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REGULATORY ISSUES AND THE DOHA DEVELOPMENT AGENDA

AN EXPLANATORY ISSUES PAPER

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REGULATORY ISSUES AND THE DOHA DEVELOPMENT AGENDA

This explanatory issues paper was prepared by Elisabeth Roderburg for the OECD Secretariat. The objective of the paper is to raise questions that might advance discussions at the 25 March 2003 Global Forum of Governance on the links between regulatory issues and the Doha Development Agenda.

I. Introduction

1. It is increasingly evident that regulatory measures – *i.e.* internal measures that do not primarily have a trade related purpose – are affecting cross-border trade and investment. Governments are faced with the challenge of developing regulations that are effective in achieving objectives in a manner that is neutral toward or supportive of other objectives, for example market openness. To achieve this balance, improved co-operation between regulators and trade policy makers and enhanced mutual awareness of the links between regulatory and trade issues are called for.

2. This paper attempts to draw attention to the links between regulatory issues and trade liberalization against the background of the Doha Development Agenda, drawing on insights gained from the OECD's Regulatory Reform Programme. The paper is exploratory in nature, and does not presume to be exhaustive or conclusive; its primary aim is to raise a number of questions that might advance discussion of these issues in the Global Forum.

What is Regulation and Regulatory Reform?

Regulatory measures are understood as the diverse set of instruments by which governments set requirements on enterprises and citizens. Regulations include all laws, formal and informal orders, subordinate rules, administrative formalities and rules issued by non-governmental or self-regulatory bodies to whom governments have delegated regulatory powers. Regulations may serve a number of legitimate purposes, including *inter alia*, protecting human or animal life and health or the environment; providing consumers with information or ensuring the universal availability of certain services in the public interest.

Regulatory reform concerns changes to improve regulatory quality, that is, to enhance performance, cost effectiveness or the legal quality of regulations; or to improve processes for making regulations and managing reform.

3. Regulation is an essential part of a well-functioning economy. While aiming to achieve their objectives, particular regulations may also have effects in areas that are not their primary targets, *e.g.* on trade. Such effects may be unavoidable. Yet there may also be cases where regulations have unnecessarily distortive or restrictive effects on market access granted to trading partners, and where regulatory reform or improved regulatory quality might make it possible to reduce such effects. There are also examples of attempts to protect some industries by imposing very specific requirements that affect imports but not domestic production or that give domestic producers a significant advantage over their foreign competitors. Again the use of good regulatory practices may make such potential effects evident prior to implementation.

4. The progressive liberalization of traditional barriers to trade at the border and the expansion of the scope and coverage of international trade rules have had two complementary effects on trade-related regulations. On the one hand, the trade effects of regulations have become more apparent. On the other hand liberalization of trade has also led to the introduction of new or modified regulations to safeguard specific concerns, particularly in areas such as health, safety and the environment.

5. It is often misconstrued that regulatory measures, technical, administrative or other regulations, are inherently in contradiction to trade liberalization. The WTO, however, acknowledges the right of countries to regulate. The Doha Ministerial Declaration explicitly refers to governments' "right to regulate in the public interest", in particular "the right of Members... to regulate, and to introduce new regulations on, the supply of services" and the legitimacy of measures to protect human, animal or plant life or health.

6. Further, the multilateral trading system itself has, as its basic principles, key elements of good regulatory practice, such as, transparency and non-discrimination. Transparency requirements – *e.g.* making trade-related rules and regulations publicly available, via publication or otherwise at the national level, or informing other WTO Members via notification to the WTO – are included in all WTO agreements, and are an important pillar of the system itself. Another important pillar is non-discrimination, to which two disciplines apply: most favored nation (MFN) treatment and national treatment (NT). MFN requires that WTO Members cannot discriminate amongst each other: that is, treatment granted to one WTO Member must be extended to all. National treatment requires that like foreign products be subject to treatment no less favorable than that accorded to domestic products. While non-discrimination is mandatory in goods trade, in the case of trade in services, limited exceptions are allowed for MFN while national treatment is discretionary.

