen during a crisis, which offers an opportunity for institutional change. In many countries change has been incremental…."

Even when reforms were supported by a forceful champion, with a strong political mandate, governments have needed some form of explicit or tacit support from regulators since regulatory decisions are made by them. This situation has been reflected in the initial development of robust coordination structures that were gradually institutionalized into something more formal. The OECD gives the example of Denmark, where coordination has been strengthened through an interministerial government committee framework and through enhanced guidance to officials. The OECD calls attention to the need to better communicate the goals and means of a regulatory policy. Stakeholder consultation and involvement were important early steps in some countries.

The roles of such coordination mechanisms range from organizing regulatory reviews, to managing interministerial processes, to actual program implementation such as case-by-case review of RIAs. In response to continuing concerns about poor regulatory quality, most regulatory management reforms in recent years have focused on increasing oversight and quality control of regulation through several methods:

- Strengthening the challenge function from a central institution that is able to grade regulatory proposals against clear quality standards and work with regulators to improve quality;
- Instituting more quality control procedural standards such as stakeholder consultation and internal coordination;
- Enabling more coordination with other government bodies with whole of government responsibilities, such as competition, trade, and finance authorities;
- Prompting earlier timing and preparation of regulatory proposals and RIAs to permit more discussion (preparation of the regulatory agenda is a powerful management tool in this regard);
- Instituting more monitoring and reporting of regulatory quality by central institutions with public reporting of performance; and

[11] Cordova-Novion, C. and S. Jacobzone (2011), "Strengthening the Institutional Setting for Regulatory Reform: The Experience from OECD Countries", OECD Working Papers on Public Governance, No. 19, OECD Publishing.

- Supporting more active participation of central reform units in reform activities, such as oversight of whole of government regulatory reviews (such as through the "regulatory guillotine" approach) and coordination of "Doing Business" reforms.

A growing number of economies have established a centralized body with explicit authority to manage and coordinate a multiyear program of regulatory reform. Bodies or authorities explicitly tasked with oversight of regulation are quite diverse. Several are in cabinet or Prime Minister or presidential offices. Others are in ministries of finance or treasury, while others are in public-private commissions, interministerial committees and councils, and special departments of the cabinet created for this purpose. As noted, international experiences are not yet clear enough to know which of these approaches are likely to produce better results.

In some economies, central management bodies are using their authority to resolve trade-related regulatory problems. For example, Vietnam created the Administrative Procedure Control Agency (APCA) in February 2011 to simplify administrative procedures under the National Public Administrative Reform Project (Project 30). APCA operates under the direct guidance of the Prime Minister. The Head of APCA told South Korean CEOs in June 2011 that the government would heed complaints by the business community over troublesome administrative procedures.[12]

The key factors contributing to success of regulatory oversight, including the mandate, powers, structure, location, resources, and coordination mechanisms, were identified by the OECD in 2011 as:[13]

- Oversight bodies are generally located close to core executive functions: either at the centre of government itself, or as part of central ministries. Despite significant institutional heterogeneity, a key issue for success is the existence of a structured unit or dedicated secretariat. Such a unit can be set up within the executive, or as a Council/Committee as part of an arms-length arrangement.
- The credibility of the core unit builds on technical expertise and political support, and is important to ensure coherence, leadership and efficiency. In some countries, the core functions of oversight remain divided among different institutions, with implications for coordination.
- The system of regulatory oversight involves checks and balances, and often includes opt-out exemptions and time limits. A constant concern is to minimize infringements to ministerial responsibilities, while ensuring commitment at the political level. A balanced approach is necessary, so that no significant loopholes can undermine regulatory quality oversight, such as omitting tax issues, or checking only part of the new regulations. Transparency and accountability mechanisms are required.
- Economies increasingly tend to adopt networked approaches for regulatory oversight. A core body, enjoying direct explicit or indirect implicit powers, coordinates a network of units in the various ministries. This contributes to policy coherence, while ensuring the interface with policymaking in sectoral areas. The units collaborate and complement each other in a dynamic way when fulfilling the core functions. While decentralizing the substantive work

[12] http://www.dztimes.net/post/business/s-korean-ceos-assured-over-removal-of-red-tape.aspx

[13] Cordova-Novion, C. and S. Jacobzone (2011).

helps to foster change in the sectoral areas, this also entails issues in terms of balancing powers and priorities.

While these central coordinating functions are rarely trade offices, for the logical reason the trade offices do not usually have the authority to participate directly in regulatory activities across the government, the central coordinating functions have the capacity to involve trade authorities, or to promote trade related quality principles in the mainstream of government regulatory activity. The central coordinating functions should be empowered by including trade related principles in the overarching regulatory principles of government, and should draw on the expertise of trade offices by including them routinely in the processes of developing, evaluating, and revising government regulations. Capacities that could be better used in coordinating regulatory proposals are the central functions for information exchange set up under the TBT Agreement (see Art 10 of the TBT Agreement) and for policy coordination (such as national TBT committees). Greater coordination and recognition of these two central functions in regulatory processes would allow them input trade expertise into regulatory decisions.

Given the difficulty of internal coordination between competent authorities, including between trade policy and regulatory authorities, in fast-moving regulatory procedures, a good practice that should be considered is explicitly including "coordination with trade authorities" in the mandate of the regulatory management function.

3. Publish an economy-wide, cost-sensitive, and forward-looking regulatory agenda that is issued on an annual basis. Ensure that trade officials review the agenda to identify any issues with potentially negative trade impacts.

Regulatory quality and coherence become much easier if governments can see well in advance a complete picture of all of the regulatory projects under development in the government. An annual and transparent regulatory planning process, although relatively neglected as a management tool for good regulation, greatly improves the quality of regulation and regulatory in several ways:

- Preparation of the annual plan improves transparency of the regulatory activities in the government, with respect to the center of government, other regulators, and stakeholders;
- Preparation of the plan improves orderliness and predictability of action by regulators, and provides a good opportunity to ensure that the regulatory development process includes key quality inputs such as interministerial consultation, stakeholder consultation and appropriate research in impact assessment;
- The annual plan improves consultation and participation by stakeholders by providing advance warning of the future activities in the government; and
- The annual plan improves the management capacities of the government by providing a management tool for setting priorities, coordinating, sequencing regulatory activities, and ensuring that adequate quality control is built into the regulatory/legislative schedule.

Particularly for economies who are suffering from high levels of regulatory unpredictability, which increases the risks for investors and other market participants, the annual regulatory and legislative plan provides an excellent and low-cost means to reduce the risk of unexpected or nontransparent activity that would harm economic performance. Regulatory risk—the risk that the rules of the game will change or be understood after an investment is sunk—reduces the quantity of investment, the

return on investment, and the social value of investment that occurs. Regulatory unpredictability reduces investments because the projected return on investment decreases. To put it in another way, reducing the regulatory risk of unpredictable or anti-market government actions actually reduces the cost of capital. Regulatory unpredictability produces an even more damaging result. The more uncertain and risky is the legal/administrative environment in which economic activity occurs, the more likely it is that aggressive rent seeking and short-term profit taking will replace longer-term investment in a competitive climate. This is the main reason why it is difficult to attract infrastructure investments in uncertain regulatory environments.

A review of regulatory governance strategies in 2010 concluded that

> a potentially powerful tool to keep a regulatory policy high on the political agenda is to have an annual regulatory agenda presented by the government and discussed in a proper parliamentary session. This would provide "macro" political incentives to carry out the more detailed "micro" political work on details of the regulatory system , i.e. promoting a RIA system or carrying through targeted regulatory reviews in selected sectors.[14]

In other words, the regulatory agenda can focus political attention on issues of regulatory quality.

Box 3. Regulatory Agenda of the United States

The United States has had for many years an extensive planning system for regulations under development. The *Unified Agenda of Federal Regulatory and Deregulatory Actions* provides uniform reporting of data on regulatory and deregulatory actions under development throughout the Federal government, covering over 60 departments, agencies, and commission. It is published twice each year on the Internet (http://www.reginfo.gov/public/do/eAgendaMain).

The Agenda provides information in a common format to help the public identify which new regulations will affect them. All entries include information about the regulation's priority, its effects on SMEs and other levels of government, an abstract, and a timetable for action. The planning process has been a core element of the regulatory quality control system. It was intended to improve interagency coordination, establish the president's regulatory priorities, increase the accountability of agency heads for the regulatory actions of their agencies, and improve public and Congressional understanding of the president's regulatory objectives.

In Mexico, the Federal Administrative Procedures Law requires each Federal Ministry and government agency to prepare and submit to COFEMER (the central regulatory reform agency), at least every two years, a biennial regulatory improvement program in order to

(i) assess and report on regulatory reform progress, and, accordingly,

(ii) plan new regulatory reform measures.

Currently, the Proceso Marco entails assessment of existing laws, regulations, and policies in key sectors and areas, and the crafting of proposals to reduce the administrative burden on firms by improving the regulatory framework and fostering economic competition, thereby enhancing productivity and economic activity. To separate political considerations from the technical analysis, the project includes a High Level Consultative Group and a Technical Group.

Development and publication of forward-looking regulatory plans offers in principle an ideal opportunity for trade authorities to be involved at a very early stage in identifying potential trade impacts and appropriate solutions. In practice, where such agendas are published, trade authorities do not routinely use them to identify issues of potential concern. Trade authorities are not normally involved in their development or review. The reasons for this are not clear, but it a relatively simple procedural reform would be to include trade authorities in the review of draft regulatory plans and the identification of potential negative effects on trade that should be considered in regulatory design, stakeholder consultation, and the RIA.

[14] Jacobs and Ladegaard, 2010.

Another useful addition to the regulatory agenda would be to identify in the description of the proposed action whether there are potential trade effects. This would build the habit of checking for trade impacts in regulatory agencies, and make it easier for trade authorities and other potential stakeholders to identify items of trade interest. This is done in the U.S. regulatory agenda through the use of an "international flag" to indicate that the regulation has implications for other countries.

4. Systematically review existing regulations to improve their effectiveness and reduce burdens. Include trade impact criteria in these reviews.

Both the OECD and APEC emphasize the importance of systematic reviews of existing regulations. Without some system of regular regulatory review, regulatory systems become outdated, inconsistent, and inefficient, in many cases damaging economic and social development. Lack of review also leads to regulatory accumulation. The 1997 OECD report stated that, without review, regulations "are long-lasting and immutable. They survive, disappearing into regulatory jungles that, without pruning, become denser and denser."

Regulatory reviews in APEC economies have ranged from very focused reviews, many organized around the rules and procedures in the *Doing Business* agenda, to the largest regulatory reviews in the world, such as those in the Republic of Korea in 1998 (11,000 regulations in 11 months, producing over one million new jobs) and Vietnam in 2008-2010 (6,000 regulations in three years, with cost-savings to businesses of $1.45 billion every year). Many countries have programs of *ad hoc* or one-off reviews, while others have systematic annual programs of rolling reviews, in which new targets and priorities are chosen for review each year.

Most regulatory reviews in APEC economies are one-time efforts examining a selected group of regulations. Regulatory reviews are usually done in an ad hoc fashion, with unclear review criteria that usually neglect specific trade impacts. In assessing regulatory review methods in 2009, the IFC noted that "The tools reviewed can generate benefits in the short term, but they are most effective as part of a longer-term sustained initiative." While few economies have focused regulatory reviews on trade, a tool does exist that would be useful in including trade issues in regulatory review programs. The WTO TBT Committee produces an inventory of regulatory measures[15] about which Members have raised concerns in the TBT Committee (known as "specific trade concerns"). Some of these measures have been raised repeatedly for years. Regulatory authorities should take this information into account when reviewing their regulations.

In 2002, the OECD[16] reviewed systematic regulatory review programsand identified four major strategies:

1. ***Scrap and build.*** To produce real change, comprehensive review and rebuilding of entire regulatory regimes is often necessary. This is called "scrap and build" in Japan, and "reinventing regulation" in the United States. It permits prioritization of reviews for specific

[15] The document is G/TBT/28 and is available on the WTO website.

[16] OECD (2002), Regulatory Policies in OECD Countries. From Interventionism to. Regulatory Governance, Paris.

sectors and more thorough rethinking of the principles underlying the regulatory regime. It also takes into account the interactions of multiple regulations.

2. ***Generalized reviews.*** In contrast to scrap and build, generalized reviews have often absorbed the energies of governments and delivered only minor results. Generalized reviews are policies that instruct regulatory bodies to review the entire body of their regulations against general criteria such as need and efficiency. Generalized reviews are actions limited in time, and have a broad scope (the entire stock of rules with certain effects, such as business impacts).
3. ***Registration and codification.*** Tracking, registration, and codification processes are often a necessary first step to understand what actually exists in the regulatory system so that systematic review can begin. Surprisingly, many developed economies still have no registry of existing regulations, or any system to track regulations. Yet it is difficult to see how one can understand or reform regulations without knowing what regulations exist, or who is regulating what.
4. ***Review clauses***. Sunsetting is a process in which new laws or subordinate regulations are given automatic expiry dates upon adoption. A closely related tool is staged repeal. Under staged repeal, existing regulations are given "sunset" dates via ex post policy action.

In 2010, the IFC[17] reviewed regulatory review methods and identified four newer methods:

1. ***Doing Business*** indicators are a tool for comparing selected indicators of the business regulatory environments in 181 economies. Created by the World Bank in 2003, DB measures selected aspects of the investment climate, namely the laws and regulations and, to an extent, practices, governing how firms do business. DB indicators provide clear, transparent, and standardized information about the state of business regulation in many countries. With this information made public, policymakers are encouraged to compete to improve the business environment and attract investment.
2. ***Standard Cost Model*** is a method to estimate the time and cost needed to complete administrative or red tape requirements. While counting only a subset of actual regulatory costs, the methodology is meant to generate interest in and momentum for reform.
3. ***Regulatory Guillotine*** tool is a process of counting and then reviewing a large number of regulations against some criteria. It then eliminates those that are no longer needed, using extensive stakeholder input. The guillotine approach espouses the principle of the "reversal of burden of proof,"[18] (i.e., the regulators need to justify why a license or regulation is needed, otherwise it will be removed). The guillotine is commonly used in situations where governments are moving from an interventionist way of producing and implementing regulation to a market-led growth strategy more open and integrated in international markets. The guillotine supposes broad-scale and systemic reforms that extend across the public sector. The guillotine method was used by South Korea, Mexico, and Vietnam, all of whom achieved substantial benefits. See Box 4.

[17] IFC (2010), Better Regulation for Growth. Governance Frameworks and Tools for Effective Regulatory Reform. Tools and Approaches to Review Existing Regulations, Washington.

[18] Jacobs, Scott and Astrakhan, Irina (2006), Effective and Sustainable Regulatory Reform: The Regulatory Guillotine in Three Transition and Development Countries, Washington.

4. ***Process re-engineering*** is accomplished through redesign of procedures, elimination of steps and application of information technology based on a clear understanding of the steps and time required to complete an information transaction or process. Successful process re-engineering is increasingly making use of new technology, mainly electronic or web-based delivery platforms, rather than physical facilities, such as a physical one-stop shop. It also requires strong coordination mechanisms within and among institutions to make sure that requirements are streamlined.

Box 4. Regulatory Guillotine in Vietnam: $1.45 billion in annual cost reductions

Prime Minister Dung approved Project 30 in January 2007. Drawing from international experience on best methods and institutional reforms, particularly the regulatory guillotine approach, reformers developed an institutional architecture to implement Project 30.

Inventory: During the first phase (which took place between January 2008 and June 2009) hundreds of civil servants representing every level of the government created the first ever comprehensive inventory of administrative procedures, which was made into a searchable electronic database and posted to the government website. Almost 6,000 administrative procedures were added to the database, which allows users to locate every administrative procedure and download printable versions of every administrative form.

Review : During the second phase (which took place between June 2009 and May 2010) a "Special Task Force" consisting of government officials and chaired by Dr. Phan, engaged government officials, citizens, non-governmental organizations and business associations in a sweeping review of the entire administrative procedure database. Prime Minister Dung and Minister Phuc emphasized that the review would only be successful if the business community and civil society helped the Special Task Force identify problematic administrative procedures. To this end, the government created dossiers designed to enable business associations, citizens, and individual enterprises to (a) identify problematic administrative procedures; (b) explain why those procedures were unnecessary, unreasonable, overly expensive, or inconsistent with existing regulations, and; (c) recommend solutions – typically, abolishment or revision – which would make the process simpler and more efficient.

