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International Trade and Good Regulatory Practices: Assessing The Trade Impacts of Regulation

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INTERNATIONAL TRADE AND GOOD REGULATORY PRACTICES: ASSESSING THE TRADE IMPACTS OF REGULATION

Robert Basedow* and Céline Kauffmann*

JEL Classification: K2, K4, H11, F10

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INTERNATIONAL TRADE AND GOOD REGULATORY PRACTICES:

ASSESSING THE TRADE IMPACTS OF REGULATION

Robert Basedow* and Celine Kauffmann*

ABSTRACT

Good Regulatory Practices encompassing the use of regulatory impact assessments, stakeholder engagement and *ex post* evaluation are a critical tool in the hands of governments to ensure that regulation achieves its objectives. Over the past several years, attention has grown for the trade costs of regulatory divergence. Diverging regulation may increase the costs to trade goods and services across borders. While regulatory divergence is often the result of diverging national public policy objectives, it may be the undesired result of rule-making ignoring the international regulatory environment and interconnectedness of our societies and economies. Good Regulatory Practices provide governments with tools, processes and strategic approaches that can help them identify and evaluate the trade impacts of their regulatory action. The paper reviews the theoretical and practical contribution of GRP to mainstreaming international trade considerations in regulatory decision-making and to addressing regulatory divergence. It does so by reviewing the relevant academic literature, GRP guidelines of a number of OECD members and examples of how GRP and in particular regulatory impact assessments are used to consider the trade impacts of regulation. Building on the available evidence, the paper discusses how decision-makers may enhance the use of GRP to address international trade considerations in regulatory policy-making.

JEL Classification: K2, K4, H11, F10

Key words: regulatory policy, good regulatory practices, stakeholder engagement, *ex post* evaluation, regulatory impact assessment (RIA), regulatory divergence, international trade

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NOTE BY THE SECRETARIAT

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EXECUTIVE SUMMARY

As markets integrate across borders and trade frictions due to tariffs are becoming less of a concern, attention of trade policy makers is increasingly focusing on regulatory activities as potential barriers to economic integration and trade. Unnecessary regulatory divergence across jurisdictions is perceived as potentially imposing trade costs and unduly inhibiting international trade in a context of global value chains. The growing attention is well-illustrated by the recent discussions on regulatory cooperation as part of the Transatlantic Trade and Investment Partnership (TTIP) and the Transpacific Partnership (TPP).

At the same time, through the Recommendation of the Council on Regulatory Policy and Governance (OECD, 2012), regulatory oversight bodies of OECD countries have recognised the importance of well-designed regulations to generate significant social and economic benefits which outweigh the costs and contribute to social well-being. The 2012 OECD Recommendation highlights a number of principles and tools that can help policy makers develop, implement and update regulations that promote their policy goals in the public interest. In this context, the 2012 OECD Recommendation recognises the importance of international regulatory cooperation for regulatory quality (Principle 12) and the relevance of the tools of regulatory policy – encompassing *ex ante* Regulatory Impact Assessment (RIA), stakeholder engagement and *ex post* evaluation – to base regulatory policy making on evidence, including the evaluation of the likely benefits, costs and effects of regulation and the consideration of the voice of the regulated (Principles 2, 4 and 5).

Together with achieving better welfare outcomes, reducing unnecessary trade costs and frictions from regulations and regulatory divergence can be seen as an important dimension of regulatory quality. It does not imply, however, that trade considerations must always play a central role in regulatory policy. Trade consideration should only play a role as far as significant trade impacts are to be expected and in view of balancing those vis-à-vis other public policy considerations. So far, however, the analytical tools or methods to assess trade costs against the overall impacts (positive and negative) of regulatory changes and regulatory cooperation are not well developed. From a regulatory perspective, RIA and other tools (such as stakeholder engagement and *ex post* evaluation) provide an opportunity to evaluate trade-related impacts of regulation. This paper investigates whether countries use the potential of these tools to integrate trade impact considerations – where necessary – in the development of regulation and analyses how the assessment of trade impacts is carried out. The paper primarily focuses on the use of RIA (for which more information is readily available) but also, to the extent possible, analyses how countries use stakeholder engagement and *ex post* evaluation to complement the RIA process. The study henceforth refers equally to 'Good Regulatory Practice' (GRP) and to 'Regulatory Policy' to characterise the disciplines aimed at ensuring the quality of regulation.

There is evidence that OECD countries use RIA to assess the trade impacts of regulation. According to the 2015 Indicators of Regulatory Policy and Governance, two-thirds of OECD members report formally assessing trade-related impacts for proposed laws and regulations in their RIA procedures. RIA guidelines typically foresee the quantification and monetisation of trade impacts, which is relatively unproblematic given the economic nature of most trade impacts. Beyond these generic features, however, a review of selected examples shows that, in practice, the ways in which these assessments are foreseen in the RIA guidelines remain both fairly heterogeneous across countries and high-level. Trade impacts are indeed typically considered through effects on 1) the overarching macroeconomic situation, 2) exports, imports, investment flows and international competitiveness, 3) interactions between domestic regulatory initiatives and the international regulatory environment and 4) effects on third countries.

Despite the fact that assessing trade impacts as part of RIA is reported as a frequent practice by OECD countries, there seems to be a gap between the theoretical use of RIAs enshrined in RIA guidelines and the reality. There are important challenges that may make the use of RIA as a tool to evaluate trade impacts a difficult endeavour. There are generic challenges as well as trade-specific ones. Generally, there is a problem with RIA overload that has been identified regardless of the types of impacts considered. There is a perception that lead services have to assess too many potential impacts, which may undermine the quality of RIAs. While the establishment of thresholds and proportionality principles should help to address the issue, most of the time their vagueness in relation to when to assess trade impacts and what trade costs to consider may amplify the problem. The institutional set-up of the RIA process may constitute another weakness of the RIA procedures. The line ministries in charge of developing regulations and the oversight body in charge of its quality control may not have the expertise to assess the relevance for trade of a given regulatory proposal. As guidance on the substance and methods for the assessment of trade impacts is typically limited in national guidelines, the lack of expert involvement may translate into ignoring or wrongly assessing trade impacts.