7. While avoiding direct involvement in national standards and regulation setting for trade in goods, the WTO has specified rules and procedures for standards or regulations to be consistent with maintenance of market access commitments. With the exception of the TRIPs Agreement, which establishes "positive" standards, the WTO generally applies "negative" standards, that is, members are not required to adopt standards or regulations, but if they do so, certain rules are to be followed in order to minimize trade disruption and the possibility of disguised protection. The challenge is to ensure complementarity and coherence between trade and regulatory regimes.

8. As part of its Regulatory Reform Programme,[1] the OECD has since 1998 been reviewing trade-relevant regulatory practices in a number of its member countries, inter alia on the basis of an analytical framework for assessing how domestic regulatory regimes, processes and practices contribute to and enhance market openness. The work completed so far provides valuable insights into which regulatory practices and approaches reduce discriminatory effects and are useful in avoiding trade restrictiveness.[2]

9. While improved regulatory quality and processes are first and foremost in the interest of the domestic economy, they can also underpin market openness. To this purpose, six principles have been identified by the OECD member countries to guide sound regulatory processes:

- Transparency and openness of decision-making;
- Non-discrimination;
- Avoidance of unnecessary trade restrictiveness;
- Use of internationally harmonized measures;
- Recognition of equivalence of other countries' regulatory measures; and
- Application of competition principles.

1. See www.oecd.org/regreform.

2. OECD, *Integrating Market Openness into the Regulatory Process: Emerging patterns in OECD countries*, TD/TC/WP(2002)25/FINAL.

10. OECD's Regulatory Reform Programme has explored the various ways in which Members have implemented these principles. For example, systematic publication of existing and planned rules, rigorous approaches to public consultation, including prior notice and comment procedures, and widespread use of the Internet, are practices that ensure transparency and openness of decision-making. Liberal investment regimes and a commitment to open regionalism can help reduce discriminatory effects. Regulatory impact analysis, and trade advocacy have contributed to trade and investment-friendly rules. Use of harmonized measures and streamlining conformity assessment procedures can limit adverse effects on trade of divergent regulations.

II. Background and issues for discussion in the Global Forum Sessions

Session I The link between Regulatory Issues and the Doha Development Agenda

11. "Regulatory issues" or "regulatory reform" do not figure as specific headings under the Doha Development Agenda (DDA) Work Programme; nevertheless, many of the negotiating topics under the program are linked either explicitly or implicitly to regulatory issues. This is particularly the case for ***trade in services*** – dealt with below under Session II, where commitments to liberalize require implementing measures at the domestic regulatory level – ; but it is also the case for issue areas such as trade and investment, trade and the environment and trade and competition, where domestic regulations will invariably be addressed. In addition, domestic regulations will also figure in the negotiations on market access for industrial and agricultural products particularly in relation to non-tariff barriers, as well as in discussions and future negotiations on transparency in government procurement and on trade facilitation.

12. Some have argued that widespread regulatory reform is a prerequisite for effective liberalization in trade in services and foreign direct investment. Regulatory reform is also seen as a way of contributing to good governance – improving the quality, objectivity, and professionalism of government regulatory bodies and reducing the opportunities for corruption and bribery. Regulatory reform, resulting in good regulatory practices can also underpin market openings and reduce unintentional distortions to trade. Some have also suggested that it should be possible to reach an understanding at the international level on some generic principles for good regulation to help guide countries' individual regulatory reform efforts.

13. Others argue that it is neither appropriate nor desirable to attempt to establish uniform standards or benchmarks for domestic regulations. They consider that it is not feasible to seek a one-size-fits all approach nor to encroach on the sovereign right of governments to undertake regulation to meet legitimate regulatory objectives. However, it may be that there is scope to consider principles which do not affect the choice of regulatory objectives as such, but which are concerned with identifying good regulatory practices, that is – are primarily concerned with the tools, processes and institutions of regulation, – not the objectives themselves. Such principles could be general in nature, leaving countries broad scope to choose the particular type of regulatory practice to implement them. While all countries may agree to general regulatory principles such as transparency, they may have different views on how this is best achieved or which specific processes are most appropriate. Indeed, the OECD's Regulatory Reform reviews indicated that, even amongst OECD countries, there was a significant variety in terms of the ways in which countries implemented individual principles of good regulation.