AmCham, the European Chamber of Commerce (EuroCham), the Korea Trade Investment Promotion Agency (KOTRA), the International Finance Corporation (IFC), and thirteen domestic Vietnamese business associations participated in the review process, gathering and synthesizing perspectives on the business environment, developing recommendations to simplify troublesome administrative procedures, and discussing solutions with their government counterparts. They divided themselves into eleven working groups (one for each sector of the domestic economy), and organized weekly meetings to develop satisfactory solutions to the administrative challenges companies in their sector faced. Based on these discussions and its own independent analysis, the Special Task Force created a package of administrative reforms which it presented to Prime Minister Dung for his approval.

Implementation : Implementation of the final phase of Project 30 began in early June 2010, when Prime Minister Dung approved a pilot package consisting of 258 administrative reforms. 5,500 additional administrative procedures came under review after the initial pilot package was implemented. By the end of the project, 9% of the 5,500 administrative procedures had been eliminated, and 77% simplified, with total cost savings to businesses in Vietnam of $1.45 billion/year.

(Source: updated from Matthew G. Schwarz (2011) Project 30: A Revolution in Vietnamese Governance? The Brookings Institution at http://www.brookings.edu/papers/2010/09_vietnam_schwarz.aspx)

These various regulatory review methods require different kinds of input and produce different kinds of results in the marketplace. They operate with different review criteria. Some of them ask the question "Is there a legitimate policy objective?" while others ask, "How can we simplify this procedure?" The IFC noted that reviewing, simplifying, and strengthening the regulatory stock can take many different forms. The nature and purpose of the particular tool must be carefully matched to the regulatory objective and to the characteristics of the legal obligation under review.

The choice of regulatory review methods must be carefully assessed if the intent is to include trade-related impacts. Some of these methods are more likely to include trade impacts than others. For

example, common review criteria in the regulatory guillotine approach are "Is this regulation needed" and "Is this regulation consistent with WTO commitments?" The Standard Cost Model, on the other hand, asks only one question: "How can we simplify this procedure?"

There are some emerging criteria on the quality of regulatory review programs.

- First, clear review criteria are essential if regulations are to be assessed effectively. It is difficult to imagine how regulatory review can be done effectively without clear and consistent criteria to assess the quality of the regulations under review.
- Second, the explicit inclusion of review criteria reflecting impacts on trade, investment, or competition would increase the benefits of reviews. The OECD recommends that governments "Target reviews of regulations where change will yield the highest and most visible benefits, particularly regulations restricting competition and market openness, and affecting enterprises, including SMEs."
- Third, reviews must include stakeholders. Nearly all successful reviews include stakeholders in one way or another. Some use stakeholder input to set review priorities or scope, while others have stakeholders conduct reviews through various forms of public-private cooperation. Some reviews have sought the participation of, for example, foreign investors. Proactive inclusion of the trade community in stakeholder consultation for regulatory review would be a useful way to identify trade problems such as discrimination or unnecessary trade restrictions.

5. Integrate competition and market openness impacts into regulatory quality systems. Create a systematic process by which draft RIAs and legal texts are shared at an early point with competition and trade offices.

Both the OECD recommendations and the APEC-OECD Checklist emphasize the importance of integrating trade and competition principles into regulatory decisions. The OECD states that good regulation should be "compatible as far as possible with competition, trade and investment-facilitating principles at domestic and international levels." The APEC-OECD Checklist asks, "To what extent are there mechanisms in regulatory decision making to foster awareness of trade and investment implications?" The answer, unfortunately, is "not to a very great extent."

Only a handful of APEC economies explicitly include trade or competition authorities or principles in regulatory drafting and/or regulatory reviews. Even in those cases, the extent to which trade and competition authorities influence or provide substantive input into the regulatory process is unclear.

More systematic and effective inclusion of trade and competition authorities in at least major regulatory decisions could probably be organized at low cost., This kind of reform is likely to be mostly procedural and not require substantial data collection or analytical methods or other tools. Investment might be needed to bolster the resources, expertise, and capacities of trade officials to review regulations. Training of trade and competition authorities is probably needed to increase their capacity to assess regulatory instruments, and to identify and recommend more pro-trade and pro-competition alternatives.

Box 5. Consultation with Trade Authority in Regulatory Development, New Zealand

New Zealand's Regulatory Impact Analysis Handbook (November 2009) sets out the process through which the trade authorities are involved in reviewing regulatory proposals:

The Ministry of Foreign Affairs and Trade (MFAT) has certain obligations with respect to ensuring New Zealand's compliance with international agreements to which New Zealand is a Party. It is therefore important to consult MFAT where a regulatory proposal could affect New Zealand's international obligations.

These obligations include the Agreements of the World Trade Organisation (WTO), Closer Economic Relations (CER), free trade agreements, etc. Where a proposed regulation affects, or may affect traded goods and services, or foreign investment, the advice of the Ministry should be sought on whether the proposed regulation is consistent with these obligations. Even where proposed regulation is consistent, there may be an obligation to notify an international organization or a trading partner of the proposed measures and allow them to comment. The usual timeframe for comments is 60 days.

3. Regulatory Impact Assessment

It is nearly impossible to regulate well if the consequences of government action are not understood in advance. Understanding consequences of various options for action more clearly is the main purpose of RIA. RIA mandates have been adopted in various forms in approximately 60 countries. There is no single "correct" model for implementing RIA systems, but any economy's RIA reforms can use international experiences to develop practices that are likely to work or practices that are likely to fail. Whatever RIA mechanism is used, the result should be:

Relevant information should be provided in the policy process so that a government understands the consequences of regulatory actions, and is able to choose regulatory and nonregulatory solutions that will clearly achieve public policy goals at lowest cost to economic and consumer welfare, including trade impacts

3.1. RIA and the TBT Agreement

RIA is, in principle, directly relevant to the implementation of the TBT Agreement, but in practice does not address many of the Agreement's specific obligations. One of the conclusions of this document is that the analytical content of the RIA must be explicitly amended if it is to be more relevant to implementation of the TBT Agreement, and trade experts must be more involved in identifying trade-friendly options and costs to be included in the analysis. Table 4 assesses, point by point, how RIA supports various TBT functionalities. This table shows that RIA is in general quite supportive, because it is a process of examining and selecting options that produce robust costs or higher net benefits, and the results of this accrue to foreign as well as domestic firms. Where RIA falls short is in assessing the kinds of impacts and options that are particularly relevant to foreign firms. In almost all RIAs, the firms in the market are assessed as if they were all domestic firms (that is, costs are assumed to be identical).

The operational recommendations for RIA below attempt to compensate for this weakness by recommending, at critical points, more specific examination of effects on foreign firms, and inclusion of specific options relevant to the TBT Agreement.

3.2 Supporting the TBT Agreement: Good Practices in Implementing RIA

RIA is a structured process of collecting and using evidence to learn how to better solve problems facing the government. In RIA, policymakers assess the need for action and the options for action, talk to stakeholders, and collect evidence to support a final recommendation. Drafting a legal norm is one possible result of the analysis, not the first step of analysis.

This understanding of RIA—an open examination of when and how government should solve problems, using evidence to separate good ideas from bad ideas—helps us understand how RIA instruments are included in the regulatory process, which actors are involved (i.e., institutional bodies), and the tasks of each actor. In other words, RIA in contemporary use is not primarily a technical method for manipulating quantitative data, although it contains analytical methods that require a certain level of skill. Rather, RIA is an extension of existing policy practices in many governments of asking the right questions, learning about the complexity of the problem and the consequences of action, and sustaining a richer and more productive public dialogue about options.

Table 4. Strengths and Weaknesses of RIA in Preventing Technical Barriers to Trade

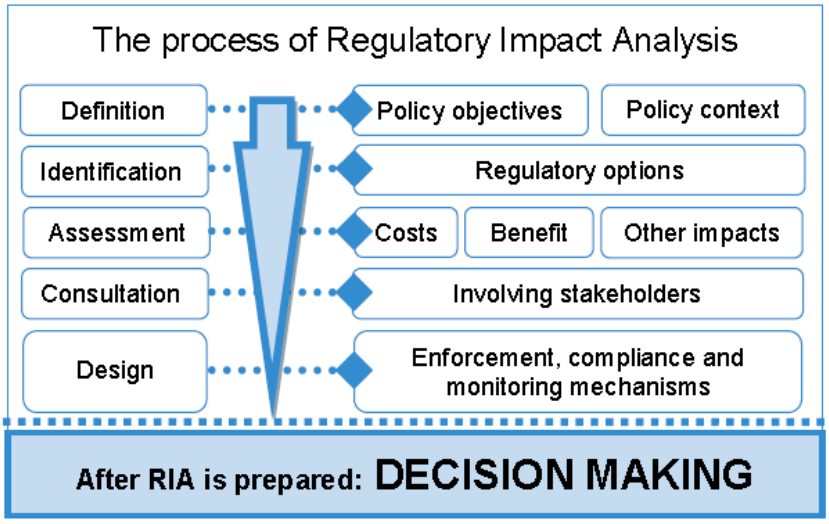
How RIA Promotes Implementation of the TBT Agreement	Weaknesses in the Implementation of RIA
Elements of the TBT Agreement Relevant to Regulatory Design	
Non-discrimination: Products imported from the territory of any Member [shall] be accorded treatment no less favorable than that accorded to like products of national origin and to like products originating in any other country.	
Members to ensure that "conformity assessment procedures are prepared, adopted and applied so as to grant access for suppliers of like products originating in the territories of other Members under conditions no less favorable than those accorded to suppliers of like products of national origin or originating in any other country, in a comparable situation." (Art. 5.1.1)	
Assess direct compliance costs on businesses. Foreign firms are treated in RIA exactly the same as domestic firms. Increased costs to foreign firms are treated as the cost of regulation exactly as are costs of domestic firms. Least cost or net benefits criteria for regulatory quality would reduce costs for foreign firms as well as domestic firms.	The RIA ordinarily examines costs for businesses participating in the domestic market, so costs associated solely with the fact that a firm is not domestic would not normally be detected in the RIA. In addition, an RIA almost never accounts for the cost of regulatory diversity across countries (e.g., adding the costs of compliance across regulations across multiple jurisdictions) – it normally considers only costs imposed in domestic markets.
Assess indirect efficiency costs. The RIA would include at least a qualitative assessment of whether reducing barriers to market competition in products and services would increase economic efficiency through more vigorous competition. In principle, this assessment would include goods and services provided by foreign firms.	Impacts on trade are not normally explicitly integrated into the RIA, and in practice are not typically assessed. This may be because there is no accepted method for assessing trade impacts, and/or data are more difficult to collect and/or because domestic constituencies for trade are weaker than other interests.
Consider alternatives to regulation. The RIA provides a structured method to assess alternative regulatory measures that do not discriminate against foreign firms and products.	Consideration of alternatives is the core of the RIA, but in most countries trade friendly impacts are not explicitly identified or require to be identified.
Avoidance of unnecessary obstacles to trade: When preparing or applying a technical regulation, a Member must ensure that the regulation is not more trade-restrictive than necessary to fulfill the Member's legitimate objective. (Art. 2.2) The obligation to avoid unnecessary obstacles to trade applies also to conformity assessment procedures. They must not be stricter than necessary to provide adequate confidence that products conform with applicable requirements. (Art. 5.1.2)	
Consider alternatives to regulation. RIA provides a structured method to assess alternatives that are less trade restrictive, and conformity assessment approaches that are lowest-cost. RIAs do include the cost of testing and certification, so conformity assessment approaches should already be included.	In most economies, the RIA does not explicitly examine trade restrictiveness of options.
Better alignment of technical regulations, standards, and conformity assessment procedures. Use relevant international standards as a basis for technical regulations and use relevant international recommendations and guides, or relevant portions of them, as the basis for their conformity assessment procedures. The Agreement, however, does not require the use of relevant international standards, guides and recommendations if they would be ineffective or inappropriate to fulfill the Member's "legitimate objectives." (Arts. 2.4 and 5.4)	
Problem definition. One of the goals of the TBT Agreement is to ensure that any restriction on trade is justified by addressing a "legitimate objective". The problem definition section of the RIA should clarify exactly what problem is being solved, that is, it should document that problem thoroughly.	No real weakness. If the RIA adequately defines the problem, it will satisfy the "legitimate objective" requirement of the TBT Agreement.

How RIA Promotes Implementation of the TBT Agreement	Weaknesses in the Implementation of RIA
Benefits assessment. The RIA provides a structured approach that could be used to compare the relative benefits of international standards and other regulatory options relative to the goals of regulatory action.	In practice, the options identified in the RIA almost never include the use of international standards.
Use of performance-based requirements. Whenever appropriate, product requirements should be set in terms of performance rather than design or descriptive characteristics. (Art. 2.8)	
Consider alternatives to regulation. RIA provides a structured method to assess performance-based alternatives.	RIA does a relatively good job in including performance-based alternatives in the options considered. However, RIAs almost never consider how the design of conformity assessment procedures can affect costs.
Acceptance of technical regulations as equivalent. Alongside harmonization, the Agreement encourages Members to accept technical regulations that other Members adopt as "equivalent" to their own if these regulations adequately fulfill the objectives of their own regulations. (Art. 2.7)	
Cost-effectiveness or lowest-cost analysis. In principle, the RIA should assess the lower costs of acceptance of technical regulations as equivalent, if the benefits assessment shows that they are equivalent.	In practice, the RIA very rarely assesses the benefits or equivalence of other countries technical regulations, and so does not include this option in the cost-effectiveness analysis.
Elements of the TBT Agreement Relevant to Enforcement	
Mutual recognition of conformity assessment. Mutual recognition of conformity assessment: The Agreement requires each Member to recognize "whenever possible" the results of conformity assessment procedures (e.g. test results or certifications), provided the Member is satisfied that those procedures offer an assurance of conformity that is equivalent as its own. (Art. 6.1)	
Cost-effectiveness or lowest-cost analysis. In principle, since mutual recognition of conformity assessment would reduce compliance costs, this option would be included in the RIA.	In practice, the RIA very rarely assesses the option of mutual recognition of conformity assessment. This is probably because these cost savings would be enjoyed only by foreign firms, which are rarely separated out as a special category in the RIA.

This approach to RIA is very positive in an international context because it allows tremendous variation in how RIA is done. A RIA that defines the problem clearly and compares options based on good consultation and sound qualitative work is more valuable than a RIA that invests a lot in quantitative work but does not clearly define the problem or identify the right options or consult adequately. Every regulator can adopt immediately the RIA structure of problem-solving, and build analytical and quantitative skills over time to add increasing precision to the analysis.

When we examine international experience, it becomes clear that RIA cannot be attached to a policy process in a mechanical way, such as by adding one step to an existing process. Rather, it must be thoroughly integrated into the policy process at an early stage, influencing the entire process. Figure 1 shows how the RIA process encompasses the entire policy process. In turn, the policy process influences how we adopt RIA. RIA is much easier if the policy process is transparent and fact-based. Integrating the use of RIA into a policymaking process that lacks elements such as good consultation procedures, a culture of openness, and an understanding of how to use empirical analysis in policy processes is difficult, because RIA will be highly resisted or ignored as contrary to habits or traditions of behavior.

Figure 1. The RIA Process in the Policy Process



Source: OECD (2008), Building an Institutional Framework for Regulatory Impact Analysis (RIA): Guidance for Policy Makers, Paris, p. 17.

If fully integrated into the policy process, RIA will

- Boost the results and effectiveness of public policy, so that a ministry or agency is more effective at carrying out its mandate;
- Reduce unnecessary costs, lost investment and jobs, and other negative effects of government regulation;
- Improve the quality and clarity of stakeholder consultation by focusing consultation on options and consequences, rather than on legal text;
- Provide everyone involved in policy development and evaluation, such as ministers, stakeholders, and members of Parliament, with a better understanding of the benefits, costs, risks, and uncertainties of options to solve the problem; and
- Reduce the risk that the government will make a mistake in designing policy.

There is today broad consensus on the organization of RIA in a public administration, after many years of trial and failure. The main good practice principle is this: *the responsibility for doing RIA must be decentralized to the regulators themselves, while a quality control mechanism should be set up by a body independent of the regulators*. This decentralized-centralized approach mirrors the approach used for budgeting systems, and is good public management practice. Extensive international evaluations have shown that other approaches—such as centralizing RIA in a separate expert body— have failed because the RIA is done too late and the learning process is not integrated into the regulatory body. If RIA is done by an independent body, even if it is more expert in analysis, the RIA will inevitably turn into a simple impact analysis of a previously prepared legal draft, which destroys the value of RIA in comparing options for problem solving. RIA cannot be integrated into the drafting process unless it is overseen or prepared by the drafters themselves.