Beyond the generic challenges, the assessment of trade impacts through RIA also faces methodological limitations. Domestic RIAs are by design and purpose a tool to maximise national welfare. To that end, RIAs usually assess and model the impacts of a regulatory proposal at the domestic level. They rarely assess impacts that transcend national borders, and, even more fundamentally, they often do not assess regulatory proposals against similar regulations in other jurisdictions. Hence, RIAs carried out at the domestic level are unlikely to capture the impacts of regulatory divergences at the international level and on global supply chains. This methodological challenge may warrant further consideration to the role of RIA in a plurilateral and multilateral setting.

Second, traders are typically concerned with the overall impact of the regulatory environment – i.e. the sum of regulations, standards and laws in a given sector – on trade. In practice, however, RIAs assess impacts across public policy domains for a single regulatory proposal and are unlikely to inform policy-makers about the broader impact of the regulatory environment on traders. This partial approach of RIAs is compounded by the fact that while RIAs have become a compulsory discipline for regulation developed by the executive branch of national government of OECD countries, they are not systematically used in relation to other sources of regulation, norms and standards that *in fine* determine the regulatory environment and frame the activities of companies. In particular, as highlighted in OECD (2015a), the disciplines of regulatory policy rarely extend to the parliament and to sub-national levels of government. In addition, in many sectors, private regulation and standards constitute an important part of the regulatory framework, which largely fall outside of the traditional public sector scrutiny and accountability mechanisms. Hence, RIA, alone, may be insufficient to enhance the regulatory environment for traders of the sectors where the sources of norms come largely from outside the executive national government.

These insights do not dismiss the contribution of RIAs to integrating trade considerations in the rule-making process where appropriate. In particular, as a process and when used adequately and early in rule-making, RIA provides the opportunity to consider alternatives and notably the existence of relevant international norms and standards that would help to limit regulatory frictions and achieve public policy objectives at lower costs. The limitations of RIA - both in terms of its methodology and its scope - underline the importance of other regulatory policy tools – such as stakeholder engagement and *ex post* evaluation - to complement the RIA process. When carried out in an appropriate manner and notably to collect the necessary evidence for decision making, stakeholder engagement and *ex post* evaluation may inform policy-makers about unexpected impacts of measures on trade and may provide insights into the trade impacts of the regulatory environment at large. Stakeholder engagement allowing traders (including foreign) to voice their concerns may also provide information about the perceived impacts of regulatory divergence. Stakeholder engagement nonetheless faces important challenges, such as the lack of inclusiveness leading to capture that make its use a difficult endeavour. *Ex post* evaluation can help to

ensure that the unexpected impacts of a regulation, including from its enforcement, are captured and can feed in the revision of regulation. An integrated approach to these tools can therefore ensure a more exhaustive consideration of trade impacts in the welfare analysis that supports the development and revision of domestic regulation. They are likely to contribute to avoiding unnecessary (and unintentional) regulatory barriers to trade while promoting other public policy objectives and preserving states' right to regulate.

The study suggests, however, that many OECD members do not systemically tap on the full potential of these tools to support evidence-based policy making. In order to fully tap on the potential of the tools of regulatory policy to mainstream trade consideration in the domestic regulatory process and to achieve public policy goals, trade and regulatory policy makers need to give further thought to the institutional setup, substantive focus and methodologies of RIA procedures, date availability and relevance, and the use of RIA in combination with stakeholder engagement and *ex post* evaluation. In particular, the report highlights the need to:

- Identify better the substantial trade costs of regulatory divergence to help regulators - who are constrained by resources and expertise - focus on what matters. Better knowledge of these trade costs should help to point regulators to domains where the integration of trade considerations into GRP is appropriate and welfare enhancing. This is clearly an area for further work.

- Further define threshold and proportionality rules to ensure that trade impacts are soundly assessed when necessary without overloading the RIA process.

- Where trade impacts have proved substantial, impact assessments should systematically encompass issues of consistency with international standards and other relevant international regulatory frameworks, as they are likely to alleviate trade frictions. A focus on market openness and competition can also help address the trade dimension without putting emphasis on the provenance of transactions.

- Better coordinate across line ministries to enhance the free flow of information and expertise on trade related impacts – there is potentially an important role for oversight bodies as the gate keepers of the quality of the RIA to ensure that this coordination is taking place.

- Consider the legal and other obstacles that may need to be overcome to enable regulatory agencies to assess regulatory impacts beyond borders;

- Consider the use of RIAs in multilateral settings and adapt the methodology to account for the distributional effects of various regulatory options and their contribution to greater regulatory coherence within the multilateral setting and with outside parties;

- Facilitate inclusive consultation with domestic and foreign stakeholders to gather information about trade and regulatory coherence implications of domestic regulation and ensure that findings are fed into the regulatory process;

- Use more systematically *ex post* evaluation and focus on evaluating whether policy goals are achieved from the perspective of the overall regulatory framework (stock) at least costs and least impacts (including for trade).

INTRODUCTION

Background

International regulatory cooperation (IRC) has become the focus of public attention with the advent of the so-called 'mega regionals' such as the Transatlantic Trade and Investment Partnership (TTIP) and the Transpacific Partnership (TPP). Regulatory and trade policy-makers have identified IRC as a key governance challenge (Hoekman, 2014, 2015; Hoekman and Mavroidis, 2015). While trade policy makers take an interest in IRC as a strategy to reduce regulatory divergence and related trade costs with a view to facilitate trade (Box 1), regulatory policy-makers ponder about how to mainstream and to adequately balance various public policy objectives, including international and trade policy objectives, in the domestic regulatory process.