14. Thus, it may be useful to discuss whether there are generic principles governing "good regulatory practice"(*i.e.* processes, tools and institutions) that could be identified and accepted internationally which would not encroach on governments' flexibility to pursue objectives and policies of their choice (*i.e.*, substance). In this regard, consideration might be given to how useful the OECD's six principles (see paragraph 9) might be.

15. Further, it might also be useful to exchange information on ways in which governments have sought to achieve those principles and what types of regulatory practices they have found to be useful. Examples of specific practices might include:

- Explicitly specifying the purpose of trade-related regulations;
- Elaborating/specifying how to ensure avoidance of unnecessary trade restrictiveness, *e.g.* as one element of regulatory impact analysis (RIAs);
- Considering how best to promote greater transparency at the international, and not just the national level, including by exploring whether gaps exist in WTO notification requirements and whether and how they should be filled, or by providing opportunities for comment by foreign as well as domestic suppliers when regulatory changes are being considered;
- Elaborating specific techniques for assessing the implications of new regulations for developing countries, particularly least developed countries.

16. A major factor when trying to address regulatory issues is the disparate experience with regulation among WTO Members. While some countries have long experience and strong political commitment to efficient regulatory practices, and have established rigorous oversight and implementation mechanisms, other countries, particularly developing countries, may lack such experience, as well as resources and expertise. In addition, the regulatory needs and objectives of countries vary.

17. An overarching theme from the DDA Declaration is the call for special consideration of the needs of developing countries, particularly the least developed countries; and the need to focus on **capacity building and technical assistance**. It is evident that assistance in capacity building both institutional and in practice concerning regulatory issues could prove highly beneficial to the promotion of market openness and further trade liberalization globally.

Questions for discussion:

- Given the prevalence of regulatory issues throughout the negotiations and work programme foreseen under the DDA is there a need to launch increased international co-operation on regulatory issues?
- Is it feasible to reach a common understanding on principles and orientations for their implementation to guide all trade-related regulatory measures without removing flexibility in the choice of regulatory objectives and policies?
- To what extent can the experience gained from regulatory good practicies identified in the OECD Regulatory Reform Programme be transferred to other countries?
- Is it useful or possible to seek liberalization in areas where some countries do not have the requisite regulatory institutional capacity or expertise?
- To what extent will negotiations aimed at liberalization require the establishment of improved regulatory regimes?
- How does one strike a balance between ensuring trading partner market access rights and flexibility in the choice of domestic policy measures?

- How can the use of regulatory tools (*e.g.*, registers of regulations affecting trade, regulatory impact analyses, prior comment) support trade liberalization? What have countries' experience been in using these tools?

- What contribution can international trade rules make to supporting domestic regulatory reform?

Session II Services liberalization and domestic regulation

18. Services tend to be highly regulated, reflecting a variety of important public policy objectives. Liberalization of services markets can require new or different types of regulatory intervention to ensure both that the expected benefits of liberalization are realized (*e.g.*, that liberalization results in a genuinely competitive market) and that important policy objectives continue to be achieved within the new market structure (*e.g.*, universal service obligations). Liberalization of services markets, far from entailing de-regulation, often necessitates regulatory reform or re-regulation.

19. Further, in choosing how to regulate service sectors, information on the potential economic and trade costs may assist government in seeking the most efficient – but still effective – regulatory means of achieving their policy objectives. Changes in technology, along with unilateral privatization and liberalization by a wide range of countries, has also led to a major growth in trade in services. High speed, real time Internet links have greatly expanded existing trade in some services (*e.g.*, data processing) and, by reducing costs, have increased the number of small and medium-sized enterprises involved in international services trade. These developments have in turn both posed regulatory challenges (*e.g.*, enforceability of national regulations) and increased the pressure for more transparent, streamlined regulatory frameworks.