Quality control of RIA is essential. Just as ministries of finance watch over budget estimates and expenditures, and are backed up by audits and performance reviews, quality control is necessary if RIA is to be carried out at a reliable level of consistency and quality. Incentives to conduct good RIA are weak in traditional civil services. Many RIA failures have been traced to the lack of effective

quality control and incentives in the civil service.[19] The central reviewers for RIA are discussed in the section of this report on internal coordination of GRPs.

Regulators (ministries or regulatory agencies) must organize themselves to carry out good RIA. This is usually done through a multidisciplinary team that brings together the range of skills and expertise needed to prepare the RIA. Building teams to work on RIA is not an easy task, but it is essential for the success of the implementation program. Creating *ad hoc* teams at the beginning of each RIA process is one method. For example, the 2009 RIA guidance of the European Commission states that when a regulator begins to think about a regulation, "The analyst must set up an Impact Assessment Steering Group (IASG) for every IA [impact assessment]. Existing inter-service groups—for example to accompany a study that feeds into the IA work or for the development of the proposal—can be used to steer the IA work."

Despite the diversity of practices, broad agreement by countries with the most experience in RIA has been reached on aspects of RIA that appear to produce better results. These lessons can be used by new reformers as well as those improving existing RIA systems. These include the ten GRPs discussed below:

1. Require RIA for all regulatory proposals with non-trivial effects on citizens or businesses.
2. Do the RIA early.
3. Publish an RIA Handbook.
4. Follow a standard format for RIA.
5. When deciding to regulate, clearly identify the need for a regulatory proposal, describing the nature and significance of the problem, and its causes or drivers, particularly if it is a result of a government failure or a market failure.
6. Set the goals of government policy.
7. Examine feasible options for solving the problem, including less burdensome alternatives involving market-based or voluntary solutions, for addressing the problem. As part of this step, assess any discriminatory effects of the options, possibility of using international standards, and various conformity assessment options.
8. Systematically compare the negative (costs) and positive (benefits) consequences of each option. Compare both the quantitative and qualitative costs and benefits of each option, including the effects on trade. Score each option as to whether it is the least trade restrictive option possible to achieve satisfactory policy results.
9. Publish the RIA for public comment, and respond to the comments in the revised RIA. Compare the comments of foreign firms with those of domestic firms to determine if there are impacts on these firms that are not felt by domestic firms.
10. Identify the reasons why the alternative selected best achieves the policy objective. Apply a "trade impact" filter to eliminate any options that are not consistent with obligations under the TBT Agreement.

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[19] Scott Jacobs (2006), "Current Trends in Regulatory Impact Analysis: Mainstreaming RIA Into Policy-Making," Jacobs and Associates Reports, at www.regulatoryreform.com.

6. Require RIA for regulatory proposals with non-trivial effects on citizens or businesses.

RIA should be a routine and mandatory part of rulemaking. Twelve APEC economies have adopted some form of mandatory RIA, although the scope varies from economy to economy. The benefits of adopting RIA are widely recognized. "RIA systems are fundamental to initiatives pursuing a comprehensive improvement in regulatory practices and performance for both OECD countries and countries in transition," the OECD has concluded.[20] The APEC-OECD Checklist states that "The development of a Regulatory Impact Analysis (RIA) helps to organise and consolidate all the possible impacts and elements for the decision at various stages of policy development." Both of these documents recognize that RIA has developed as the accepted method for assessing the full impacts of government action, including both the budget costs and the non-budget regulatory costs that have long been invisible.

RIA is required in many APEC economies, either by law or by high-level order of some kind. In Peru, since 1993, Congress has required the government to present a cost benefit analysis of bills that are presented. In the Republic of Korea, the 1994 Basic Law on Administrative Regulations and Application implements basic elements of a regulatory quality assurance system, including clarifying principles for regulation, and requiring Regulatory Impact Assessment, advance notice of proposed new regulation, and public consultation. In Mexico, all ministries and decentralized organisms of the federal administration have to submit a RIA with every regulatory proposal that imposes compliance costs on private agents.

For countries just beginning with RIA, the IFC has published "Making It Work: 'RIA Light' for Developing Countries" (previously footnoted). The paper argues that five criteria should be in place for a functioning RIA system (RIA "light"):

1. Political commitment to establish and operate an effective and self-sustaining RIA process.
2. A unit or group of regulatory reformers—preferably based in a central area of government that oversees, comments, and reports on the quality of regulatory proposals before decisions are made about regulation.
3. Clear and consistently applied criteria and rules employed to screen regulatory proposals.
4. A transparent regulatory policy development process that includes consultation with stakeholders.
5. A capacity building program, involving preparation of guidelines; training of officials preparing RIA and facilitating the required cultural changes, and establishing monitoring, evaluation and reporting systems.

The paper also suggests that these five criteria should be established in sequential order. Not all five are needed right away. In general, countries just beginning should build RIA capacities through a graduated introduction of RIA into the policy system. A good way to start is to train a core group, then to select two or three high-priority legal proposals for piloting a RIA approach. After evaluation, the methods can be adjusted, and a program of carrying out a few selected RIAs each year can be launched, progressively building skills in ministry after ministry. The priorities for RIA can be decided based in part on public consultation, perhaps through the regulatory agenda. Another way to

[20] OECD (2008), *Introductory Handbook for Undertaking Regulatory Impact Analysis (RIA)*, Paris.

start is with a very light RIA, in which everyone defines the problem and possible options, and gradually adds quantitative elements as skills are built. A third approach is to start with highly structured public consultations to identify potential impacts qualitatively, and then addressing those concerns systematically in the drafting process. This qualitative approach can be built around the RIA method, using the problem definition, identifying options, and so forth.

7. Do the RIA EARLY. Do not develop the RIA after a legal draft is completed. Such an analysis is just an assessment of an option already chosen, rather than a comparison of different options to help choose the final solution that is the best one for the country. RIA is best begun early in policy development, and is updated as new information comes in.

When is RIA done? RIA is always done before a regulator makes policy decisions. A legal draft is completed after the RIA identifies the best option. A common mistake is to draft first, and then prepare the RIA. The analyst should prepare the RIA before or in parallel with the drafting process, so that the analyst know which solutions to write into the legal text. Drafting is simply a means of writing down formally what the analyst have learned through the RIA.

Of course, the initial RIA will change over the course of the analysis, the consultation, and understanding of other options because the RIA process is a dynamic process of learning about which solution is best. A regulator will not make up his/her mind about the best solution at the beginning of the process, but will learn more as the process continues until, at the end, he or she is ready to make the most reasonable choice justified by the RIA. The initial RIA and legal draft will change as more information comes available through the consultation process. New options will require changes to legal drafts, and so on until the process is complete.

The RIA is finished when the RIA confidently answers basic questions about the quality of the policy:

- What is the problem being solved, and why did it emerge?
- What are the feasible goals of government action?
- What will happen to the problem if the government does not act?
- What are the options for solving the problem? What are the good and bad consequences of each option?
- Why is the proposed solution the best solution, that is, produces the best results at lowest cost to the country?
- Can the government implement the policy effectively?

The entire process of the RIA is structured to provide reasonability and transparency to the final recommendations. For the policy analyst, the value of the RIA is not the precision of the analysis, but reducing uncertainty by asking the right questions and engaging in a richer and more informed debate on the pros and cons of various policy options.[21] This is why stakeholder consultation is part of the preparation of the RIA. In fact, open discussion of the RIA content is so important that, in those

[21] Scott Jacobs, 2006. This phrase appeared originally in OECD (2002) Regulatory Policies in OECD Countries: From Interventionism to Regulatory Governance, p 47, which was drafted by Jacobs.

countries that have used RIA the longest, the RIA is considered to have little value without stakeholder consultation on its content. The draft RIA is published as part of consultation, and the final RIA summarizes the results of consultation.

How long will it take to prepare a good RIA? The time will take from 4 weeks, plus 30 days for consultation, to a year or more. The European Commission's RIA guidance (2009[22]) says that a RIA will take 8-52 weeks: "The time needed for preparing an impact assessment will depend on the complexity and sensitivity of the proposal but it will also depend on how the analyst go about it. For example, the analyst may need to call on external expertise through a call for tender, which clearly takes time." If an interministerial consultation process is needed, that will also take more time. Public consultation (minimum of 30 days) should also be included. The time needed for good RIA means that the analyst should not wait until late in the process—a RIA can be well done only if the analyst starts early in the policy process, and plans ahead.

8. Develop, adopt, and use a RIA Handbook.

Good RIA methods and communication of those methods is critical. Every government that has made good progress in implementing RIA has published a handbook or guide. These handbooks are quite dynamic. As RIA practices of all, governments frequently change the RIA handbook to reflect best practice or the priorities of a new government. One of the newest RIA guides is Vietnam's online RIA guide[23] published as part of its Program for Enhancing Regulatory Quality (PERQ).

Based on good international examples of RIA handbooks, such as Vietnam's online RIA manual and the World Bank's manual for RIA Light,[24] each economy should develop a handbook tailored to its highest-priority economic, social, and environmental impacts, identifying an orderly step by step procedure to carry out RIA within the policy process, and the analytical methods to be used to identify more efficient and trade-friendly regulation and delivering better regulatory outcomes, with templates for the RIA itself.

There is no model for a RIA handbook, since the procedures and methods of RIA differ somewhat between economies based on the policymaking process and the impacts of highest priority, but successful handbooks have similar formats:

- ***Process:*** The handbook sets out the step by step procedures needed to develop RIA within the drafting, consultation, and approval processes, making sure that RIA is done early, before or during drafting, and never after drafting, and that the RIA is fully integrated into the policy process, including the legislative process.
- ***Problem definition:*** It ensures that the problem is correctly defined, focusing on the impacts of ultimate interest, and identifying the causes of the problem that can be corrected by government action.

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[22] See Annexes to Impact Assessment Guidelines. Revised annexes – draft version 27 May 2008.

[23] http://ria.net.vn/EN/Home.html

[24] At https://www.wbginvestmentclimate.org/advisory-services/regulatory-simplification/business-regulation/better-regulation-for-growth/papers.cfm

- ***The objective and intended effect of the policy:*** It sets out the format for stating what the policy is intended to achieve, including measurable performance targets.
- ***Identification of options:*** The handbook states what kinds of regulatory and nonregulatory options should be considered, including traditional command and control, performance designs, market incentives, and consumer choice.
- ***Comparison of costs and benefits of options:*** It sets out a standard format so benefits and costs can be compared consistently across all options. Trade impacts can be explicitly included in this section of the handbook.
- ***Results of public consultation:*** The handbook details how the RIA is integrated into public consultation, and how the regulators should use consultation to strengthen and validate the RIA. Consultation with trade authorities could be explicitly included in this section.
- ***Recommended actions:*** The handbook sets out the principles by which the best option should be selected, such as the efficiency or benefit cost principles.
- ***Compliance strategies for the recommended action:*** It asks the regulator to describe how the government will implement the selected option.
- ***Processes for monitoring and evaluation of the recommended action:*** It asks the regulator to describe how the selected option will be evaluated to ensure that it achieves the results that the government hopes to achieve.

The handbook is not just for regulators. In successful systems, it is mandatory in that it sets out a standard format for the RIA. A RIA must respond to each section of the RIA format—a RIA cannot, for example, identify the options, but fail to compare the benefits and costs of the options. While a RIA might be longer or shorter depending on the importance of the impacts, each must be complete. It must follow the standard format set out in the handbook, and must use the standard templates to present information so that readers can easily understand the content of the RIA. The handbook actually sets the quality standard for RIA content that must be mandatory, just as a budget proposal follows a specific format.

9. Follow a standard format. Summary forms for two kinds of RIA are provided in Annex 1. These forms provide the standard structure and content for each RIA.

Adoption by the government of a standard approach to RIA and standardization of a summary form to report the results of RIA are very important for the quality and transparency of the work. The costs of RIA decrease when the RIA structure is standardized. A standard format increases its effectiveness in changing public policy, and the quality of the analysis. A good RIA regime can be based on two forms of RIA, shown in Table 5 below.

Summary forms for each kind of RIA are provided in Annex A. These forms provide the standard structure for each RIA. The summary form for the Planning RIA is the RIA itself, while the summary form for the Standard RIA is attached to the more detailed RIA document.

Table 5. Forms for RIA

	Scope	Timing and Length
Planning RIA	Any action included in an annual legislative plan or agenda, either at the level of the ministry or the government	Very light RIA prepared during preparation of a legislative plan. Not more than 2-4 pages.
Standard RIA	All policies such as new and amended legal norms at national level with potential effects on citizens and the business sector.	Prepared before or during the drafting process, and used in consultations. The signed Summary Form is attached to the top of the RIA. 10-30 pages total.

Every RIA follows the same structure. However, the analyst has much flexibility in deciding the level of detail. The content and detail of each RIA depends on the importance of the policy. The RIA will have more detail and data as impacts become more significant. The analyst does not want to over-analyze small changes, and the analyst does not want to under-analyze important changes. The most successful RIA programs are those that target scarce RIA resources to where they can do the most good by applying the *principle of proportional analysis*. This principle means that RIA detail and scope will be determined by the likely impacts of the proposed action:

- Every policy initiative will present sufficient analysis in the RIA to "allow for informed debate" about which solution is best.
- The more significant an action is likely to be, the greater the number of options and the more quantification of costs and benefits in the RIA.

Even if the analyst decides to carry out a RIA that is less detailed, the analyst should nevertheless produce a report that contains the full content presented in Annex A. All elements must be prepared for every RIA.

Below, each step of the Standard RIA identified in Annex A is discussed, and examples are given of good practice.

10. RIA Section 1: Define the Problem: When deciding to regulate, clearly identify the need for a regulatory proposal, describing the nature and significance of the problem, and its causes or drivers, particularly if it is a result of a government failure or a market failure.

The team developing the policy must agree on a clear definition of the problem being solved. The problem definition is the most important part of the RIA. It is the basis for everything that follows. If the problem is not clearly defined, it is very unlikely that the analyst will develop the right solutions. Done properly, the problem definition should satisfy the TBT Agreement requirement that regulatory interventions that affect trade be based on a legitimate policy objective. The problem definition will identify, using evidence, that a problem actually exists, and its magnitude and trends. It should include looking at how other economies have addressed the problem, whether trade concerns were raised with other regulations and whether voluntary solutions are available from standards and conformity assessment bodies.

The New Zealand government requires that the problem definition answer the following questions:

> …assess the nature and size of the problem associated with the expected outcomes in the absence of any further government action. This involves identifying and quantifying (to the extent possible) the costs and benefits of the current arrangements, including:
>
> the nature and probability of the adverse outcome/s that will arise in the absence of further government intervention (in addition to the interventions already in place), and who is likely to be affected by the adverse outcome, including how widespread it is likely to be (i.e., how many individuals, groups, firms etc. are affected), what harm or injury is likely to occur, and the magnitude of these impacts.
>
> This quantification should include aggregate figures (totals) to help put the issue in a wider perspective.
>
> The next step is to identify the root cause of the problem (not just the symptoms), for example market failure, regulatory failure, unacceptable hazard or risks, social goals/equity issues. The reason why the problem will not be addressed within existing arrangements or by private arrangements (such as individual contracts, market forces etc.) should be explained. If the problem relates to existing legislation or regulation, it should be made clear whether the problem is in relation to its design (and) or its implementation.

Problem definitions come in two parts. The first part is identifying the final effects that the government wants to correct. Sometimes, regulators state the problem as being the absence of regulation. For example, it is not uncommon to see a problem being stated as "taxi scooters are not licensed." But that is not the problem; licensing is a potential solution to the problem. Confusing the problem with solutions is a common mistake and should be avoided. Solutions should never be stated in the problem definition. Instead, state the problem in terms of final effects of interest, *never* in terms of solutions.

> Example: If the problem is "Taxi scooters are creating safety risks because they are not following traffic rules, resulting in deaths and injuries of passengers," a possible solution might be "enforcing helmet requirements for taxi scooters." The benefits of each solution would be assessed in terms of effectiveness in reducing deaths and injuries of passengers.