Box 1. Regulatory divergence and international trade

Regulations may differ across jurisdictions for two main reasons. Regulatory divergence may be the result of different public policy and democratic objectives of regulators, manifesting itself in different stringency of regulations (security, environmental, health or other). Regulatory divergence may also occur if regulators from different countries pursue the same public policy and democratic objectives but adopt different regulatory approaches to reach these objectives. It typically results in different compliance requirements and reflects regulatory path dependence (OECD 2015b).

Regulatory divergence may be considered as a trade barrier if it increases trade costs. Trade costs may inter alia take the form of specification costs (labour and capital costs to adjust product or service to regulations in target market), conformity assessment costs (costs of demonstrating conformity with regulation in target market) or information costs (costs of obtaining and monitoring regulatory environment in target market) (OECD 2015b). Systematic evidence on the magnitude of these costs across sectors lacks. However, anecdotal evidence suggests that they are likely to be substantial for traders.

Regulatory trade barriers are likely to inhibit trade among developed economies more than classic tariffs. Due to decades of unilateral liberalisation efforts and international trade negotiations, average tariffs of developed economies have fallen significantly. Despite some efforts, regulatory trade barriers, on the other hand, are perceived as causing important frictions. The EU, USA, Japan, Canada, Norway, Switzerland and Macao for instance have by and large eliminated tariffs for pharmaceutical products under the *Pharmaceutical Tariff Elimination Agreement* negotiated during the Uruguay Round. Studies, however, suggest that divergences in pharmaceutical regulation between the EU and the USA impose additional costs on traders engaged in transatlantic pharmaceutical trade equivalent to a 19% tariff (Sunesen et al., 2016). What is more, WTO law – in particular the Agreements on Technical Barriers to Trade (TBT), on Sanitary and Phytosanitary Standards (SPS) and the General Agreement on Services Trade (GATS) – contain provisions aimed to ensure that newly implemented or revised regulations and voluntary standards do not create unnecessary barriers to trade or are not more restrictive than necessary to fulfil legitimate purposes. Regional Trade Agreements (RTAs) also generally pay attention to TBT and SPS. Policy-makers and academics have, however, voiced their limited satisfaction with the impacts of these efforts (Alemanno, 2015). Policy-makers therefore increasingly focus on the reduction of regulatory trade barriers as a priority of foreign economic and trade policy.

Regulatory trade barriers may arise at the border as well as behind the border. At-the-border barriers such as diverging customs and clearing procedures have been subject of recent WTO work. The Trade Facilitation Agreement was concluded at the Bali Ministerial meeting in 2013 and will enter into force once two-thirds of WTO members have signed the document. The Agreement will harmonise many aspects of customs procedures and thereby contribute to dismantling regulatory trade barriers arising at the border. Behind-the-border barriers emerge because of diverging domestic regulations. They are likely to trigger the bulk of trade costs and stand in the focus of current efforts to reduce regulatory trade barriers. Regulatory co-operation is a key tool to achieve more compatible regulations. Sharing information between regulators and considering each other's approaches and experiences can avoid or lower unnecessary barriers to trade without jeopardizing the objectives of regulation. Recent attempts to strengthen and to institutionalise international regulatory cooperation are being pursued under the TTIP and the TPP (Box 12).

OECD members have identified IRC as a principle of regulatory policy in the 2012 OECD Recommendation. It recommends states to take the international regulatory environment into account, to respect their international regulatory obligations and to avoid the duplication of regulatory efforts where recognition of existing international and foreign regulations and standards would achieve the same outcomes. The underlying rationale is that a domestic regulatory framework, which ignores globalisation, is likely to fall short of its purpose and to create unnecessary costs.

The OECD, through its Regulatory Policy Committee (RPC) and its Trade Committee (TC), has been working on different aspects of IRC from a regulatory and trade policy perspective for years.[1] The OECD's 2013 report *International Regulatory Co-operation: addressing global challenges* has produced first evidence on countries' efforts to promote IRC. On 5 November 2015 the RPC and TC held a joint meeting, which represented an opportunity for these two policy communities to bring their perspectives together, take stock of experience to date with different IRC mechanisms, and to identify the critical elements of an agenda for IRC in the context of trade. The meeting aimed to update delegates on progress made and provide them with an opportunity to share their understanding and exchange their views on different IRC approaches and the tools and methodologies to identify and measure trade impacts.

In support of this joint agenda, this paper focuses on the use of regulatory policy tools – and in particular on Regulatory Impact Assessments (RIAs) – across OECD members to assess and balance trade policy and other public policy considerations in the regulatory process. As set out in the 2012 OECD Recommendation, regulatory policy comprises a set of principles and tools such as RIA, stakeholder engagement and *ex post* evaluation, which support the development and implementation of high-quality regulation (Box 2). The use of RIA stands in the focus of this study, because it has received special attention in ongoing policy debates and is widely used across OECD members (OECD 2015a). The study complements this focus with a discussion of the contribution of stakeholder engagement and *ex post* evaluation as necessary complementary tools in the assessment of international and trade considerations in the domestic regulatory process.

As set out in OECD (2015a) and synthetised in Box 2, language and terminology around regulatory policy vary across countries and policy communities and involve terms such as "Better Regulation", "Smart regulation", "Regulatory management and Good Regulatory Practices (GRP)". In the context of recent discussions on TTIP, TPP and in the WTO, the term GRP has been widely used. It is therefore used interchangeably with regulatory policy in this paper.

Box 2. Defining regulatory policy and regulatory quality: the OECD perspective

Regulations are the rules that govern the everyday life of businesses and citizens. They are essential for economic growth, social welfare and environmental protection. But they can also be costly in both economic and social terms. In that context, "regulatory quality" is about enhancing the performance, cost effectiveness, and legal quality of regulation and administrative formalities. The notion of regulatory quality covers process, i.e. the way regulations are developed and enforced, which should follow the key principles of consultation, transparency, accountability and evidence-base. The notion of regulatory quality also covers outcomes, i.e. regulations that are effective at achieving their objectives, efficient (do not impose unnecessary costs), coherent (when considered within the full regulatory regime) and simple (regulations themselves and the rules for their implementation are clear and easy to understand for users).