20. While there is increasing awareness of the strong economy-wide case in favor of services liberalization and the high cost of protecting key infrastructure sectors (*e.g.*, telecommunications, finance, transportation), there is also growing recognition that opening services markets to foreign competition involves a broad and complex set of policies, regulatory instruments, institutions and constituencies, domestic and foreign, public and private. **Experience demonstrates that the nature, pace and sequencing of regulatory reform and liberalization undertakings must be assessed with care.**

21. Some specific regulatory tools might be useful in this regard. Prior consultation can contribute to the development of better regulation, providing more information as to all available options, including international best practices, and their possible impact upon a range of stakeholders. Such information could shed useful light on the appropriate sequencing of liberalization and regulatory reform, as well as on the particular regulatory reforms required to reap the expected benefits of liberalization. Insights gained through prior consultation into the experiences of other countries could also be useful in designing and sequencing domestic reforms. Finally, prior consultation can also provide an early warning system as to whether trading partners view proposed regulations as unnecessarily burdensome or restrictive.

22. Other tools may also be helpful. Provision of the rationale for a proposed regulation can increase understanding of the need for a regulation and the identification of appropriate and equally effective alternatives. A register of regulations can help promote the development of a competitive market by facilitating use by foreign suppliers of liberalized market access. RIAs, in addition to their domestic benefits, could also be used to consider the implications of a proposed regulation for trading partners, in particular the impact upon developing country trading partners.

23. However, such regulatory tools, while yielding considerable benefits, also entail significant administrative costs. Services trade is vast and encompasses sectors as diverse as telecommunications and health, transport and professional services. The range of players, public and private sector, and the number of regulations is enormous. The administrative burden of conducting prior consultation, or regulatory impact analyses, for all regulations affecting trade in services could be significant. Efforts to limit the scope of regulations subject to, *e.g.*, prior consultation (*e.g.*, by restricting it to measures significantly affecting trade in services), would go some way to addressing this problem, but the lack of international standards in services removes one such useful limiting device (in goods trade, prior consultation requirements are generally only triggered when a Member's standard departs from the relevant international standards).

24. Indeed, the complexity of service sector reform, and the critical need for liberalization efforts to be rooted in, accompanied and, in some instances, preceded by sound regulation (including enforcement capacity) can present formidable challenges to developing countries. This points to the need for liberalization of services to be progressive, and to be accompanied by regulatory capacity building. The need of many WTO Members for such assistance is reflected in the Doha Development Agenda's (DDA) acknowledgement of the importance trade-related capacity building as part of the new negotiations.

25. The WTO Agreement on Trade in Services (GATS) under which the current negotiations are taking place, is designed to allow for progressive and flexible liberalization. Under the GATS, Members are free to choose whether or not to open a given service sector (or sub-sector), and, if they choose to do so, they can limit the extent and type of market access (*i.e.*, they can limit the activities of foreign suppliers) and national treatment granted (*i.e.*, they can continue to discriminate in favour of nationals) provided they list these restrictions in their schedule of specific commitments.

26. The GATS also recognizes the right of Members to regulate, and to introduce new regulations on the supply of services to meet national policy objectives, as well as the particular need of developing countries to exercise this right. The GATS does not prescribe the type of regulations that governments should enact; rather it seeks to ensure a level of transparency in Members' regulatory behavior and to establish some basic disciplines to ensure that Members do not use regulations as a disguised restriction on trade. Disciplines, including related to transparency, vary depending upon whether a country has made specific commitments to open a particular sector.