The second part of problem definition is a statement of the drivers or causes of the problem. This is similar to a decision tree approach that links outcomes to causes. The drivers or causes should be detailed enough so that regulatory solutions can be identified. Most problems have multiple causes, and each cause will require a different solution.

Identifying the causes of the problem is necessary because the regulation will be designed to attack the underlying causes that create the ultimate problem. This is how regulations solve problems. The drafters should identify as many causes as are relevant, with as much detail as needed to design regulatory solutions. If an important cause of the problem is missed, the drafting team might miss an important regulatory solution, and the government will fail to solve the problem. If the analyst does not understand the reasons for a problem, the analyst can make things much worse.

> Example: Prices of meat going up during Ramadan, might be due to (1) a cartel and price fixing among meat wholesalers; or (2) a shortage of meat caused by increased demand. If the government believes that higher meat prices are due to a cartel, it might set price controls. But if the problem is actually due to a shortage of meat, the price controls will make the shortages worse by reducing imports of meat. In that case, the government has made a normal market adjustment much worse.

Many economies require the analyst to determine if the underlying problem is a market failure or a government failure. In the highly regulated economies in which many APEC economies work, many problems are actually the result of other government policies or regulations. If the problem is a result

of the failure of other regulations, the solutions should include revising and eliminating those regulations, rather than adding new regulations on top of existing ones.

Many problems are results of market failures. The U.S. RIA guidance states that the major types of market failure that should be examined in the problem definition include the following:

- ***Externality.*** An externality occurs when one party's actions impose uncompensated benefits or costs on another party. Environmental problems are a classic case of externality. For example, the smoke from a factory may adversely affect the health of local residents while soiling the property in nearby neighborhoods.
- ***Common property resource.*** Resources that may become congested or overused, such as fisheries or the broadcast spectrum, represent common property resources.
- ***Public goods.*** Public goods, such as defense or basic scientific research, are goods where provision of the good to some individuals cannot occur without providing the same level of benefits free of charge to other individuals.
- ***Market Power.*** Firms exercise market power when they reduce output below what would be offered in a competitive industry in order to obtain higher prices. They may exercise market power collectively or unilaterally. Generally, regulations that increase market power of selected entities should be avoided.
- ***Inadequate or Asymmetric Information.*** Market failures may also result from inadequate or asymmetric information. Because information, like other goods, is costly to produce and disseminate, your evaluation will need to do more than demonstrate the possible existence of incomplete or asymmetric information. Even though the market may supply less than the full amount of information, the amount it does supply may be reasonably adequate and therefore not require government regulation. Sellers have an incentive to provide information through advertising that can increase sales by highlighting distinctive characteristics of their products. Buyers may also obtain reasonably adequate information about product characteristics through other channels, such as a seller offering a warranty or a third party providing information.
- ***Other Social Purposes.*** There are justifications for regulations in addition to correcting market failures. A regulation may be appropriate when you have a clearly identified measure that can make government operate more efficiently. Rulemaking may also be appropriate to protect privacy, permit more personal freedom or promote other democratic aspirations.

11. RIA Section 2: State the desired objective(s) of government action in concrete and measurable terms action.

Step 2 of the RIA is to clearly define goals of the reform in the form of measurable performance indicators. The goals should be stated with respect to the ultimate goal of the regulation, or as close to the ultimate goal as can be measured. A goal is never “to adopt a law” since a law is just one possible means to reach the desired performance. The effectiveness of a law will be measured with the performance goal.

The three elements of a good performance goal are as follows:

- Performance – state the difference in actual variable being measured

- Time period – state the year that the difference will be achieved
- Measurement method (since a goal must be measured) – state how the analyst will measure the goal

The performance goals drive the selection of solutions because they define the main benefits of action. Potential solutions to the problem should be assessed against the performance goals. Progress in reaching the performance goals are the "benefits" of the policy. Therefore, the RIA attempts to assess the benefits and costs of each solution compared to the goals that you state here.

12. RIA Section 3: Examine feasible options for solving the problem, including less burdensome alternatives involving market-based or voluntary solutions, for addressing the problem. As part of this step, assess any discriminatory effects of the options, possibility of using international standards, and various conformity assessment options.

In this section, the regulator should identify at least three, and more if possible, options for action, based on the problem definition statement. Identifying possible solutions to the problem is one of the most important steps of the RIA. Traditional "command" regulation uses incentives of deterrence driven by the risk of penalties (do what the government says, or we will punish you—if we can detect noncompliance), but there are many other ways to change incentives in the market and in society (providing risk information so that consumers can make better choices). Governments in both OECD and developing countries are using today a wider set of policy instruments, both regulatory and non-regulatory, to solve problems.

The instruments that should be considered in the RIA range from very prescriptive regulatory interventions to tools such as various degrees of self-regulation and voluntary programs. Some of these alternatives are familiar to most countries. For example, the comprehensive tobacco control regime recommended by the United Nations and already implemented in most countries combines 10 different policy instruments.[25] The first option always included in the RIA is the "no-action" option, or the option of taking no further action to resolve the problem, either because the problem does not warrant action, or it will resolve itself due to market or technological changes, or the costs of action are too high to justify acting.

The analysts should choose from a hierarchy of instruments ranging from minimum to maximum government intervention. Possible options include the following:

- Letting the free market operate (consumer choice).
- Voluntary standards, information disclosure, and codes of practice. Greater internal coordination that includes national standards bodies can increase consideration of voluntary solutions (both standards and conformity assessment procedures) developed and implemented by the private sector. When voluntary consensus standards are developed by a diversity of

[25] The UN instruments are (i) higher taxes (excise); (ii) smoking bans (workplace, places open to the public), (iii) advertising bans (direct, point of sale, indirect), (iv) bigger, stronger warning labels; (v) packaging restrictions (descriptors, colors); (vi) product regulation (TN ceilings, ingredients); (vii) cessation programs (industry funded); (viii) smoking prevention programs and laws; (ix) counter-advertising and restrictions (denormalization), and (x) litigation (internal document disclosure).

stakeholders (industry, regulators, consumers), these solutions can effectively balance interests and result in trade facilitative solutions.

- Mandatory information disclosure and education campaigns (labeling requirements (food labels), quality marks, information disclosure) to explain, inform, influence, persuade, and empower consumers. Where such approaches pose trade problems, harmonization and voluntary approaches can sometimes meet public policy goals in a more trade-friendly way, and these approaches should be considered in the RIA. Where labeling can have adverse effects on trade, options such as harmonization and recognition of labeling from other economies should be considered carefully.
- Self-regulation by organized sectors.
- Market incentives through government spending (taxes, subsidies, insurance schemes, etc.), consistent with WTO obligations.
- Creation of new markets through tradable property rights (tradable emission permits).
- Performance regulations set out performance targets and permit regulated parties to decide how to meet the targets. Stating the performance required stimulates innovation by rewarding businesses who find efficient ways to meet the performance.
- Risk-based approaches exempt or regulate differently low-risk activities.
- Lower compliance-cost designs should always be considered. Every RIA should look for options that reduce costs, such as permitting electronic or online filing, or extending the period of a licensing from 1 year to 5 years or permanently, or recognizing conformity assessment testing from another country.
- "Command and control" regulations are detailed rules for behavior that set out detailed requirements for how affected parties should comply, as in tax regulations. Command and control regulations focus on HOW people should behave, rather than WHAT they should accomplish.

Different instrument mixes can have very different benefits and costs. The analyst will rarely choose just one option—the most likely result is a mix of two or more options to address different causes of the problem. The OECD has for many years examined instrument mixes in environmental policy and found there are good results from using a mix of instruments.[26] The skill of regulators in a country in identifying and designing efficient mixes of instruments can greatly affect the benefits and costs of regulation. Designing an effective instrument mix requires "regulatory governance" skills such as impact assessment.

Some kinds of regulatory designs are so damaging to economic performance that governments should rarely or never use them. These regulatory options should normally not be considered, or, if considered, be shown to be the only practical approach before they are adopted. U.S. guidelines

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26 "First and foremost, many environmental problems are of a 'multi aspect' nature —in addition to the total amounts of releases of a certain pollutant, it can, for example, also matter where emissions take place, when they occur, how a polluting product is applied, etc. Secondly, certain instruments can mutually underpin each other —as when a labelling scheme enhances the responsiveness of firms and households to an environmentally related tax, while the existence of the tax helps draw attention to the labelling scheme". Source: OECD (2007), Instrument Mixes for Environmental Policy, Paris. ISBN 978-92-64-01780-1

require a very high burden of proof before regulators can use any of the following types of economically damaging regulations:

- Price controls in competitive markets;
- Production or sales quotas in competitive markets;
- Mandatory uniform quality standards for goods or services if the potential problem can be adequately dealt with through voluntary standards or by disclosing information of the hazard to buyers or users; or
- Controls on entry into employment or production, except (a) where indispensable to protect health and safety (e.g., tests for commercial pilots) or (b) to manage the use of common property resources (e.g., fisheries, airwaves, public lands, and offshore areas).

How can the analyst identify solutions or options?

- The drafting team should brainstorm about possible solutions, using its experience and judgment to identify as many solutions as possible for each underlying driver or costs of the problem. The problem definition will, if complete, help identify solutions to specific drivers or causes of the problem to be solved. Each major driver should have a family of options to address it.
- One of the best ways to start is to research what other countries have done in similar policies. Expanding efforts on regulatory cooperation and information exchange through fora such as APEC is valuable. Other countries offer a rich set of experiences that can help the analyst decide what has worked, and what hasn't worked. Options identification should start with identification of what other countries have done. Internet searches can be very helpful here.
- Another way is to consult quickly and informally at the beginning of the process. To identify the widest possible range of options, the policy team might want to consult with experts and with groups with different perspectives. Ask them directly, “What options should we consider to solve this problem? What has worked in other policy areas or countries?”
- A fourth way is to locate RIAs done in other countries to see what options they considered. Annex C contains links to several websites where RIAs are posted. Check them to see if another government has prepared an RIA in an area similar to the analysis.

Some common options are part of almost every RIA. The “no further action” option should always be considered because it provides a baseline to compare with “action” options. It is highly recommended to include a performance based option, as well as a non-regulatory option. Here are some guidelines that should be included in the RIA Handbook:

- Every RIA will include the “no policy change” option, which is also called the baseline option. The baseline option projects what will happen if the government continues on its present policy path, without change. This is necessary because all of the other options will be compared to the baseline option to determine the real effect of the option. For example, if car accidents are increasing under current policies, a regulation that maintains accidents at today’s level might be a very good policy indeed. The only way to know if a policy option makes things better or worse is to compare it to the “no policy change” scenario.
- A RIA cannot seriously consider every possible option. A RIA should include several kinds of options in addition to the “no policy change” option. The hierarchy of instruments listed above is a good place to start. A good rule of thumb is to include one command and control

option, one performance option, and one non-regulatory option, and for each one to include designs that reduce regulatory costs.

WTO obligations, including the TBT and SPS Agreements, must be considered, and the principles underlying these obligations should have an effect on the kinds of options that are considered. It should be fairly easy to remedy the weaknesses identified above with respect to the general failure to consider options that are trade friendly. In the RIA handbook and in training, regulators should be advised and trained in how to consider the following kinds of options in the RIA.

- Discriminatory options, such as imposing less favorable treatment on foreign goods as compared with domestic goods should be identified early on and excluded from the policy analysis. Here, regulators probably need a simple checklist or other advice on how to identify regulatory designs that are likely to be discriminatory. In particular, a specific question could be asked in the RIA about whether a higher burden is imposed on foreign goods and foreign firms based on the fact that they are located outside of the domestic market. At this time, no RIA guide used in the APEC region explicitly asks this question.
- Use of relevant international standards is also not explicitly included in most RIAs. An option that could be explicitly considered in every RIA setting standards for products, services, or processes, is whether an international standard should be adopted. The decision to adopt it would depend on the relevance and effectiveness of the international standard in meeting the government's policy objective. Here, trade authorities and national standards bodies must work with regulators to help identify relevant international standards that they should consider. There is a huge lack of information among regulatory agencies about what international standards are relevant to them, how to find them, and how to consider them in their day-to-day work. National regulators can be more proactive in developing international standards that meet national needs. Participation by regulatory authorities in the development of international standards can help ensure that the resulting standard meets their regulatory needs.
- Compliance strategies that explicitly include conformity assessment costs, including possible use of international systems of conformity assessment so that results are recognized across borders. It would not be very difficult to develop this option sufficiently so that regulators could easily assess whether it should be an option in a specific RIA. Already, some compliance strategies are already considered in the options part of the RIA. For example, the New Zealand RIA Guide (2009) states that "Choices around the implementation and enforcement of a regulatory option can have a major influence on expected compliance rates and whether the expected costs and benefits will materialize." The guide asks regulators to consider in the RIA:

  > **Enforcement strategy** – how compliance will be enforced, who will undertake this, whether there will be sanctions for non-compliance (i.e., warnings, fines, licence suspension, prosecution, and whether there will be gradations of sanction depending on the level/severity of breach), the suitability of risk-based enforcement strategies.

13. RIA Section 4: Systematically compare the negative and positive consequences of each option. Compare both the quantitative and qualitative costs and benefits of each option for addressing the problem, including the effects on trade.

Section 4 on benefits and the following section 5 on costs are parallel, in that the analyst will estimate both the major benefits and costs for each option identified in section 3. This is not as difficult as it seems. The analyst must proceed step by step, examining the likely results of each option, and identifying those results as negative (costs) or positive (benefits). The analyst will start by describing them qualitatively, and then quantifying the most important impacts. Every RIA consists of both quantitative and qualitative analysis for benefits and costs. The European Commission's RIA guidelines state that the analysis of impacts consists of three steps:

1. Identification of economic, social and environmental impacts.
2. Qualitative assessment of all significant impacts.
3. In-depth qualitative and quantitative analysis of the most significant impacts.

The benefits are the reasons for government action. Without clear benefits, the government should not act. Benefits of government action are any major positive outcome of the action, whether the outcome directly intended (as stated in the goals) or a secondary outcome that is also beneficial. For example, a slower speed limit might be aimed at saving lives due to fewer car accidents, but would also reduce property damage to cars. Both are legitimate benefits of a regulation setting a lower speed limit (of course, there are also costs, such as the longer times spent traveling from one place to another, which costs people time and income).

For each option described in Section 3, the RIA must clearly describe any major benefits that are anticipated, and must show the progress that each option will make against the goals of government action.

Benefits can take a variety of economic, social, and environmental forms. In general, benefits are described in the RIA in three basic categories:

1. ***Economic benefits that can be valued in the market.*** These can be monetized in currency/year or net present value over several years. Examples are reduced medical costs from safer products, higher productivity due to safer workplaces, less energy use from fuel efficiency standards, and other benefits of clear economic value. One economic benefit would be enhanced trade which would increase consumer choice and reduce prices, which increases household income and reduces poverty.
2. ***Non-economic benefits in the social or environmental area that can be quantified.*** These should be presented in measurable metrics. Examples are number of cancers avoided, number of species saved from extinction, number of cases of crime avoided. These kinds of benefits should be presented in general terms (NOT "better safety and health" or "safer roads") but, rather, in a clear metric ("25% fewer disabilities per year from car accidents").
3. ***Non-economic benefits that cannot be quantified*** (more social justice or the value of saving an animal species from extinction). These general benefits are highly subjective, and are rarely presented in a quantified form in a RIA.

Economic benefits are stated in monetized terms, such as dollars/year. Potential social and environmental benefits should be stated in a standard metric (a metric is simply a way to measure the benefits) so that options can be compared in terms of benefits. If the analyst only make general

statements, such as “better safety and health” or “safer roads,” it will be impossible to know which option provides more protection. For example, the RIA should not simply state that the option will “save trees” or “make bread safer.” It should estimate the number or percent of trees saved for each option, and the number or percent of food poisonings prevented. Potential metrics that can be used include:

- Number of deaths avoided
- Number of trees saved
- Number of severe cases of asthma prevented
- Value of consumer savings due to less fraud
- Percent of severe environmental emissions prevented.

These measures will enable the analyst to compare the benefits of options. When no metric is possible, the impact should be described as precisely as possible, looking at the effect of ultimate interest. Where it is difficult to value social impacts, the RIA should provide an indication of the impact by looking at impact measures other than value. This might involve information such as how many people will be affected, what type of people might be affected; and the nature and impact of the effects. If impacts are uncertain, try to quantify the main impacts—“around 200 injuries avoided” or “10,000 elderly people lifted out of poverty”. Effects may also be categorized as ‘small’, ‘medium’ or ‘large’, to compare and weight various social impacts.