Both OECD and non-OECD countries have acknowledged the importance of regulatory policy "to ensure that regulations and regulatory frameworks are justified, of good quality and achieve policy objectives" (OECD, 2011). In line with this realisation, consensus has grown among countries over the years on the elements of high quality regulation and a large body of knowledge has developed on various strategies, institutions, tools and practices around regulatory policy and governance. These efforts have led to the development of a number of instruments and, in 2012, to the endorsement by the 2012 OECD Recommendation. Despite the efforts to build a consensus around the content of regulatory policy and governance, however, the language of the regulatory policy agenda of countries has remained diverse as illustrated in the Table.

Box 2. Defining regulatory policy and regulatory quality: the OECD perspective (*cont.*)

Overview of terminologies used in relation to regulatory policy

OECD	EU	Other terminologies used
Regulatory policy	Better regulation	Good regulatory practice
Regulatory quality	Smart regulation	Regulatory management
Regulatory reform	Regulatory fitness	Deregulation
		Paperwork reduction
		Regulatory governance
		Regulatory improvement
		Simplification

Source: OECD (2015a), Regulatory Policy Outlook, OECD Publishing, Paris.

The OECD's surveys on regulatory management (2005, 2008) and the *2014 OECD Regulatory Indicators Survey*[2] suggest that OECD members routinely assess as part of their RIAs the likely impact of regulatory initiatives on the public sector, national budgets and various domestic public policies. Two thirds report assessing the trade impacts of regulation. However, the evidence suggests that this number may cover very different realities across countries. Less than half of the countries consider the impacts of regulatory proposals on other jurisdictions. And while stakeholder engagement are generally a widespread governance tool in OECD countries, the practice of allowing foreign stakeholders to participate in the design and review process of regulation remains limited to a few countries. Finally, the use of *ex post* evaluation to assess the impacts of regulation in general and on trade in particular is significantly less developed than the use of RIA (OECD 2015a). In this context, its use to assess impacts on other jurisdictions and international trade remains fully to be explored.

Research questions, objectives and methodology

The objective of the study is to clarify the role of GRP – in particular RIA – in mainstreaming trade considerations in the domestic regulatory process. Hence, it raises a number of research questions:

1. *What role can GRP (and more specifically RIA) play in theory in mainstreaming trade considerations in the domestic regulatory process?*

2. *How do OECD countries integrate in practice considerations related to trade into their RIA processes?*

3. *When and how should RIA take trade issues into account: 1) if expected trade impacts exceed a predefined threshold and have a manifest link to trade, 2) as a mandatory component in analysing different regulatory options, 3) as an ad-up once a regulatory option has been chosen allowing policy-makers to take mitigating actions?*

4. *How to ensure that the trade impacts are balanced with other welfare impacts of regulation? How can quantitative and qualitative impacts be integrated into a meaningful cost-benefit analysis that can inform decision making?*

5. *How can the institutional setup of the RIA procedure contribute to a proportional approach and the appropriate consideration of significant impacts (including trade related when relevant) in the RIA process as well as the free flow of information on trade and other impacts among services?*

6. *How can OECD countries complement and enhance their use of RIA on its own and together with other regulatory policy tools such as stakeholder engagement and ex post evaluation to assess and to balance trade impacts against other policy objectives in their regulatory process?*

The study is structured as follows. First, it discusses the theoretical purpose, benefits and limitations of RIA, stakeholder engagement and *ex post* evaluation to mainstream trade considerations in the domestic regulatory process. Second, it reviews scarce academic research on the use of three tools to identify and assess trade impacts of regulation. Third, it analyses the country evidence on whether and how OECD members use RIA, stakeholder engagement and *ex post* evaluation to address trade considerations.

It builds on the *2014 OECD Regulatory Indicators Survey* and the preceding OECD survey *Indicators of Regulatory Management Systems* (OECD, 2009a) to identify which countries systemically evaluate international and trade considerations. Moreover, it draws on official guidelines to examine the process, institutional setup, substantive focus and methodologies used to measure international and trade impacts of regulatory initiatives (Box 3). The analytical focus lies in particular on the following seven jurisdictions: Australia, Austria, Canada, Germany, Switzerland, the United Kingdom and the EU. These jurisdictions reported the highest frequency in evaluating the trade impact of proposed laws and regulations. It is therefore reasonable to assume that they have developed the most elaborate approaches to assess international and trade considerations as part of their regulatory process. The final part summarises the key findings and discusses steps to enhance the use of RIAs and other tools of regulatory policy to mainstream trade considerations in the domestic regulatory process.

Box 3. Guidelines and documents consulted for this paper

- **Australia:** Best Practice Regulation – A guide for ministerial councils and national standard setting bodies, available under: www.coag.gov.au/sites/default/files/coag_documents/COAG_best_practice_guide_2007.pdf
- **Australia:** The Australian government guide to regulation, available under: https://cuttingredtape.gov.au/handbook/australian-government-guide-regulation
- **Australia:** Trade Impact Assessments, available under: www.dpmc.gov.au/sites/default/files/publications/014_Trade_Impact_Assessments.docx
- **Austria:** Handbuch Wirkungsorientierte Folgenabschaetzung, available in German under www.bka.gv.at/DocView.axd?CobId=49873
- **Canada:** Triage Statement Guide, available www.tbs-sct.gc.ca/hgw-cgf/priorities-priorites/rtrap-parfa/guides/temp-gabar/tsf-fet-eng.asp
- **Canada:** Medium/High Impact Regulatory Impact Analysis Statement Template, available under: www.tbs-sct.gc.ca/rtrap-parfa/temp-gabar/mhitrias-gimereir-eng.asp
- **Canada:** Guidelines on International Regulatory Obligations and Cooperation, available under: www.tbs-sct.gc.ca/rtrap-parfa/iroc-cori/iroc-cori-eng.pdf
- **Canada:** Canadian Cost-Benefit Analysis Guide, available under: http://www.tbs-sct.gc.ca/rtrap-parfa/analys/analys-eng.pdf
- **Germany:** Arbeitshilfe zur Gesetzesfolgenabschaetzung, available under: www.bmi.bund.de/SharedDocs/Downloads/DE/Themen/OED_Verwaltung/Buerokratieabbau/ah_gfa.pdf?__blob=publicationFile