27. The GATS framework of rules related to regulation remains unfinished. There is currently no "necessity test"[3] in the GATS. There is a mandate to negotiate any necessary disciplines to ensure that measures related to certain types of regulations (qualification requirements and procedures, technical standards and licensing requirements) are, *inter alia*, based on transparent and objective criteria and not more burdensome than necessary to ensure the quality of the service. Progress on these negotiations, underway since 1995, has been very slow, with WTO Members concerned to ensure that any disciplines do not undermine regulatory flexibility. There is no agreement amongst Members on whether a necessity test is itself necessary for services, nor on the range of measures which might fall under the scope of such a test.

3. In the context of goods trade a "necessity test" is generally considered to be a requirement to show that a given regulation is not more trade restrictive than necessary to achieve its stated objective. For example, in the Agreement on the Application of Sanitary and Phytosanitary Measures, the requirement is that measures are not more trade-restrictive than required to achieve their appropriate level of sanitary or phytosanitary protection, taking into account technical and economic feasibility (Article 5). In the Agreement on Technical Barriers to Trade, technical regulations are not to be more trade-restrictive than necessary to fulfil a legitimate objective, taking account of the risks non-fulfilment would create (Article 2).the regulations are necessary – that the country must legitimize the regulation in question in relation to an accepted standard.

Some key GATS disciplines and agreements

Members are required (***Article III Transparency***) to publish promptly and, except in emergency situations, at the latest by the time of their entry into force, all relevant measures of general application which pertain to or affect the operation of the GATS. They must also promptly and at least annually inform the Council for Trade in Services of the introduction of any new, or any changes to existing, laws, regulations or administrative guidelines which significantly affect trade in services covered by its specific commitments. Members are also obliged to establish one or more enquiry points to provide specific information to other Members, upon request. (Other specific transparency requirements relate to notification of, for example, mutual recognition and regional trade agreements).

Article VI (Domestic Regulation) provides that, in sectors where they have made commitments, Members are required to ensure that all measures of a general application affecting trade in services are administered in a reasonable, objective and impartial manner. Each Member must also have procedures for prompt, objective and impartial review upon request of, and appropriate remedies for, administrative decisions affecting trade in services (although this does not require any member to institute tribunals or procedures which would be inconsistent with its constitutional structure or legal system). Where authorization is required to supply a service subject to a specific commitment, the competent authorities are obliged to inform the applicant of the decision within a reasonable period of time, and to provide, on request and without undue delay, information concerning the status of an application. Where specific commitments for professional services are undertaken, Members are required to provide for adequate procedures to verify the competence of professionals of any other member.

Article VI.4 mandates the development of any necessary disciplines for measures relating to qualification requirements and procedures, technical standards and licensing requirements to ensure that such measures do not constitute unnecessary barriers to trade in services and are, *inter alia*, based on objective and transparent criteria, not more burdensome than necessary to ensure the quality of the service and not in themselves a restriction on the supply of the service. Such disciplines would only apply to non-discriminatory measures; discriminatory measures can be maintained if they are scheduled. There is yet no agreement as to the scope of measures falling under VI.4.

The ***Disciplines for the Accountancy Sector*** require that, in addition to making a range of information publicly available (*e.g.*, licensing requirements, procedures for review of decisions), when introducing measures significantly affecting trade in accountancy services, Members shall *endeavor to* provide opportunity for comment, and give consideration to such comments, before adoption. Further, Members shall also inform another Member, upon request, of the rationale behind domestic regulatory measures in the accountancy sector, in relation to legitimate objectives. Measures relating to qualification requirements and procedures, technical standards and licensing requirements should also not be more trade restrictive than necessary to fulfil a legitimate objective, with such objectives being, *inter alia*, the protection of consumers, quality of the service, professional competence and the integrity of the profession. Preliminary consideration is underway about the possibility of extending the Disciplines to cover other services, in particular other professional services.