> Good example: The government wants to protect the environment and reduce fuel use. One option is to encourage hybrid cars through a tax exemption for these cars. The benefits of this option would be expressed as % reduction in annual fuel consumption, which could be monetized as currency/year cost-savings. Environmental benefits could be expressed as % reduction in emissions.
>
> Bad example: In the same policy, benefits should not be expressed as number of hybrid cars bought each year, since this measure does not tell the analyst if fuel consumption is changing. The goal is fuel consumption, not number of hybrid cars bought. Number of cars is the wrong measure of benefits.

Assigning monetary values to benefits is usually a more difficult task than to costs, because social and environmental benefits are not traded in markets, and therefore valuation is difficult. This RIA guide does not cover the methods for monetizing non-market benefits, but instead recommends the easier approach of using another metric. The European Commission’s 2009 IA guidance covers this topic well, and readers are referred to that RIA document for more information.

It is good practice to conclude this section on benefits with a summary table that reports and compares, either in currency or another metric, the benefits of each option. At minimum, the benefit should be described by stating if the benefits are small, medium, or large, providing a metric for measurement, and estimating the number of entities affected.

Costs are any negative consequence of action or non-action. Costs of government intervention are presented in parallel with the benefits, and are based on the same approach: presentation of major economic costs in dinar/year, and presentation of major environmental and social costs in a measurable metric. When no metric is possible, the impact should be described as precisely as possible. Of course, costs to businesses are only one kind of cost. There might also be social and environmental costs (negative effects) or risks associated with an option. All major negative consequences of an option should be presented in the RIA as a cost.

It is not acceptable to state that government intervention has benefits, but no costs. Like for benefits, when cost impacts cannot be presented in monetary terms, some consistent metric should be used across all options so that the costs of options can be compared. Every government policy that requires action has costs. Some costs can be monetized (such as the cost of applying for a license), while other costs are expressed in other metrics (such as higher levels of poverty or number of people losing access to services). Quantification is not itself a goal in the RIA but a tool to enable the policy maker to make more precise and higher quality policies.

If the RIA analyst is not to be inextricably confused, the analyst must have a clear idea of what costs are to be included in the RIA and what costs excluded, both across cost components and across time. Social and environmental costs of government policy can include negative impacts on safety and health, as when fuel efficiency policies reduce the weight of cars and therefore increase road fatalities, or when agricultural subsidies increase the use of environmentally damaging forms of agriculture, such as fertilizer runoff into vulnerable watersheds. Often, risk reduction policies increase other risks. For example, chlorination of water is beneficial since it reduces the spread of disease, but chlorinated water also causes lung cancer. It is important that these kinds of costs be discussed explicitly in the RIA.

Quantitative assessment of direct compliance costs for businesses is required for each policy option, with a qualitative discussion of dynamic economic costs. Assessing the economic costs of policy is, for some kinds of costs, quite easy, and for other kinds of costs, incredibly difficult. Many policies impose many kinds of costs—first-order costs as well as second and third-order costs —creating a ripple of effects stretching on into infinity.

The issue is what to measure, and how. Without going too much into theory, the real economic costs of government policy are the social costs to the country, which, in the most accurate analysis, would be measured as opportunity costs. In effect, the government uses policy to allocate national resources from one use to another use (for example, buying a more costly fuel-efficient car rather than a cheaper car and a new television). People place different values on different uses of resources. Because we cannot measure social opportunity costs easily, we often use a proxy for social costs to greatly simplify the RIA: ***direct compliance costs to businesses***.

We do not do this because we think that business costs are more important than other kinds of costs. Costs to businesses are actually passed through to many parties: investors (as lower profits), employees (as lower wages), and consumers (as higher prices, lower quality, or less choice), and costs can be passed upstream or downstream of the producer directly affected. So measuring the cost to business in the RIA does not mean that we know WHO pays for government policy. In most cases, it is impossible or very difficult to find out who pays, since the distribution of costs through investors, workers, and consumers is done through many channels, and depends on the exact nature of competition for the product or service affected.

Government policies have three kinds of costs for businesses, discussed separately below.

Direct compliance costs, leading to increased costs of production. Costs of policy compliance—operating, transaction, and capital costs —reduce company profitability, investment, and real wages. Increased costs of production are divided into two categories:

- Administrative and other operating costs, such as labor costs
- Substantive costs, including capital costs such as buying new equipment,

The direct compliance costs to businesses of the policy option should be identified as precisely as possible. This is done by systematically and step by step going through the full process needed to comply with a solution, and listing the individual cost components for businesses. The result is a list of cost components, with an estimate of the number of businesses affected.

In many cases, it will be easy to estimate the monetary cost of these provisions. Where it is easy, this should be done even in the Standard RIA. Because it is unlikely that the policy team will have enough understanding of businesses to identify the full costs accurately, these costs will be validated in the consultation process, where businesses will be asked to agree or disagree with the analysis.

Reduced market opportunities for competition, innovation and expansion, leading to higher consumer prices or less consumer choice, lower values for business assets and fewer opportunities for higher returns. Examples: Regulations that close markets through monopolies or other barriers to entry such as trade barriers; slow innovation by prescribing technologies; or reduce business flexibility in labor hiring and firing.

These costs include all effects on the capacity of a business to compete, to expand into new markets, to innovate, and to grow or contract or exit (such as closing a plant). While it is very difficult to quantify these effects, it is essential to discuss them qualitatively if policy makers are to make the right decisions. Government policy might have low direct costs, but high indirect costs in reducing market opportunities.

This is the part of the RIA where impacts on trade can be explicitly integrated. Options that have an effect of reducing trade either through disproportionate costs on domestic or foreign firms, or through regulatory barriers to entry, or other discriminatory effects could be identified here. To make this part of the analysis operational, however, regulators need some kind of tool to facilitate the identification of these kinds of discriminatory or unnecessarily trade restrictive options. Such a tool could be a checklist of poor regulatory designs, or a risk assessment based on the consultation process, or another kind of practical quality check. Clearly, options that have such potential effects on trade impose additional costs that should be considered in the RIA, as well as the legal commitments of the country under the WTO.

The RIA should identify where the policy option will have any of the following effects, and then evaluate whether that effect will be significant for firms and consumers:

- Close markets through monopolies or create other barriers to entry
- Slow innovation by prescribing technologies or banning technologies
- Reduce business flexibility in labor hiring and firing
- Create barriers to imports or exports of goods or services
- Have disproportionate effects on imported goods or services
- Impose unequal compliance requirements on imported goods and services
- Make it harder to open plants, close plants, or re-locate plants.

This section on costs should conclude with a summary table that reports, either qualitatively or quantitatively, the costs of each option. At minimum, the cost impacts should be described by stating if the cost impact is small, medium, or large, and estimating the number of entities affected.

Here, in a summary table, the analyst could include an explicit criterion for trade impacts, which is not currently part of any national RIA. Rather than using legal requirements such as *nondiscrimination* or *least trade restrictiveness*, a simpler scoring mechanism could be used that

identifies high-risk regulatory designs that require more consideration from a trade perspective. This scoring mechanism should determine if less trade restrictive alternatives exist that can make an equivalent contribution to the achievement of the objective at the level of protection sought. For example, each option could be verified against the following simple checklist:

- This option does not impose different requirements for domestic and foreign producers.
- This option adopts international standards where they are equally effective.
- Where labels are required, they are harmonized with international standards or recognize equivalent labels used in other countries.
- This option adopts relevant elements of international systems of conformity assessment.
- Taking into account the previous bullets, this option is not more trade-restrictive than necessary to fill its legitimate objectives.

14. RIA Section 6: Publish the RIA for public comment, and respond to the comments in the revised RIA. Compare the comments of foreign firms with those of domestic firms to determine if there are impacts on these firms that are not felt by domestic firms.

The RIA will serve as an analytical document and as a consultation document. The traditional method of consultation—in which government simply released legal text and asked for feedback—should be seen as the minimum approach to consultation that often should be supplemented by additional information and more proactive approaches. Releasing legal text for comment was once seen as a good way to consult, but today is often ineffective in itself in communicating the decisions at stake, and clarifying the information that is needed. More proactive methods such as RIA are often needed to inform stakeholders of the real issues. For example, more information than legal text is needed to clearly communicate the issues at stake, the impacts, the options, and the reasons why the solution was chosen. This is one reason why the RIA should be completed in draft before consultation begins, and should be published for comment with the policy document such as the legal text. Good practices and stakeholder consultation are discussed separately in this report (see Chapter 4).

15. RIA Section 7: Identify the reasons why the alternative selected best achieves the policy objective. Apply a “trade impact” filter to eliminate any options that are not consistent with obligations under the TBT Agreement.

This is the key section of the RIA for policymakers, because the RIA will compare the benefits and costs for each option considered, and reach a judgment about the best option for the country. For all options, the analyst will present a summary overview of all positive and negative economic, social, and environmental impacts, then recommend a preferred option. It is critical that the RIA be clear, succinct, and neutral in the presentation of options, and state clearly the reasons for recommending the preferred option.

In general, the analyst will recommend the option that (1) either achieves an acceptable policy result at lowest cost, or (2) produces the highest net benefit. The analyst will not recommend any options where the costs seem disproportionate to the benefits. Where analysis is qualitative, the judgment about which option meets this test will be partly subjective. In this case, the analyst should compare

the options, and then explain as clearly as possible why the preferred option seems to deliver the highest benefits at the lowest cost.

At minimum, the analyst should compare the quantitative information that is required, including direct compliance costs on businesses and administrative burdens, and the measurable metrics the analyst used for major social and environmental impacts.

This is another area where the TBT principles can be introduced explicitly into the RIA. For example, the analyst should recommend only those options that meet TBT obligations for least trade restrictiveness, nondiscrimination, acceptance of international standards, and so forth. These kinds of criteria can act as a threshold filter. That is, any option that does not respect one of these TBT obligations could be eliminated before a cost-effectiveness of benefit cost or net cost test is applied to the remaining options. This positive burden of proof would require the analyst to demonstrate in the RIA, either quantitatively or qualitatively, that each option meets the relevant TBT obligations. Currently, no RIA in the APEC region uses TBT-related criteria to compare options.

Communication with non-technical readers is the goal of this section. The comparison of options should summarize and synthesize all of the analysis prepared, and present the information in a readable, accessible, and understandable format. Quantitative and qualitative information will be presented for each option, usually in a table format to make it easier to compare options.

Summary Table in the RIA

Options	Summary of Major Benefits	Summary of Major Costs	Does this option comply with TBT commitments?	Compare benefits and costs. Which option produces more benefits at minimum cost?
Option 1:				
Option 2:				
Option 3				

The analyst should reach a clear recommendation about which option produces the most benefits at lowest cost. Recall that in most cases, the recommendation will not to be to adopt a single option, but to adopt a combination or mix of options that together address the main drivers of the problem identified in Section 1.

4. Public Consultation Mechanisms

Public debate is the most important learning tool for government. Public consultation is the means through which public debate is channeled into policymaking. Stakeholder consultation is a structured, two-way flow of information between government and those affected by government actions that can be developed at any stage of the regulatory development, from identification of the problem to design of the instrument mix to evaluation of existing regulation.

But consultation is useless if it is not structured, relevant, timely, and produces information that is of sufficient quality. The importance of high-quality public consultation is widely recognized in both the regulatory reform and trade communities. According to the SCSC, its Members emphasize the importance of various transparency, openness and accountability mechanisms, processes and procedures to implement Good Regulatory Practice. Whatever public consultation mechanism is used, the result should be this:

Develop an effective, efficient, and practical means of channeling information from civil society into the policy making process during the development of new regulatory actions, collecting particularly information needed to understand the problem and choose solutions that achieve public policy goals at lowest cost to economic development and consumer welfare, and to ensure that affected interests are informed of possible upcoming regulatory actions.

4.1 Public Consultation Mechanisms and the TBT Agreement

Public consultation is, in principle, directly relevant to the elements of the TBT Agreement, but in practice consultation does not address many of the issues of the Agreement. Like RIA, a conclusion of this report is that the strategy of public consultation must be revised if it is to be more relevant to the TBT Agreement. In particular, given the difficulties of quantitative analysis of trade impacts, there must be more involvement of foreign producers and trade experts in the consultation process, and therefore in the RIA process, so that qualitative assessments can be done of the trade impacts of particular regulatory and non-regulatory options and designs.

Table 6 shows that public consultation is embedded in the TBT Agreement, because the Agreement requires Members to open up the policymaking process to other WTO Members, enabling interested parties who are not insiders or internal to domestic processes to work with government officials to participate. The benefits of this accrue to foreign firms as well as new entrants in the domestic market, and also to consumers, who benefit the most from market openness, but who are often invisible in the consultation process.

In fact, because of the need for specific knowledge that is often not held by domestic regulators, the public consultation process, properly designed, is probably more reliable than other means, such as RIA, in identifying negative trade impacts and introducing proposals for other options that reduce those impacts. As a quality control mechanism supporting the TBT Agreement criteria, public consultation is probably the most important part of the regulatory process.

In practice, the consultation must be much more robust in terms of introducing considerations of trade impacts into the policy process at an early stage. Consultation is often carried out too quickly or too late, is based on unclear consultation documents, or involves groups who are too narrow and do

not represent the interests of those who support market openness. When consultation is done according to good practices, that is, it is early, clear, and accessible, there are many examples of responses concerning trade impacts.

Table 6: Public Consultation and the TBT Agreement

How Consultation Promotes Implementation of TBT Agreement	Weaknesses in the Implementation of Consultation Processes
Elements of the TBT Agreement Relevant to Regulatory Design	
Nondiscrimination: Products imported from the territory of any Member [shall] be accorded treatment no less favorable than that accorded to like products of national origin and to like products originating in any other country.	
Members to ensure that "conformity assessment procedures are prepared, adopted and applied so as to grant access for suppliers of like products originating in the territories of other Members under conditions no less favorable than those accorded to suppliers of like products of national origin or originating in any other country, in a comparable situation." (Art. 5.1.1)	
Avoidance of unnecessary obstacles to trade: When preparing or applying a technical regulation, a Member must ensure that the regulation is not more trade-restrictive than necessary to fulfill the Member's legitimate objective. (Art. 2.2)	
The obligation to avoid unnecessary obstacles to trade applies also to conformity assessment procedures. They must not be stricter than necessary to provide adequate confidence that products conform with applicable requirements. (Art. 5.1.2)	
Alongside harmonization, the Agreement encourages Members to accept technical regulations that other Members adopt as "equivalent" to their own if these regulations adequately fulfill the objectives of their own regulations. (Art. 2.7)	
These TBT requirements are information intensive. That is, they require that the regulator to understand a great deal about regulatory design and trade impacts, and their effects on products and services that originate outside the borders. Many regulators do not have this kind of information and have no explicit mandate to consider them, public consultation is the most likely channel to bring that information into the policy process.	Public consultation must be structured clearly and involve the right interests in order to bring in this kind of detailed information. Many consultations are too brief, are not based on clear consultation documents, and involve too narrow a group to identify this kind of highly focused information.
Identifying stakeholders. A GRP is to draw up a list of stakeholders who should be included in the consultation process. In principle, this would permit the regulator to identify in advance regulatory proposals or designs with potential trade impacts, and to ensure that the consultation complies with TBT notification requirements and includes both domestic and foreign stakeholders interested in market openness.	In practice, most consultations occur in an ad hoc way without clear identification of major stakeholders. In these cases, it is critical that the regulator use the most accessible consultation method (publication for comment on the Internet) so that stakeholders can identify their own interests.
Elements of the TBT Agreement Relevant to Transparency	
To help ensure transparency, the Agreement requires Members to publish a notice at an early stage and notify other Members through the WTO Secretariat when it proposes to adopt a technical regulation or conformity assessment procedure and to include in the notification a brief indication of the purpose of the proposed measure. Members must allow "reasonable time" for other Members to comment on proposed technical regulations anPublic consultation with affectedd conformity assessment procedures, which the TBT Committee has recommended to be "at least 60 days" (G/TBT/1/Rev.10), and take public consultation with affected comments it receives from other Members into account. (Art. 2.9 and 5.6)	
Public consultation methods can be used to notify other members, and the reasonable time for comment required by the TBT Agreement can be easily incorporated into	In practice, notification procedures are usually quite separate from public consultation procedures. They occur through different channels, and are targeted at

How Consultation Promotes Implementation of TBT Agreement	Weaknesses in the Implementation of Consultation Processes
standard consultation procedures.	different groups. This increases the risk that trade-related impacts contained in regulations might not be identified by groups affected.
Elements of the TBT Agreement Relevant to Enforcement	
Mutual recognition of conformity assessment. Mutual recognition of conformity assessment: The Agreement requires each Member to recognize "whenever possible" the results of conformity assessment procedures (e.g. test results or certifications), provided the Member is satisfied that those procedures offer an assurance of conformity that is equivalent as its own. (Art. 6.1)	
Public consultation with affected businesses is an efficient way to identify opportunities trade facilitative approaches to conformity assessment. In principle, businesses should be able to identify duplicative or overlapping conformity assessment requirements.	Public consultation may not reach the right businesses, or the consultation may not be structured clearly enough to permit affected businesses to identify issues related to conformity assessment.