Box 3. Guidelines and documents consulted for this paper (*cont.*)

- **Germany:** Fragenkatalog zur Gesetzesfolgenabschaetzung, available under: www.bmi.bund.de/SharedDocs/Downloads/DE/Themen/OED_Verwaltung/Buerokratieabbau/fragenkatalog.html;jsessionid=28E60FDF932DAAF2B60C31023F27BE6D.2_cid364?nn=3314334

- **New Zealand:** Regulatory Impact Analysis Handbook www.treasury.govt.nz/regulation/regulatoryproposal/ria/handbook

- **Switzerland:** Handbuch RFA, available under: www.seco.admin.ch/themen/00374/00459/00465/04053/index.html?lang=de

- **Switzerland:** Checkliste RFA, available under: www.seco.admin.ch/themen/00374/00459/00465/04053/index.html?lang=de

- **United Kingdom:** Better Regulation Framework Manual – Practical Guidance for Government officials, available under: www.gov.uk/government/uploads/system/uploads/attachment_data/file/421078/bis-13-1038-Better-regulation-framework-manual.pdf

- **United Kingdom:** Green Book – Appraisal and evaluation in central government, available under www.gov.uk/government/uploads/system/uploads/attachment_data/file/220541/green_book_complete.pdf

- **European Union:** Better Regulation Guidelines, available under: http://ec.europa.eu/smart-regulation/guidelines/toc_guide_en.htm

GOOD REGULATORY PRACTICES IN THEORY – PURPOSE, BENEFITS, LIMITATIONS

Regulatory policy seeks to ensure that regulation serves the public interest and is welfare-maximising and cost effective. It encompasses a set of procedural and substantive principles and tools guiding the domestic regulatory process. In particular the principles of regulatory policy stipulate that the domestic regulatory process at the design and enforcement stage should be transparent, accountable, inclusive and clearly structured in terms of involved actors and institutions (OECD, 2005). With regard to substance, regulation should be effective in attaining its purpose and efficient in terms of minimising the costs but maximising the benefits of regulation for society, the state, the economy and the environment. Regulation should, moreover, be coherent with the broader domestic and international regulatory landscape and comprehensible for the regulated. States may draw on three regulatory policy tools to ensure respect for these procedural and substantive principles and high quality of regulation – RIA, stakeholder engagement and *ex post* evaluation of the stock of regulation.

RIAs are an *instrument* and a *decision process* for informing policy-makers on whether and how to regulate to attain countries' public policy objectives. RIAs seek to assess the need for public intervention, potential regulatory options for intervention as well as the various expectable impacts of these options across public policy domains in terms of costs, benefits, efficiency and effectiveness. RIAs ideally enable policy-makers to compare and to select the welfare-enhancing regulatory option to deal with an issue. RIAs are typically conducted for primary laws and subordinate regulations. RIAs complement systems for consultation and policy development within government. They ensure that information about proposed measures are disseminated and discussed across government services at an early stage (Box 4 delineates the key steps of a RIA process).

Box 4. RIA in a nutshell

RIA is a systemic approach to critically assessing the positive and negative effects of regulations and non-regulatory alternatives. The purpose of RIA is to inform policy-makers about costs and benefits of various regulatory and non-regulatory options to address a public policy concern. RIA, moreover, may allow the dissemination of information about public policy concerns and regulatory initiatives within public administrations and between public administrations and society. RIA reports typically undergo a quality check by special oversight bodies and are discussed at the political cabinet level in order to take a political decision on how to proceed and what option to pursue. In many countries, stakeholder engagement forms part of the RIA process

The key steps of a typical *ex ante* RIA include:

Problem definition. Administrations wishing to propose a new regulation are asked to identify and describe in detail the problem and its drivers. Policy problems are normally classified in two different groups: *market failures*, including informational asymmetries, barriers to market entry, monopoly power, transaction costs and many other market imperfections that lead to inefficient outcomes; and *regulatory failures*, which include all cases in which an existing set of rules is not achieving desirable outcomes, and as such warrants an update or a repeal. Another case in which a policy problem can be identified occurs whenever the proposing administration is confronting *new policy targets or objectives*, and this requires new regulatory intervention.

Identification of alternative regulatory options. In this phase, the need for intervention has to be translated into concrete policy options. Often, available guidelines at international and national level recommend that alternatives to "heavy-handed" regulation, such as light-touch regulation, regulation through information, principles-based regulation, and alternative forms of intervention such as self- and co-regulation are duly taken into account, in order to ensure that the remedy chosen is not disproportionate to the problem at hand.

Box 4. RIA in a nutshell (*cont.*)

Data collection. This phase may entail a variety of empirical methods, from desk research, telephone and face-to-face interviews to the distribution of questionnaires, organisation of online surveys and consultations, co-operation between regulatory authorities, focus groups, Delphi methods, stopwatch methods, etc. The amount of data needed and the method used to collect it vary from case to case, and should be proportionate to the RIA. When data is missing, economic modelling is also possible, especially through behavioural models such as those used in the law and economics literature, and through econometric modelling.