The ***Reference Paper on Basic Telecommunications*** contains a number of regulatory "best practices" in liberalizing telecoms, including: transparent licensing (*i.e.*, public availability of criteria, time normally required for decision and terms and conditions individual licenses); timely, transparent and non-discriminatory allocation of scarce resources (*e.g.*, spectrum, numbers); competitive safeguards against abuse of dominance (*e.g.*, anti-competitive cross-subsidization or use of information gained from competitors); and establishment of an independent regulator. Interconnection must be available at any technically feasible point in network; on non-discriminatory terms and conditions; at cost-oriented rates, sufficiently unbundled; and with interconnection agreements made publicly available. Finally, universal service obligations should be administered in transparent, non-discriminatory and competitively-neutral manner and be not more burdensome than necessary.

Questions for discussion:

- What have we learnt about the relationship between services liberalization and regulatory reform? Are there particular issues which arise for developing countries?

- To what extent might trade rules themselves support or encourage regulatory reform, or the use of specific regulatory tools to underpin services liberalization?

- Can we identify some generic principles governing "good regulations" for services? Are there particular issues that arise in the regulation of services as opposed to goods?

- What has experience been at the national level with specific regulatory practices (*e.g.*, regulatory impact assessments; prior consultation) in the context of liberalizing trade in services?

Session III Regulatory approaches to reducing border and behind the border barriers

28. Barriers emanating from regulations represent a significant subset of border and behind-the-border non-tariff barriers for trade in goods. Concerns about their impact on market access and trade liberalization has led to the inclusion of non-tariff-barriers and trade facilitation considerations in the DDA.

29. Non-tariff barriers comprise traditional border policies such as import licensing, quotas and prohibitions as well as behind-the-border policies in importing countries such as product standards and conformity assessments or access to distribution systems. Business complaints often extend to the way such border and behind-the-border policies are implemented. For example, policies that (directly or indirectly) affect imports can be designed, applied or enforced in a non-transparent or arbitrary manner. These procedural aspects themselves pose additional impediments to the smooth development of trade. Also, they tend to be not policy-specific. For example, problems of non-transparency can occur in the implementation of quotas as well as in the implementation of technical measures.

30. WTO disciplines covering various types of non-tariff measures contain more or less detailed provisions designed to prevent or at least minimize the adverse effects resulting from procedural factors. For example, the Agreement on Technical Barriers to Trade stipulates that technical standards and conformity assessment regulations must satisfy principles of transparency in the drafting, implementation and administration processes and follow international standards where these are available. Recognizing that technical regulations may reduce trade opportunities, the Agreement requires that governments apply a criterion of regulatory efficiency (avoidance of unnecessary trade restrictiveness) in their choice of a measure. Moreover, Members are encouraged to promote international harmonization of standards and conformity systems. Similar principles are found in the Agreement on Sanitary and Phytosanitary Measures with respect to measures which governments undertake to protect human, animal or plant life or health. Yet many exporters and policymakers continue to perceive procedural barriers as significant impediments to trade and look towards further improvements of existing rules.

31. Trade facilitation addresses a subset of procedural barriers, namely customs and border-crossing procedures, as well as other practices and formalities related to the movement of goods in international trade. Related discussions in the WTO Council for Trade in Goods (CTG) have focussed on three GATT Articles which seem particularly relevant for "*further expediting the movement, release and clearance of goods, including goods in transit*". These articles call for a number of basic principles of good regulatory practice to be applied to activities, practices and formalities involved in collecting, presenting, communicating and processing data required for the movement of goods in international trade. GATT Article X on the *Publication and Administration of Trade Regulations* introduces basic commitments with respect to transparency of trade regulations and due process relating to their administration. GATT Article VIII on *Fees and Formalities connected with Importation and Exportation* requires trade fees to be proportional to the government services related to importation and exportation and calls for formalities that are not unduly trade restrictive. GATT Article V on *Freedom of Transit* introduces least trade restrictiveness and non-discrimination in the regulation of traffic in transit. Similar principles underlie other WTO Agreements related to cross-border movements of goods, such as the Agreement on Import Licensing, or the Agreement on Customs Valuation, although these agreements are not currently under review within the Doha Agenda.