4.2 Supporting the TBT Agreement: Good Practices in Public Consultation

Consultation is quite difficult to do well, because it involves engaging a number of different interests in regulatory processes that are moving quickly, that are focused on specific issues, and that must weigh many competing policy objectives and impacts. Because of its importance for the quality of regulation as well as for values of transparency, public participation, and accountability, considerable work has been done internationally in developing GRPs for public consultation. And governments themselves have done considerable work in experimenting and innovating with different consultation methods in order to improve the results and reduce the costs.

Over the past few years, public consultation has become simultaneously *more multilayered*, which allows it to become more open, and *more targeted*:[27]

- *More open* in the sense that RIA is pushing consultation to occur sooner, more systematically, and more transparently. For example, the European Commission published in 2002 a consultation communication[13] that lays out minimum standards of consultation. The United Kingdom's Cabinet Office reports that "We consult more extensively now than ever before. And, in the vast majority of cases, consultation periods are now at least 12 weeks long, enabling more time for responses and more people to be involved."[28] In the United States, the United Kingdom, and the European Commission, draft RIAs are now published on Internet sites for maximum public access.
- *More targeted* in the sense that some forms of consultation are structured to link information needs with particular stakeholders. Consultation with key stakeholders has become more structured in several countries, a welcome development given the difficulty of eliciting high quality information from the public. These structured approaches include the use of focus groups (Victoria State). The Victoria State RIA Guide (2005) states that preliminary

[27] These opening paragraphs are adapted from Scott Jacobs (2006).

[28] The UK consultation code is at http://www.cabinetoffice.gov.uk/regulation/consultation/documents/pdf/code.pdf

consultation may occur through focus groups and briefing sessions with key stakeholders before deciding that a regulatory proposal is the most appropriate response to an issue.

The newer multilayered consultation strategies—based on minimum and consistent standards but allowing more flexible adaptation for more detailed information—seem to be more effective and accessible than earlier consultation strategies based on standardized consultation methods. From the perspective of the TBT Agreement and the trade community, the multilayered approach preserves accessibility while providing opportunities for much more targeted and technical information to be received.

The GRPs recommended internationally and included in this document are as follows:

- Require a minimum standard of consultation for all regulatory proposals that affect citizens or businesses.
- Plan the consultation in advance.
- Establish procedures that provide all public stakeholders with an early and meaningful opportunity to comment on regulatory proposals. Consult widely throughout the process of developing a new policy or revising an existing policy.
- Identify stakeholders: Identify all of the stakeholder groups and individuals that should be consulted.
- Provide plainly written, clear, and concise draft measures for public comment with adequate time for review so that stakeholders and government can have a meaningful dialogue that leads to improved regulatory outcomes. Prepare the consultation document. Use the RIA to clarify key questions.
- Ensure that regulators are held publicly accountable for how they consider public comments. Integrate the evidence into the final RIA, and the recommendations. Provide feedback to stakeholders.

16: Require a minimum standard of consultation for all regulatory proposals that affect citizens or businesses.

Consultation should not be a discretionary part of regulating society. The government should commit to a consistent level of transparency, with consultation a routine part of the regulatory process as drafting. A recent survey across the APEC area found that consultation is quite unpredictable. Many regulators in the APEC region have enormous discretion about how they consult, who they consult, when they consult, what information they collect in consultation, on what documents they consult, and how they respond to consultations. Both the OECD and the APEC-OECD Checklist call for predictability and transparency in the consultation process, at the same time that both acknowledge that flexibility is needed so that the regulator can adjust the consultation to the specific context. A balance is clearly needed. On sum, it seems that the balance has not yet been reached. Regulators appear to have too much discretion in applying even minimal standards of good consultation, and there is not enough predictability for stakeholders in knowing how they should engage the regulatory process.

This lack of predictability is particularly damaging to outsiders, such as foreign firms and new market entrants. When the consultation process is unpredictable, firms close to the government are much

more likely to participate. This creates the potential for consistent bias against market entry, open borders, and competition.

Just as other market actors would benefit from a more consistent approach, so would those who support strengthening the implementation of the TBT Agreement. That approach should be very widely accessible to reduce the costs of consultation for outside interests. It also should be low-cost so that it can be applied repeatedly in the day-to-day pressures of policymaking.

There is a good standard for such a method. Governments have increasingly used publication for comment on the Internet as the minimum standard for consultation. This method has two major advantages: it provides wide access and it is extremely cost-effective. This form of consultation provides the widest access to economic actors, such as those engaged investment and trade. Publication on the Internet for comments is supplemented as needed with other more proactive forms of consultation such as hearings, focus groups, advisory committees, expert groups, and so forth.

To be effective, universal publication for comment should be required, through a law or a central government decree, for all regulatory proposals affecting citizens or businesses. Accessibility would be enhanced if this publication occurred on a central Web portal, rather than on multiple ministerial sites.

Box 6. GRP: Central Web Portals for Regulatory Consultation

Examples of centralized consultation Web portals in APEC economies

- **AUSTRALIA**: Business consultation website (www.consultation.business.gov.au).
- **CANADA**: Pre-publication is in the Canada Gazette, Part I (http://canadagazette.gc.ca/index-e.html).
- **HONG KONG**: A business consultation e-platform (http://www.gov.hk/en/theme/bf/consultation/calendar.htm) has been established under the GovHK portal to provide a channel for the business community to access to relevant business consultation information on new regulations, administrative measures and procedures that would impact on business and to provide their comments on the proposals directly to the government bureaus/departments concerned.
- **JAPAN**: An e-government portal site has a special column of 'comments' where comments can be posted and reviewed. (http://www.e-gov.go.jp/)
- **MEXICO**: Website of COFEMER used for comment on draft regulations is at http://www.cofemer.gob.mx/BuscadorAnteproyectos/busqueda.aspx?estatus=2
- **UNITED STATES**: Comprehensive electronic regulatory dockets at www.Regulations.gov.

17. Plan the consultation in advance.

Like all quality controls, consultation takes time. Advance planning will reduce the costs and time needed, while ensuring that consultation is early and meaningful. Advance planning of the consultation has several advantages:

- In well-structured consultation processes, in most cases, a regulator will consult at the same time on both a draft policy and a draft RIA. Advance planning will be needed to coordinate the two procedures without losing valuable time and slowing policy development.
- Advance planning prevents unacceptable delays. If a regulator plans the policy development in advance, consultation should not unacceptably slow down the policy process. Regulators who not plan in advance are usually under pressure to "cut corners" by reducing the consultation.

- Advance planning enables early consultation. The timing of the consultation is very important to its value. If it is done too late, such as after the Minister has reached a decision on a draft, the consultation risks becoming a façade, in which the views of stakeholders do not really matter to the final decision. If this occurs, stakeholders will rapidly discredit the consultation activities of the institution, and even legitimate consultations will not be trusted. Early consultations, at a time when there is flexibility about whether to act and how to act, generate the best results in the value of the consultation and the good will of stakeholders.

Good practice for advance planning means that a regulator should develop, either formally or informally, a consultation plan that includes the following elements:

- ***The consultation effort should be proportionate to the importance of the issue***. As for the RIA, the regulator should begin to describe the importance of the issue in terms of the number of people affected, the significance of the social, environmental, and economic impacts, the political importance, the risks and complexities, and other relevant issues. This will help determine the scope and type of consultation needed. At minimum, for important issues, the regulator should plan for more than 30—preferably 60—days of Internet publication.
- ***Set clear objectives for the consultation***. What should the consultation achieve? The consultation can be used to ensure that opposing interests are balanced, to collect information not available to the public sector (such as compliance costs or innovative technologies that businesses can use to comply), or to create consensus around controversial issues (by creating fora where different views can be discussed). The regulator should know well in advance what would be a successful consultation.
- ***Manage the timing and the timeliness.*** Advance plans should developed with as much detail as possible, including the schedule for the policy development process that identifies the phases and schedule of consultation. Of course, the schedule might change due to unexpected events, but the consultation should be explicitly scheduled from the very beginning so that it is not forgotten or downsized when time gets short.
- ***Budget the consultation process.*** Internet publication is very cheap, but other forms of consultation will require additional financial resources. Surveys, seminars, flyers, and other opportunities for feedback should be budgeted well in advance so that the financial constraints are understood and do not slow down policymaking. It is important not to underestimate the amount of resources—people, money and time—that a consultation could consume. This holds for both the public body running the consultation and for those consulted. Each phase takes time and effort: planning and running a consultation, hiring consultancy expertise if required, analyzing submissions received, publication and dissemination of results and evaluating the consultation.[29]
- ***Adapt and mix consultation mechanisms according to the RIA process.*** As discussed below, the regulator will integrate the consultation into the RIA process by choosing consultation methods that are most likely to produce the kind of information needed to complete the RIA. At the very early planning stage, the regulator is unlikely to understand in much detail the kind of information needed to complete the RIA, but should be able to begin mapping out

[29] Ireland Department of the Taoiseach (2005), Reaching Out: Guidelines on Consultation for Public Sector Bodies, p. 5.

whether the RIA will need specific sectoral information, demographic information, health and safety statistics, or benchmarks and experiences from other countries. The earlier the regulator begins to understand the data needs in the RIA, the earlier effective consultation methods can be chosen.

18: Establish procedures that provide all public stakeholders with an early and meaningful opportunity to comment on regulatory proposals. Consult widely throughout the process of developing a new policy or revising an existing policy.

In any complex regulatory proposal, the regulator will need to adapt and mix consultation mechanisms according to the capacities of stakeholders. Even at an early stage, the regulator should be able to determine if the policy will affect significant numbers of small businesses, or rural interests, or consumer costs or choice. Each of these groups typically has a difficult time responding to online consultation, and hence a more fully developed consultation plan that includes other opportunities for input might be needed. Without sufficient advance planning, it is difficult to respond adequately to the needs of such stakeholders.

The minimum standard for consultation is recommended to be online publication for 30 and preferably 60 days for all policy initiatives—whether new or revisions to existing policy. But there are many other methods of consultation that can be used. Annex B contains a description of several other consultation methods that should be considered as part of a multilayered approach. The choice of method will depend on the needs and expectations of stakeholders, the time and resources available, and the skills of the regulator. Figure 2, below, compares several common consultation methods according to criteria of consultation quality.

From the perspective of the trade facilitative approaches, online publication on the central Web portal is likely to be the most effective means of discovering opportunities for consultation. But communicating complex solutions to the regulator might require more dialogue. For example, advocating conformity assessment solutions might require more detailed information, communications between regulators in different countries, and in general more opportunity to interact. In these cases, the trade community would want supplementary methods of consultation in addition to online publication.

For the trade community, another key issue in the selection of methods is accessibility. More open and accessible procedures are less vulnerable to capture, and more likely to bring in high quality information such as on trade impacts. A key concern is the possibility of the selective provision of data by stakeholders seeking to promote their own sectional interests. Open forums with media present tend to be more balanced than small closed groups, although small groups will provide more intense discussion and better detailed understanding. More open consultation mechanisms can be one means of guarding against biased information, both by increasing the likely number of data sources and by subjecting material submitted by one interested party to scrutiny and comment from other groups. In general, the TBT principles will be supported by more accessible methods.

Figure 2. Consultation Methods Compared

Method	Speed	Promoting dialogue	Providing relevant Information	Representative views (openness)	Quantitative views	Qualitative views	Hearing unorganized interests
Publication on central Web portal	****		****	**	**	***	**
Opinion surveys	*	*	**	***	****		*
Business surveys and questionnaire-based surveys	****	*	*****	****	*****	*	**
Advisory Committees	***	****	***	***	*	***	*
Face-to-face interviews	*	**	***	*	*	****	***
Focus Groups/ Citizens' Panels	**	****	***	***	**	***	***
Test panels	**	****	***	**	*	***	***
National Fora	*	**	**	***	**	****	**
Open Days / Road Shows/Exhibitions	*	**	****	*	*	*	*
Model Enterprises	**	***	****	*	*	***	***

Scoring: * Reasonable ** Good * Very good **** Excellent**

Source: Adapted and expanded from Ireland Department of the Taoiseach (2005) Reaching Out: Guidelines on Consultation for Public Sector Bodies, p. 45, which is adapted from the UK Cabinet Office publication, How to consult your users, 1998.

19: Identify stakeholders: Identify all of the stakeholder groups and individuals that should be consulted.

The consultation should never exclude anyone with valid interests. In conducting consultations, officials should recognize and understand the multiplicity of stakeholders with different interests, points of view, and expectations concerning the nature and content of a proposed policy. From a trade perspective, both domestic and foreign interest should be given a chance to participate. Broadly defined, stakeholders are:

- Individuals, groups, or organizations whose interests are affected by the issue or those whose activities strongly affect the issue. Stakeholders might include other levels of government and those from third countries;
- Those who possess information, resources and expertise needed for the impact assessment, strategy formulation, and implementation, and
- Those who control relevant implementation instruments.

Plainly, this definition of stakeholders includes the trade community, not only from the point of view of those whose interests are directly affected, but those who control implementation resources such as conformity assessment, and those who possess specific expertise such as assessing trade restrictiveness and potentially discriminatory provisions. Each of these viewpoints justifies the inclusion of the trading community into most consultation opportunities.

A key issue for the trade community is the representativeness of stakeholders. Do consulted parties represent all important interests or do they represent a narrow set of interests? If a regulator consults too narrowly, he risks being captured through consultation. The information used to design the policy will represent, not the interests of the country as a whole, but the interest of specific groups. One reason for diversifying the stakeholders who are consulted is to reduce the risk of capture and bias in public policy decisions. One way to help ensure that groups are representative is to consult with umbrella organizations that are already organized, for example, national trade associations or consumer groups. A strategy that the trading community might follow is to organize specific trade-related consultation capacities in key stakeholder organizations.

20. Provide plainly written, clear, and concise consultation documents, including the RIA and draft text if prepared, for public comment with adequate time for review so that stakeholders and government can have a meaningful dialogue that leads to improved regulatory outcomes. Prepare the consultation document. Use the RIA to clarify key questions.

One of the critical issues for the success of public consultation is developing consultation materials that enable people to actually understand the issues at stake. Clarity is the most important quality of consultation documents. In all cases, if stakeholders are to respond effectively, the regulator must be clear about what the proposals are, who may be affected, what questions are being asked and the timescale for responses. People should be able to work out quickly whether a consultation is relevant to them.

Probably the most common and least effective form of consultation in promoting a meaningful two-way dialogue is circulation of only a draft legal text for comment, often to a selected group such as an advisory body. In essence, this approach says to stakeholders that the government has decided but it wants to do, but that stakeholders who see the text are welcome to disagree with it. The reason that this approach is ineffective is that very few people in society can read a legal text and understand the underlying consequences, much less understand the options that were considered and the reasons for the government's selection of this particular solution. The consultation become simply a redrafting exercise in which various stakeholders suggests different legal text. This form of consultation is often basically a form of intimidation because it is clear that the government has already defending its preferred approach.

If a consultation is to involve the real issues—that is the nature of the problem, the choice of solutions, the comparison of solutions using clear criteria, and the selection of a preferred solution—then it must occur on the basis of much clearer and more comprehensive information. It should be clear that much of the information needed for consultation is actually the information also in the RIA.