Assessment of alternative options. This phase can be carried out through different techniques – the most common being cost-effectiveness analysis, cost-benefit analysis, and risk analysis. Options scrutinised always have to include the "zero option", sometimes referred to as "baseline" or "no policy change" scenario, which should not be confused with the "status quo" scenario, since it captures the evolution of the policy problem absent new regulatory intervention. Depending on the available data and the depth of the RIA exercise, the assessment can be qualitative or quantitative, or a mix of the two.

Identification of the preferred policy option. Once the available options have been carefully scrutinised, the comparison leads to the identification of the most preferred option. This is not necessarily the options that should be undertaken, as RIA *per se* is only a support to, not a replacement of, the policy maker's role in selecting the most appropriate action. International guidance documents often recommend that the preferred option is subject to a more in-depth assessment, mostly aimed at quantifying the prospective impacts.

***Provisions for monitoring and evaluation*.** As increasingly required in national RIA systems, the RIA document should also specify the ways in which the impact of the selected policy action can be monitored overtime, and a clear and efficient time horizon for revision of the action in the future. In addition, whenever indicators can be selected at the *ex ante* stage, this facilitates the *interim* and *ex post* evaluation of the selected action, which should follow the *ex ante* phase.

Source: Renda (2015) and (OECD, 2009b).

Stakeholder engagement is a *communication process* between regulators and the regulated with a twofold purpose. Stakeholder engagement increases the information available to regulators. Consultations allow stakeholders to voice their concerns and to provide regulators with the needed technical expertise. Once the challenges of stakeholder engagement are addressed (in particular avoiding the risk of capture), regulators' enhanced access to information should promote high regulatory quality. Stakeholder engagement, moreover, increases the legitimacy, accountability and transparency of the regulatory process. Stakeholders are more likely to take ownership and to comply, if their concerns are taken on board and factored into regulation. Stakeholder engagements should be held throughout the regulatory life cycle from the design to the enforcement stage. States draw on various consultation instruments such as meetings, written comments or online platforms to establish contact with the regulated. Stakeholder engagement typically complements RIA and *ex post* evaluation to provide the relevant information upon which to base decisions and policy making (OECD, 2015a).

Ex post evaluation of regulation is necessary to ensure that regulations are effective and efficient (OECD, 2012). It is only after implementation that direct, indirect and unintended impacts of regulation can be fully assessed. It may inform regulators on how to reform and enhance or whether to dismantle a regulation in a given domain. *Ex post* evaluation may take many different forms, including stock management (e.g. red tape reduction targets), programmed reviews of specific regulations (e.g. review clauses) or ad hoc reviews of regulations or sectors (Box 5).

Box 5. A brief introduction to *ex post* evaluation

Ex post evaluation of laws and regulations may take different forms (OECD, 2015a). First, states may continuously assess and monitor their laws and regulations. Continuous assessments often take the form of red tape reduction targets, "one-in-one-out rules" or general monitoring programs of issue-specific regulators. Second, states may build review mechanisms into a measure when adopting it. Built-in review mechanisms are for instance sunset clauses or *ex post* evaluation obligations. Third, states may review existing laws and regulations as the need arises. Often such ad hoc evaluation takes place, when stakeholders complain about compliance costs or states decide to evaluate existing measures in view of implementing new laws or regulations in a given domain.

In theory, *ex post* evaluation of existing laws and regulations serves a twofold purpose. It assesses whether a measure effectively and efficiently attains its primary objective; and whether a measure has unintended and undesired effects on society, the state, the economy or the environment. Information gathered through *ex post* evaluation is meant to enable states to correct and to enhance existing measures (Sharma et al., 2013).

The benefits of GRP for mainstreaming trade considerations

The tools of regulatory policy and in particular RIA are in many regards pertinent approaches to mainstream trade considerations in the domestic regulatory process, where appropriate taking into consideration expected the significance of trade impacts. They are likely to help address trade considerations in the regulatory process for four reasons (Kauffmann, 2014):

- They submit regulatory measures to a reality check, support evidence-based policy making and help channel the voices of affected parties, including trade-related concerns.
- They are non-discriminatory – all potential trade partners can benefit from better rules.
- They preserve regulatory sovereignty.
- As horizontal disciplines, they constitute a low cost approach and may help avoid lengthy sector-specific discussions.

A key purpose of RIAs is to sharpen the view of policy-makers, prior to the endorsement of regulation, for various, indirect and non-manifest effects of the proposed measure across public policy areas. Regulatory trade barriers are often the result of indirect impacts of rule-making. RIAs may increase the attention of policy-makers for trade impacts and thus ensure a conscious balancing of trade and other public policy considerations. In addition, the RIA process provides a point in time to reflect on alternative options, to consider how other jurisdictions are addressing similar challenges and to map the existence of international legal instruments and policy standards in the same field.

Ex post evaluation provides a critical complementary perspective to the RIA process by helping to identify unexpected impacts of domestic regulation once it is enacted, for instance on trade. And unlike RIA, *ex post* evaluations may take a broader perspective and assess not only the impacts of a single regulation but of the regulatory environment at large in a given domain (e.g. stock evaluation). Stakeholder engagement may be helpful both in the *ex ante* and the *ex post* phases for acquiring information on (expected and realised) regulatory divergence and its costs and benefits for traders. As traders incur the costs and benefits of regulatory divergence in terms of deflated or increased trade volumes, stakeholder engagement should draw the attention of regulators to potentially unexpected impacts or provide monetised information on the impact of regulatory divergence on trade.

All three tools of regulatory policy seek to promote high quality regulation. Regulation is of high quality, if it attains its public policy objective while imposing minimal costs on society, stakeholders, the environment and the state. High quality regulation is supposedly non-discriminatory. It creates a regulatory

environment, which should equally benefit domestic and foreign traders and consumers. Good regulatory practice thus is conducive to international trade and economic integration in general.