32. Regulatory tools for ensuring transparency and predictability of trade regulations, avoiding border measures that are more restrictive than necessary to achieve their set objectives, or seeking convergence towards internationally harmonized standards are not fundamentally different from the good practices regulation toolkit. For instance, a first step in addressing regulatory barriers is to identify and evaluate the factors generating them, before taking the appropriate remedial steps. Regulatory authorities have developed a series of assessment tools in order to help inform regulatory decision-making, including regulatory impact analysis (RIA) mechanisms, notice- and-comment procedures and business panel tests. To date, these tools have seldom been conceived or formulated in terms of market openness considerations per se. Yet, the experience gained in using such assessment tools can usefully underpin and sustain simplification and streamlining efforts in the area of border and behind the border barriers.

33. Another interesting example is offered by the efforts to coordinate regulatory intervention. Regulatory requirements with respect to trade in goods involve a number of different government agencies, including customs authorities, licensing authorities, food or health inspection agencies, etc. Multiple regulatory prerogatives frequently lead to duplicative requirements, increased compliance costs and time lost interfacing with different concerned authorities in sequential manner. In many countries experience has been gained using "Single Window" mechanisms to handle the citizen-administration interface. Such an approach could also prove valuable to efforts to facilitate trade at the border.

34. Other common administrative practices which may interestingly contribute in facilitating trade include setting up registries of regulation and formalities, systematic reviews of regulatory regimes around competition or market friendliness principles, and establishment of sun-setting and other automatic review clauses.

35. The DDA Work Programme calls for "enhanced technical assistance and capacity building" also in the trade facilitation area, and experience gained inter alia through the OECD Regulatory Reform Programme might prove beneficial in this regard.

Questions for discussion:

- Is trade facilitation an area where explicit international standards for regulatory quality could be usefully established? To what extent could such standards find their place in a possible WTO trade facilitation agreement?

- To what extent can the regulatory good practices identified in the OECD Regulatory Reform Programme be relevant for other countries? Are there specific factors to be taken into account when using the domestic efficient regulation toolkit in an international context?

- Which of the good practices are best suited to contribute to a reduction of border and behind-the border impediments to trade in goods?

- Is it feasible to reach a common understanding on principles and orientations for their implementation that should guide all trade-related regulatory measures without diminishing flexibility in the choice of the aims of regulatory policies? How can generally applicable principles be adapted to the specific institutional, regulatory, resource and infrastructure circumstances of each country?

Session IV Conclusions: Next steps

36. Multilateral trade negotiations are increasingly focusing on domestic regulatory measures, both as a consequence of the effects of such measures becoming more apparent as border measures are reduced or eliminated, and as a consequence of trade negotiations expanding into areas where the primary barriers to trade are to be found at the domestic regulatory level.

37. Using principles for regulatory reform or best regulatory practices can contribute to enhanced implementation of existing market access commitments, and can also facilitate liberalization efforts in new areas. There is, however, a need to address the variations in regulatory capacity among WTO Members. Expanded and enhanced technical assistance and capacity-building are called for in order to ensure commitment to new multilateral rules and implementation of liberalization commitments.

38. In order to ensure that regulatory regimes and trade regimes are complementary and mutually supportive improved cooperation between regulators and trade policy makers is essential. International cooperation among regulators in order to promote good regulatory practices worldwide will need to be addressed. The possibility of identifying generic principles for good regulatory practices without reducing flexibility in the choice of domestic regulatory goals could be explored.

Questions for discussion:

- What are the challenges faced by developing countries in building appropriate regulatory frameworks? In the context of limited resources, how might developing countries assess priorities?

- How can the OECD contribute to trade-related regulatory capacity building in non-member countries? Is it desirable and/or possible to coordinate such efforts with the work of the Bretton Woods institutions on “good governance”? What kind of assistance would be most useful?

- How can cooperation between regulators and trade policy makers be improved, both at the national and international level? What sorts of approaches – *e.g.*, mutual awareness efforts, commitments on implementation – would be most useful?

- Is convergence of national regulatory measures either de facto or through negotiated harmonization in specific areas desirable?