This is why, in many countries, RIA has become a cornerstone of the stakeholder consultation process on regulations. Canada's Treasury Board Secretariat states that "encouraging stakeholder consultation early in the process is perhaps the most important feature of the RIA programme."[30] The minimum standards for publication of RIA open up access by preparing the public to participate more effectively, while the more structured and tailored forms permit more intensive dialogue and better information collection.

As noted, the RIA is in many countries the main consultation document. In fact, as Annex A shows, public consultation is integrated into the RIA process, and the results of consultation are reported in the final RIA.

When the RIA is first published for comment, in Section 6 of the RIA, the regulator should, as part of consultation, identify the questions that stakeholders should answer. Write the consultation materials for non-technical readers. Be clear about what the proposals are, who may be affected, what questions are being asked and the timescale for responses.

This section could, for example, ask for feedback and information to validate and strengthen the analysis of the following issues:

- Problem definition: Is the problem correctly defined and understood? Is the baseline option reasonably projected into the future?
- Performance goals: Are the performance goals appropriate?
- Options: Are the identified options realistic and reasonable? Should other options be considered?
- Costs and benefits: Does the RIA identify all important costs and benefits of the options? What other costs and benefits should be considered? Can data be submitted to be more precise about the magnitude of the costs and benefits, and the comparisons of the options?
- Should other impacts, such as distributional impacts, be added to the analysis?

Asking more specific questions to elicit more specific information is a good technique. The consultation process provides an excellent opportunity for the RIA analysts to collect information held by non-government sources, and at low cost. The more specific are the questions, the more likely that specific information will be submitted. Identify major uncertainties in this section, as well, to generate a discussion of the assumptions that are most justified.

21: Ensure that regulators are held publicly accountable for how they consider public comments. Integrate the evidence into the final RIA, and the recommendations. Provide feedback to stakeholders.

Ensure that regulators are held publicly accountable for how they consider public comments. Analyze responses and integrate responses into the Impact Assessment. Organize the evidence in the comments by the goals of the policy initiative, the key questions that were asked in the consultation, and the options proposed in the impact assessment. Integrate the evidence into the final RIA, and the

[30] Treasury Board Secretariat, Website (undated) Number 14: Regulatory Reform through Regulatory Impact Analysis: The Canadian Experience, at http://www.tbssct.gc.ca/pubs_pol/dcgpubs/manbetseries/VOL14-1_e.asp

recommendations. Provide feedback to stakeholders. Give feedback regarding the responses received and how the consultation process influenced the policy.

This step has been built into Section 6 in the standard RIA format (Annex A). If the RIA is being finalized after consultation, this section will include the following:

- Indicate which groups of stakeholders have been consulted, at what stage in the RIA process and how (public or targeted consultations, and if targeted, why?)
- Summarize the main results and comments received, and how this input has been taken into account or why it has not been taken into account.
- Indicate if the minimum standards of consultation have all been met, and, if not, why not?

One way to ensure that the concerns of the trade community are taken into account is to compare the comments of foreign firms with those of domestic firms to determine if there are impacts on these firms that are not felt by domestic firms. If the concerns of foreign firms are different in kind or scope than the concerns of domestic firms, this might indicate that the regulation has different effects on each.

5. Implementing GRP in Support of the TBT Agreement

This reference document lays out the core GRPs that have been recognized as essential to the production of "better regulation." These core GRPs are strongly supportive of the goals and the specific TBT Agreement obligations. They support market openness in regulatory regimes through a variety of channels, including

- Better coordination with trade offices internal to the government to improve the consistency of government action with TBT commitments;
- Identification and analysis of potential trade impacts and opportunities for lower cost of regulation through options such as recognition of conformity assessment; and
- Improved accessibility to regulatory proposals and more constructive opportunities for dialogue with regulators on trade facilitative options.

The GRPs in practice, however, often fall short of their potential in encouraging trade facilitative approaches to regulation and avoiding unnecessary obstacles to international trade. These weaknesses are identified throughout this reference document, and solutions to some of these weaknesses are proposed. Small but significant changes to the implementation of the GRPs can significantly enhance implementation of the TBT Agreement in the day to day process of government regulation. In that sense, this reference document should be seen as a set of trade-enhanced GRPs that are entirely compatible with the goal, spirit, and design of GRPs as recommended by a range of international organizations.

5.1 Summary of GRPs

The recommended adjustments to GRPs to promote respect for TBT principles and obligations are summarized below:

Internal Coordination of Regulatory Quality

Governments should develop, use and strengthen a set of quality principles for government regulation, and should explicitly include trade friendly principles based on the TBT Agreement, among other sources. The following operational principles would strengthen compliance with the obligations of the TBT Agreement:

- Domestic and foreign producers shall be treated equally in the design and application of regulations.
- Impacts on trade shall be the minimum needed to attain a clearly defined policy objective.
- Performance standards should be used rather than design standards.
- Relevant international standards shall be used unless there is evidence that they would not be effective or appropriate in achieving a defined public policy goal.
- The central coordinating functions should be empowered by including trade related principles in the overarching regulatory principles of government, and should draw on the expertise of trade offices by including them routinely in the processes of developing, evaluating, and revising government regulations.

- Given the difficulty of internal coordination between competent authorities, including between trade policy and regulatory authorities, in fast-moving regulatory procedures, a good practice that should be considered is explicitly including "coordination with trade and standards authorities" in the mandate of the regulatory management function.
- Include trade authorities in the review of draft regulatory plans and the identification of potential negative effects on trade that should be considered in regulatory design, stakeholder consultation, and the RIA.
- In the regulatory agenda, identify in the description of the proposed action whether there are potential trade effects.
- When organizing a program of regulatory review, the explicit inclusion of review criteria reflecting impacts on trade, investment, or competition would increase the benefits of the reviews.
- Proactive inclusion of the trade community in the stakeholder consultations for regulatory review would be a useful way to identify existing trade problems such as *de facto* discrimination or less trade restrictive solutions.
- More systematic and effective inclusion of trade, standards, and competition authorities into at least major regulatory decisions could probably be organized at low cost.
- It may be that training of trade and competition authorities is needed to increase their capacity to assess regulatory instruments, and to identify and recommend more trade and competition friendly alternatives.

Regulatory Impact Assessment

- In the developing and adopting a RIA handbook, regulators should be advised and trained in how to consider the following kinds of criteria in the RIA:
    - — Regulatory designs with potential discriminatory impacts
    - — Use or recognition of international standards
    - — Compliance strategies that explicitly include conformity assessment costs, including mutual recognition, use of international systems of conformity assessment and other trade facilitative approaches.
- Options that have an effect of reducing trade either through less favorable treatment to foreign firms, or through regulatory barriers to entry, or other potentially discriminatory effects or unnecessarily trade restrictive effects should be identified in the assessment. To support better analysis operational, however, a tool could be developed to facilitate the identification of these kinds of impacts. Such a tool could be a checklist of poor regulatory designs, or a risk assessment based on the consultation process, or another kind of practical quality check.
- Analysts should recommend only those options that meet TBT commitments for least trade restrictiveness, nondiscrimination, acceptance of relevant international standards where appropriate and effective, and so forth. These kinds of criteria can act as a threshold filter. That is, any option that potentially violates one of these TBT criteria could be eliminated before a cost-effectiveness of benefit cost or net cost test is applied on the remaining options. This positive burden of proof would require the analyst to demonstrate in the RIA, either quantitatively or qualitatively, that each option meets the TBT criteria for quality.

Public Consultation

- To ensure access to all market actors, universal publication for comment should be required, through a law or a central government decree, for all regulatory proposals affecting citizens or businesses. Accessibility would be enhanced if this publication occurred on a central Web portal, rather than on multiple ministerial sites.
- Trade experts and authorities who control implementation resources such as conformity assessment, and those who possess specific expertise such as assessing trade restrictiveness and potentially discriminatory provisions should be included in most consultation opportunities.
- The concerns of foreign firms should be compared to those of domestic firms to see if there are systematic differences that indicate potentially different impacts on the two kinds of firms.

5.2 Implementing GRPs in APEC economies

A 2012 report prepared for APEC, "Baseline Study of Good Regulatory Practices in APEC Member Economies," found that each of the 21 economies has already made progress in recent years in applying GRPs in domestic regulatory activities. Some economies have made substantial and rapid progress. Other economies have focused on smaller reforms, such as targeted regulatory reviews in high-priority areas, but without yet institutionalizing GRPs into the regulatory process.

The benefits of GRPs to economic growth will not be gained from isolated, episodic, ad hoc reforms. They will be gained only through sustained, multi-year reforms that institutionalize better means of regulating into the machinery of government. A successful regulatory reform program in economic terms probably includes a mix of components, including cost-cutting aimed at one-time reductions in existing costs, and regulatory governance tools such as regular reviews, regulatory quality principles and oversight, better forms of RIA and consultation, whicih are aimed at sustaining lower costs, reducing policy risks, improving resource allocation, and building a regulatory framework for socially beneficial and trade friendly growth.

For countries just starting out in implementing such a program, what are the priorities for future action? How would the country begin? This document provides some advice for specific GRPs such as RIA. But is RIA the right "early" initiative? A recent report on regulatory governance by the World Bank[31] found that some systemic reforms, such as consultation, appear to be either easier or more adaptable than other reforms, such as RIA. A sequenced approach that focuses step by step on a multi-year program, as defined in a national regulatory policy, would be better than the current scatter-shot approach, where some GRPs are adopted and others are not, without clear rationale. A clearer sequence and the relation of specific tools to specific outcomes would help reformers design a more context-specific program. That suggests that GRPs should be included as part of national strategies such as economic development plans.

Obviously, some kind of coordination and organization infrastructure is needed, and the OECD has suggested that interministerial committees and other ad hoc institutions can be used at early stages to

[31] Scott Jacobs and Peter Ladegaard (2010) Regulatory Governance in Developing Countries, Investment Climate Advisory Services/World Bank Group, Washington, D.C. at http://www.fias.net/ifcext/fias.nsf/Content/BRG_Papers

manage a reform program. At a later date, they can be replaced by permanent management systems as in the countries with the most advanced regulatory quality systems. The legal infrastructure is more contextual, since APEC economies have used a wide variety of legal and management instruments to implement GRPs. In some countries, consultation is a legal requirement enforced by the courts, and in others, it is a management requirement that can be waived as needed. In general, it is important to adopt GRPs as a commitment across the government. Voluntary compliance by regulators facing tight time and resource constraints is almost always ineffective. GRPs must be implemented within a general framework that, whether the reform is limited or ambitious, is mandatory and implemented accountability.

OECD and World Bank work suggest, for APEC and other economies, two main priorities for developing GRPs.

- ***Transparency.*** The OECD and others have found that transparency is the single most important quality characteristic of regulatory systems, since transparency helps correct many of the underlying problems that lead to regulatory failures such as excess cost, poor regulatory design, high regulatory risk, corruption, and other problems. Focus on transparency is particularly interesting since transparency tools seem to be quite cost-effective. The APEC region offers experience with a range of tools that can be considered.
- ***Consultation.*** Adoption of minimum standards for a quality consultation system would be a good first step. Such standards could include good practices such as development of a central Web portal, publication of RIAs and draft text for at least 30 to 60 days, a clear mandatory scope for consultation including legislation and important subordinate regulations, and a requirement for written feedback after consultation is completed. Many different methods of consultation are used in the APEC region, and some work to be done on assessing the best designs and practices for a range of methods.

As noted above, because of the need for specific knowledge held by affected interests, the public consultation process, properly designed, is probably more reliable than other means, such as RIA, in identifying negative trade impacts and introducing proposals for other options that reduce those impacts. As a quality control mechanism supporting the TBT Agreement criteria, public consultation is probably the most important part of the regulatory process, and should be an early and high priority for action.

Forward planning. When introducing quality control into a regulatory system, the forward planning system is a key component. Forward planning requires the ministries to organize themselves, to plan ahead for consultation and other quality inputs, to provide information to the center of government and to stakeholders on their plans, and to empower managers at the center of government to set priorities, to coordinate between regulatory bodies, and to insist on quality control measures to be done during the development process. APEC offers experience with annual legislative and regulatory plans of various kinds. Again, publication on the Internet is cost effective and greatly improves transparency.

Regulatory review. Another low-cost, high-return investment would be in agreeing on more effective regulatory review mechanisms. In developing and transition countries where regulatory environments create high barriers to market entry and competition, moving to market-friendly regulation seems to

significantly add to growth performance, as in the case of China and India.[32] Regulatory reforms in South Korea that eliminated almost half of government regulations that created barriers to trade and investment were predicted to boost real GDP growth by 8.57 percent over 10 years.[33] Least developed countries, particularly in South Asia, have the least business-friendly regulations covered by the *Doing Business* indicators, and therefore presumably the most to gain from regulatory reform.[34]

APEC economies offer many examples of effective and ineffective review mechanisms. Again, some priority-setting is needed. A focus on systematically reviewing and revising trade impediments, perhaps starting with those identified in the specific trade concerns inventoried by the WTO Trade Committee, might be a good start across APEC economies.

[32] Crafts, Nicholas (2006), "Regulation and Productivity Performance." Oxford Review of Economic Policy, Ox-ford University Press, Vol. 22, No. 2, p. 197.

[33] Byung Ki Ha (1999), The Economic Effects of Korea's Regulatory Reform (in Korean), KIET, Seoul. (in Korean).

[34] Djankov, S., McLiesh, C. and Ramalho, R. (2006). Regulation and Growth, World Bank, Washington, March.

Annex A. Standardized RIA Forms

Regulatory Impact Assessment (RIA) should be carried out in a structured way, that is, a standardized approach that consistently collects and presents a core set of information for every regulation.

Below are forms that could be used to carry out RIAs. The first form, the Planning RIA, is itself a complete RIA. This RIA is done at the stage of the regulatory or legislative agenda or other early planning process. The 2-3-page form (once completed) presents a basic set of information that allows ministers or other decision-makers to decide if a legislative a regulatory proposal is in accord with the priorities of a government, and is sufficiently well justified to invest in the complete RIA, drafting, and consultation processes.

The second form, the Standard RIA, would summarize the actual RIA done before or during the drafting process. The actual RIA would be normally 10-20 pages. This reform will be presented on top of the RIA, and would accompany every proposal submitted forward to the minister, to the Cabinet or the Government, and to the Parliament. This summary form and the full RIA underneath would also be used during the consultation process.

This form also functions as the consultation planning documents, and the consultation reporting documents, in which regulators report on the conclusions and their reactions to the consultation process. This is an example of how good consultation practices are thoroughly integrated into the RIA process to support the quality of both the analysis and consultation process.

Planning Regulatory Impact Assessment (RIA) Form*

***Note: Attach to this form as many attachments as are needed to provide additional evidence**

Ministry /Agency: xxx	**Title:** xxx
For inclusion in Legislative Agenda or Regulatory Agenda	**Date:** xxxx
Contact for questions: Name and email of contact person	**Telephone:** xxxxx

1. **Briefly define the problem or issues that justify government action. What are the causes of the problem?**

2. **Goals: State the goals of government action in concrete and measurable terms, with a clear timeline for achieving the goal.**

3. **What possible solutions will be considered when drafting the legal instrument? Include at least one non-regulatory option. Always include a performance-based option as an alternative to a "command" regulation.**

4. **Benefits: Describe qualitatively any significant potential economic, social and environmental benefits of taking action. How do the expected benefits compare to the government goals?**

5. **Costs: Describe qualitatively any significant potential economic, social and environmental costs of taking action. State if costs will be minor or major and who will be affected (such as businesses or government).**

6. **Summarize the key questions for consultation. Identify the key stakeholders who will be significantly affected by this issue. State the planned schedule for consultation.**

Signature of responsible official

This impact assessment reasonably explains the possible impacts of the proposed action.