Furthermore, GRPs in themselves do not limit countries' regulatory space and sovereignty. They may inform policy-makers of potential trade-related impacts of regulatory initiatives and thereby encourage their conscious handling. But unlike international regulatory agreements or supranational rule-making, they do not affect states' authority to regulate. The potential limitation of countries' regulatory space and sovereignty through IRC arrangements has shown to be a sensitive issue for policy-makers and citizens inter alia in the current public debate on TTIP, TPP and in deliberations in the WTO. It is also a key result of the survey carried out to OECD countries as part of OECD (2013). From this perspective, the political costs of mainstreaming trade considerations through GRPs are limited in comparison to other IRC mechanisms.

RIAs, stakeholder engagement and *ex post* evaluation are a cost-effective approach to mainstreaming trade considerations in domestic regulatory processes, irrespective of the sector or policy area under consideration. The vast majority of OECD members have in place formal procedures in relation to these three areas (OECD, 2015a). There is no need to design fundamentally new procedures, to adopt new national or international commitments or to create new institutional structures.

The limitations of GRP for mainstreaming trade considerations

GRP nevertheless face limitations with regard to mainstreaming trade considerations, which are important to outline in order to create a realistic level of expectation among policy-makers. First, research on the use of GRP and RIAs generally cautions that this is an area where there may be important gap between theory and practice. Many countries formally commit to assessing for instance various social or environmental impacts so that appropriate weight is given to these considerations in the development and implementation of policies. The assessment of potential impacts is, however, often inadequate in practice and does not feed into the policy-making process (Nykvist and Nilsson, 2009; Ruddy and Hilty, 2008; Robinson et al., 2014; Owens, 2005; Russel and Jordan, 2007; Turnpenny et al., 2008; Baecklund, 2009; Wilkinson et al., 2004; Jacobs, 2006; Turnpenny et al., 2008). As Deighton-Smith et al. (2016) summarise, this may be the result of a lack of political commitment to RIAs and to certain public policy objectives (Nykvist and Nilsson, 2009; Ruddy and Hilty, 2008; Robinson et al., 2014). There is also a tendency among regulators to see RIAs as a legitimation rather than an information and evaluation tool (Owens, 2005; Russel and Jordan, 2007; Turnpenny et al., 2008; Baecklund, 2009).

Importantly, the capacity of RIA and GRP to inform the policy making process critically hinges on the availability of relevant information. However, there are challenges related to identifying and measuring the trade impacts and costs of regulatory divergence. While businesses perceive regulatory divergence across countries as a significant source of trade costs (OECD, 2014b), regulators need a precise and measurable understanding of these costs to balance them in the welfare maximisation exercise. Otherwise, these concerns may be perceived as a mere lobbying exercise. Box 1 provides preliminary insights into the trade costs of regulatory divergence. Further work is necessary to consolidate the understanding and definitions of trade costs related to regulatory divergence and to gather the evidence on the magnitude of these costs. This will allow regulators both to prioritise their efforts on the frictions / costs that matter most and to embed more effectively trade dimensions in the regulatory process.

GRPs, to the extent that they are disseminated and coordinated across different parts of government and agencies, are likely to increase transparency and awareness among policy-makers for trade considerations and to bring about a tacit convergence of regulation (Gerstetter, 2014). However, they do not deal with and solve regulatory divergences directly (O'Rourke and Sinnot, 2001; Rodrick, 1995; Dutt and Mitra, 2002). Hence, policy-makers must be aware of the possibility that regulatory divergence (and

related trade frictions) may persist (Kauffmann, 2014). Countries hold different public policy and democratic preferences. Preference heterogeneity may translate into regulatory divergence and thereby trade costs. Regulatory divergence due to diverging democratic preferences may to a certain extent be welfare enhancing. Attempts to limit such regulatory divergence across jurisdiction may translate into welfare losses as the needs and preferences of stakeholders are not accurately reflected anymore in regulation (Majone, 2009; Buchanan, 1965, Casella, 1996) (Box 6). In addition, different agency cultures and regulatory path dependence may promote regulatory divergence. Countries, moreover, may use regulation and regulatory divergence for hidden protectionism, as the sudden rise in non-tariff barriers during the recent global economic crisis demonstrated (Economist, 2013). The mainstreaming of trade considerations through GRPs is unlikely to change this, since these practices support policy making but do not supersede political decisions.

Box 6. The theory of club goods and its implications for IRC, GRP and RIA

On the most abstract level, the topic of this paper ties into economic research on so-called club goods (Buchanan, 1965; Casella, 1996). Two features define club goods. First, it costs very little or nothing for an additional actor to enjoy a club good once it has been produced. Second, actors may be excluded from a club and thus prevented from enjoying a club good. In other words, club goods are public goods from whose benefits actors may be excluded. Such club goods are for instance national defence, product standards, social and environmental legislation and so forth.

The theory of club goods stipulates that there is an optimal club size. As club membership increases, the per capita production costs for a club good diminish. In turn the club good must be tailored to the aggregate preferences of an increasingly heterogeneous club membership. Hence, there is a growing mismatch between individual needs and preferences, on the one side, and the properties of the club good on the other. The optimal size of a club is reached when the per capita production costs of a club good equal the per capita costs caused by the mismatch between individual preferences and the properties of the club good. If club membership exceeds this threshold, members are likely to leave the club.

How is the theory of club goods related to IRC in general and GRP/RIAs? IRC extends the applicability of regulations and laws to several jurisdictions. It bears the risk that regulations and laws decreasingly match the needs of regulators and regulatees – either through international harmonisation or the 'import' of foreign regulation under mutual recognition and equivalence agreements. Once the applicability of laws and regulations becomes too broad and the stakeholdership too diverse, IRC may reduce welfare and challenge the very *raison d'être* of regulations and laws. While GRP and RIA are not explicitly based on the theory of club goods, they may enable policy-makers to assess whether to opt-in or out of an international "regulatory" club. They may allow countries to assess whether the benefits of a certain regulatory path that may promote IRC outweigh its costs.