_____ **Date:**

Standard Regulatory Impact Assessment Summary Form

***Note: This summary form should be attached to the RIA – it does not replace the RIA.**

Ministry /Agency: xxx	**Title:** xxx
Stage: Before consultation/after	**Date:** xxxx
Contact for questions: Name and email of contact person	**Telephone:** xxxxx

1. **Problem Definition. Briefly define the problem or issues that justify government action. What are the causes of the problem? Will the problem get better or worse without government action?**

2. **Goals: State the government goals of the proposed action in concrete and measurable terms, with a clear timeline for achieving the benefits.**

3. **Options. List and briefly describe the options that were considered to solve the problem. Include at least one non-regulatory option. Always include a performance-based option as an alternative to a "command" regulation.**

4. **Benefits: For each option, describe, using a measurable metric, any significant potential economic, social and environmental benefits of taking action. Quantify in dinar/year the direct economic benefits for businesses. Use consistent measures for each option so that they can be easily compared. How do the expected benefits compare to government goals.?**

5. **Costs: For each option, describe, using a measurable metric, any significant potential economic, social and environmental costs of taking action. Quantify in dinar/year the direct economic costs for businesses and implementation costs to the government. Assess qualitatively other economic costs, such as effects on innovation, market opportunities, and competition. Use consistent measures for each option so that they can be easily compared.**

6. **Consultation: If this RIA is prepared before consultation, summarize the key questions for consultation. Identify the key stakeholders who will be significantly affected by this issue. State the planned schedule for consultation.**

   If this RIA is prepared after consultation, summarize key comments and responses.

7. **Recommendation: What is the recommended policy and why will it produce more benefits at lower cost than other options? How do the expected benefits of the recommended action compare to the government goals set out in Section 2?**

7A. What are the costs to government of the recommended policy? Currency/year _____

8. **The RIA concludes that the proposed policy can be enforced by government bodies. Yes/ No**

9. **The RIA contains a monitoring strategy to determine if the policy is effective after adoption. Yes/No**

<u>Signature of responsible official</u>

This impact assessment reasonably explains the impacts of the proposed action. The recommended action is the most effective solution.

_____ **Date:**

Annex B. Stakeholder Consultation Methods and the TBT Agreement[35]

The strengths and weaknesses of several common consultation methods are discussed below, with reference to the TBT Agreement. These methods provide different degrees of access and information content, and are useful for different kinds of regulatory issues. For example, publication for comment (preferably on the Internet) provides the widest possible access that is useful for non-domestic interests, while other methods such as opinion surveys and focus groups can provide more focused input. Consultation methods are of two types, passive or proactive.

Passive consultation methods: Methods in which the public institution asks for information or comments, and stakeholders choose who will respond and what information to provide. Passive consultation typically is structured as a question-and answer format, in which the public sector asks the public at large, members of the public respond as they wish, and then the consultation is completed. Passive consultation allows broad access, but does not permit deeper discussion and might be dominated by highly organized interests. The notification requirements of the TBT Agreement are an example of passive consultation.

Proactive consultation methods: Methods in which the public institution targets specific groups and participates in a forum for discussion and dialogue. Pro-active consultation is structured to target specific groups or issues, and to elicit dialogue, discussion, and give-and-take in order to develop a deeper understanding of the issues. These methods collect more detailed information, but are smaller and do not permit wider access, so might leave out important interests. Pro-active methods are commonly used with important RIAs because these methods are capable of generating more targeted and detailed data.

Passive Consultation Methods

Publication for Comment (notice and comment), Such as Publication on a Web Portal

Publication for 30 to 60 working days on a government Web portal is a minimum consultation requirement used by many countries. This is preferably done on a central web portal, rather than individual ministry sites, to reduce transactions and search costs for stakeholders, and to improve consistency and compliance with publication requirements.

Strengths

- Fast – the only preparation needed in advance is preparation of the consultation materials.
- Cheap for the government. Every ministry in every country can afford a website.
- Very open and accessible. Opens access for the entire world.
- Can be combined with other efficient means of communication. For example, the ability to submit comments electronically reduces costs and delays and allows organized groups to

[35] This annex is adapted from earlier work by Jacobs and Associates and published in various forms.

operate more effectively in formulating their views and transmitting them to government. Electronic mailboxes, for example, can give stakeholders the opportunity to send feedback to consulting bodies either by email or using a web page response form.

- Good for communicating detailed or technical information, and used in combination with other documents such as background documents
- Email distribution lists – can be used to circulate consultation information to pre-identified groups of people. Accessing contact information can be difficult but if a consulting body has an ongoing relationship with a group(s) of people, then there is likely to be ready access to contact lists.
- Good way to get views on complex issues from interested parties
- Can be adapted to online media
- Online commentaries or submissions possible
- Can be accompanied by contextual questions
- Allows time for considered responses to be prepared.15

Weaknesses

- Lack of universal access if Internet access is not universal, and if some groups are not organized enough to monitor the Government sites, and to react quickly enough to gather information and prepare written comments.
- Does not permit dialogue. Once the stakeholders submit comments, the consultation is completed.
- Can lead to excessive formality or use of jargon since all discussion is in formal written form.
- Some groups may lack the resources for full analysis and response, and so responses may not be representative.
- Preparation of responses can be time consuming. Can be costly to interest groups by requiring more preparation of responses in written form.
- Information needs to be designed and presented differently online, which requires more care for clarity and readability. The tendency to post long and technical documents on Internet sites reduces the quality of consultation.
- IT is not a solution to all aspects of consultation – submissions still need to be analyzed offline. Because it is easy for the government, publication of the Internet might incorrectly lead to expectations of faster analysis of submissions, feedback and decisions arising from consultation process

Opinion Surveys

Opinion surveys or attitude surveys are questionnaires conducted through paper, telephones, and online or direct interviews of the views and opinions of target groups. Such surveys attempt to measure the views of citizens on relevant issues. Such instruments can be useful in collecting certain kinds of information relevant to policymaking, such as the acceptance of government actions and the effect on compliance, but the consultation exercise is not a vote about whether government action is justified, since that depends on the empirical evidence and the decision of policy authorities.

Strengths

- Can collect information about the acceptability or reaction of people to certain options. The European Commission states that information from opinion surveys is used to write

"qualitative studies that provide an in-depth study of the motivations, the feelings and the reactions of selected social groups towards a given subject or concept…"36

- Can collect information from large groups, so can allow distinction between interests.
- Longitudinal studies are possible since questions can be repeated at a future date in order to make comparisons over time.
- Can support conclusions about the risks of various options in terms of business or consumer reaction.

Weaknesses

- Opinion polls measure 'top of the head' public views, rather than collecting empirical evidence. Subjective opinions can be useful for elements of the impact assessment, such as the willingness to comply and in mapping consumer preferences, but do not collect the kind of evidence needed to assess impacts in the RIA.
- Since they are subjective, opinion polls are difficult to interpret and open to inconsistent readings.
- Opinion polls are inherently limited in their value as predictors because they only represent a 'snap-shot' of public opinion at the time the survey is carried out, and opinions can change quickly.
- Opinion polls are heavily influenced by how questions are asked, and hence subject to manipulation.
- Sample populations must be carefully chosen, since opinions can vary across gender, socioeconomic status, and other factors.
- Costly and requires extensive preparation.

Business Surveys and Questionnaire-based Surveys

Surveys are a method of quantitative research that provides answers and statistics in response to fixed questions. Most public administrations have extensive experience in carrying out various kinds of surveys. Much detailed consultation and data collection in the RIA process depends on various kinds of business surveys. The key to a successful survey is that the sample is representative, and that everyone answers the same questions so that the results can be compiled into a data base (that is how a survey differs from an interview, in which the content is more fluid). Quantitative surveys can be carried out face-to-face, postal, telephone, email or web-based.

Strengths

- Provides standardized answers to focused questions that can be easily compiled into a database
- Can be carried out quickly and fairly cheaply if the sample size is small, and is relatively low-cost way to contact large number of people
- Better if very short and focussed, but good also for longer and more complex questions if target audience is prepared to invest
- Can be directed towards a targeted and representative audience that allows distinctions between different classes categories and groups

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[36] http://ec.europa.eu/public_opinion/index_en.htm

- Allows a considered response to sensitive subjects
- Useful where a high level of interest is anticipated

Weaknesses

- Questionnaires need careful design to ensure that the respondent understand clearly the question and is able to provide the information requested
- Cannot support dialogue
- With fixed questions, respondents cannot elaborate or develop their answers in depth or show variations. This means that the results may not be wholly valid in that they do not give a true picture of the respondent's point of view.
- Little control over who completes it, since response is voluntary
- Choice of sample is critical to the representativeness of the results
- Response rates can be very low and hence surveys can waste time and money (but are much better for telephone-based surveys than for mail based surveys)
- Does not suit subjective or opinion-based questions

Proactive Consultation Methods

Direct Interviews with Stakeholders, Such as Businesses

Interviews are direct contacts between an interviewer and a respondent, mostly in a face-to-face format, but increasingly by electronic means. Such interviews can be done quickly if advance planning is carried out, so that a list of businesses willing to be interviewed is already available.

Strengths

- If the respondents identified in advance, can be fast and cheap.
- Provides good qualitative information in a relatively short time. Can be used to fill in data gaps in the RIA.
- Longer interviews allow in-depth exploration of individual views, attitudes, behaviour and motivation.
- Can be structured or open-ended as appropriate
- Sample selection can be controlled
- Interviewer needs to have necessary skills to properly explore issues

Weaknesses

- Time required to identify interviewees and arrange interviews
- Qualitative data can be difficult to analyse
- Can be expensive and time-consuming to analyse the results
- Interviewee may not be as open as interviewer would wish
- Risk of implicit bias/halo effect

Focus Groups

A focus group is a small number of people led by a trained facilitator in a one-off discussion focused on a particular topic. Issues can be explored in considerable depth. Deliberative public engagement through focus groups provides policy and decision-makers with much richer data on public attitudes

and values, offers opportunities to more fully explore why people feel the way they do, and allows the time to develop ideas, options and priorities with the public. For the civil servants, the experience provides opportunities to share and develop their views with each other and directly with experts and decision-makers.[17] Focus groups are a useful way of finding out what specific groups of people think about proposals.

Strengths

- Allows for a well-defined objective and structured discussion
- Targeted recruitment can include groups otherwise excluded
- Can be outsourced fairly cheaply
- Can promote ownership of issues through participation
- Anonymity possible if third party facilitators used
- Can be combined with other methods such as business test panels to deepen understanding of the issue
- Can be used to assess complex regulations which are difficult to measure through other means

Weaknesses

- Membership of group requires careful selection to ensure representativeness
- Untrained moderators might not accurately capture feedback
- Unclear or confused objectives can lead to poor quality outcomes
- Risk of biased conclusions or conflicting messages if group has been allowed to digress or be influenced by individual members
- Time-consuming to assess and write reports
- Can collect views or complaints with no clear recommendations on what could be done to solve the problems.

Business Test Panels

A test panel is a group of businesses that participates in focused surveys, questionnaires, or group meetings to provide precise information to public institutions quickly and cheaply. The European Business Test Panel[37] is a well-known online version of this method. Denmark adopted an innovative strategy to improve the flow of information to ministries on the likely impacts of regulation. In its Business Test Panels, a cross-section of businesses is asked directly about the expected administrative burdens of proposed legislation. The Danish Test Panel program assembled, each year, a list of hundreds of businesses willing to be interviewed by ministries. This list greatly sped up the interviews, because the businesses were already identified and had already agreed to participate. However, experience has shown the precision of test panel data to be low, and the system is largely seen as an “early warning system” for unanticipated major impacts.

Strengths

- Can provide very focused and detailed information on impacts on specific businesses
- Consultation can be carried out quickly if test panels are prepared in advance.

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[37] http://ec.europa.eu/yourvoice/ebtp/faqs/index_en.htm

- Information can be collected from a carefully selected group, such as the number of businesses by sector and size required to ensure that the panel is statistically representative of businesses, including SMEs.
- The infrastructure needed to conduct businesses panels is easy to set up, and the costs are low. Panels are a cost-effective way to consult with businesses.
- Business panels can be run by individual ministries or by a central unit. The latter is preferable, if one wants to ensure methodological consistency in data collection, while the former can be beneficial, if the aim is to ensure ownership within the ministry.
- Complements other forms of consultation

Weaknesses

- Advance preparation is required so that consultation can move quickly when needed.
- Quality of data might be low, since similar businesses might have very different assessments of impacts. Uncertainty can become so significant that the results are difficult to use in the political process—because too much time is spend discussing whether the results are a true reflection of the actual costs of the regulation (Denmark).
- Consultation "fatigue" is possible if the same businesses are used over and over.

Advisory Committees

Advisory committees are semi-permanent or permanent committees established to act as a source of expert advice on complex issues. While normally associated with ongoing consultation, such forums can also be used for once-off consultation processes. They may be composed of social partners, representative organizations and/or experts in the particular field. If ongoing, the membership of such committees should be reviewed on a regular basis to ensure balance of representation.

A common consultation process is based on setting up an ad hoc public-private advisory commission of selected civil servants and private representatives who discuss specific issues under their mandate. The advisory commission approach can be effective in bringing stakeholder views into the policy process at an early stage, and in generating a dialogue around options and policy design. Yet risks of the advisory commission approach should be managed. For example, the OECD has noted that advisory bodies are vulnerable to capture and bias, since their members are pre-selected and might not represent all important views. Many governments are replacing advisory commissions with more open and flexible methods of consultations to include a greater variety and number of interest groups.[38]

Advisory commissions also tend to be *ad hoc* and high cost, requiring extensive preparation and participation. Therefore their use is limited only to the most important issues, and cannot become a routine part of how the ministry operates from day to day. A more standardized consultation approach across the ministry would lower costs and improve the effectiveness of the ministry.

Strengths

- Good source of advice on complex social or technical issues
- Recognised expertise of committees helps to inform decision-making processes

[38] OECD (2002) Regulatory Policies in OECD Countries: From Interventionism to Regulatory Governance, Paris.

- Can help produce more appropriate policy, especially when dealing with complex or controversial policy issues.

Weaknesses

- Selecting membership to ensure representativeness can be difficult.
- Ensuring smooth internal dynamics within a group can be difficult
- A clear mandate and timeframe is necessary
- Standing advisory committees need time and resource commitments to ensure effective functioning.
- Management may not set clear boundaries between the group's advisory role and management's responsibility for decision-making.

Public Meetings/National Forums

These are meetings that are arranged for members of the public to find out about and express their views on a specific issue. Meetings are held in public and attendance is usually open to anyone. They can be preceded by pre-consultation meetings to maximize effective participation of groups who would normally be excluded.

Strengths

- Excellent method of capturing opinions
- Allows anyone to contribute their views
- Transparent process and facilitates media interest in the issue
- Can be repeated in multiple locations as often as necessary

Weaknesses

- Attendance can be unpredictable
- Possibility of domination or disruption by specific interests
- Can be intimidating for people to put across their views
- Quality of meeting depends on quality of facilitation
- Can lack focus
- Report preparation can be time-consuming

Other Internet Tools

The Internet offers the potential for deeper engagement, through online forums or chat sessions. Online chat events allow participants to exchange views instantly, thus taking on the form of a discussion, (rather than time-lagged posting with forums). Chat events are useful to promote a consultation through the presence of, for example, the sponsoring Minister in the discussion. Participation in the discussion might be limited to pre-selected individuals, either to structure the conversation or to allow for a more intensive discussion among specific experts. This format could still allow others to view the discussion.

Strengths

- Are very fast and cheap to organize.
- Provides an opportunity for dialogue to exchange views and engage in deeper discussion

- Can supplement other forms of consultation by encouraging participation or by following up to provide feedback or ask additional questions

Weaknesses

- Very subjective discussion. Cannot collect precise or empirical information
- Are limited in the complexity and technical issues that can be discussed
- Participation is highly restricted and may be biased by dominant interests. Some interests may not have access to Internet services

Annex C. Websites with RIAs Posted by Governments

There are now a number of web pages on which governments place their impact assessments.

Agency	URL
European Commission Legislative & Work Programmes (incl. list of proposals subject to Impact Assessment)	http://ec.europa.eu/governance/impact/practice_en.htm
US Government	http://www.regulations.gov/fdmspublic/component/main (search for topic, then search for RIA in results)
Mexico COFEMER (in Spanish)	http://www.cofemermir.gob.mx/
UK -- The Impact Assessment Library (IAL)	http://www.ialibrary.berr.gov.uk/
UK – list of all RIAs completed (download the pdf list for each ministry)	http://www.bis.gov.uk/policies/better-regulation/policy/scrutinising-new-regulations/regulatory-reporting
New Zealand -- The Treasury	http://www.treasury.govt.nz/publications/informationreleases/ris
Australia Office of Best Practice Regulation	http://ris.finance.gov.au/
State of Victoria, Australia: Regulatory Impact Statements and Standard Cost Model Measurements 2004 - Present	http://www.vcec.vic.gov.au/CA256EAF001C7B21/0/8EC98DC03CC3F798CA256F8B0076A015?OpenDocument