RIAs, moreover, face methodological limitations in assessing and comparing various impacts for policy option, which may prevent policy-makers from taking RIA findings into consideration (Wilkinson et al., 2004; Jacobs, 2006; Turnpenny et al., 2008; Nykvist and Nilsson, 2009; Robinson et al., 2014). With regard to the assessment of trade impacts, RIAs are by design and purpose a tool to maximise national welfare. To that end, RIAs assess and model impacts mostly at the domestic level. The impact of regulatory initiatives on trade may, however, transcend national borders. RIAs are likely to ignore for instance impacts of regulatory initiatives on third country suppliers, which may increase input costs for national companies. It is not common either that RIAs incorporate an analysis of regulatory divergences with major trade partners, which would involve an understanding of how the new regulatory proposal may depart from other jurisdictions' regulatory framework. It may be difficult to change this focus within domestic RIAs, both because of methodological complexities and the fact that statutory mandates may require national regulators to focus on purely domestic considerations and to ignore international considerations when developing regulation. There may also be a lack of expertise and an information gap on how other jurisdictions regulate similar activities.

In addition, information provided so far by RIAs on regulatory impacts remains largely partial for a number of reasons. While traders are typically concerned with the overall impact of the regulatory environment on their activity – i.e. the sum of regulations, standards and laws in a given sector –, RIAs are mostly used in practice to assess the impacts across public policy domains for a single regulatory proposal. This is compounded by the fact that RIAs are primarily conducted by the executive branch of the national government. However, regulatory trade barriers are the results of the accumulated stock of laws, regulations, standards and norms that frame activities in a sector be they of public (from different levels of government and parliament) or private nature.

In particular, the last 20 years have brought a rise in private regulation at the domestic and transnational level (OECD, 2013b; Eberlein et al, 2014). In many sectors, private regulation plays a more important role than public regulation and laws. However, RIAs and a state-focused regulatory policy strategy may not be able to fully deal with and assess regulatory trade barriers resulting from private rule-making. They may do so when private standards are integrated as part of a proposed regulation[3] or when they are considered as an alternative scenario to a regulatory proposal. However, there is no legal requirement on private standard setters – like there is generally no such requirement for parliaments and sub-national levels of government – to carry out a RIA similar to the one imposed on the executive branches of OECD countries (and reflected in OECD 2015a). Hence, public regulatory policy-makers may need to think about how to deal with the growing role of private regulation as well as interactions between public and private regulation affecting trade. More systematic and comprehensive *ex post* evaluation may provide part of the solution.

Furthermore, while RIAs may include provisions for monitoring and enforcement, they are limited by their *ex ante* nature in dealing with the trade frictions that may arise from the implementation of regulation. However, as underlined in OECD (2013) and in particular in the case study of the Regulatory Cooperation Council, regulatory frictions to trade do not only arise from substantively different rules. In many cases they are the result of different enforcement mechanisms. Addressing such regulatory trade barriers is extremely cumbersome. It requires not only going into the very detail of a regulation so as to identify the source of a trade friction, but also, once the rule is issued, considering how it is enforced on the ground (the inspection procedures and the remedies). In this situation, an *ex ante* tool may not be able to capture the full impacts of a regulation.

The limited scope of RIAs (partly by design and partly in practice) underlines the importance of using other tools of regulatory policy, such as stakeholder engagement and *ex post* evaluation, to complete the information on impacts provided by the *ex ante* process. These tools can typically support a broader assessment of the impacts of the regulatory environment on trade, beyond one specific regulatory proposal and regardless of the source of rules. They can also provide information *ex post* on what is causing trade frictions in practice. So far, the evidence shows the limited strategic use of these tools by countries, in particular the lack of their complementary use to inform the development and revision of regulation (OECD, 2015a). Therefore a more integrated use of RIA, stakeholder engagement and *ex post* evaluation provides a promising avenue to trigger a virtuous circle of identification, evaluation and consideration of trade impacts in an iterative process. Beyond a more systematic and integrated use of regulatory policy tools, an institutionalised international regulatory cooperation platform (as provided by the Canada-US Regulatory Cooperation Council) may be needed to raise and address trade frictions on a continuous basis and avoid their sporadic consideration through punctual consultation or evaluation only (Heynen, 2013).

Having said that, stakeholder engagement and *ex post* evaluation face their own set of challenges that need to be taken into account when considering their potential to complement the RIA process in mainstreaming trade considerations. Most notably, the capacity of stakeholder engagement processes to ensure an inclusive consideration of all relevant voices has been challenged. If inadequately carried out, stakeholder engagement may provide privileged access to policy-makers for specific groups. While this is

a generic challenge of stakeholder engagement, it has been of particular concern in discussions over mega trade agreements. CEO (2015) and Mendes (2011, 2015) warn that stakeholder engagement in the context of trade agreements may under certain circumstances pave the way toward regulatory capture. Mendes (2015) also underlines that the creation of a legal obligation to conduct RIA and stakeholder engagement under TTIP may frame and gear GRP efforts toward IRC and trade considerations thereby shifting the focus away from other public policy concerns. OECD (2015a) emphasises that policy-makers must ensure that 'weak' stakeholders, which are less organised than big business and have less resources to monitor the regulatory landscape, get their say in the regulatory process.

Likewise, academic and policy publications have identified a number of generic weaknesses and challenges when conducting *ex post* evaluation, which inter alia apply to its use in assessing trade impacts (Allio, 2015; Buell and Tortorella, 2011; Metzenbaum, 1998; Heckman et al., 1997). Allio (2015) generally highlights the limited uptake in *ex post* evaluation across OECD countries: "until recently, this dimension has received comparatively less attention in the regulatory reform agenda and post-implementation evaluations have not yet been systematically implemented in most countries." Taking into consideration that the assessment of trade impacts does not figure high on the GRP agenda so far, it seems fair to assume that states may yet sharpen their assessment focus in *ex post* evaluations also in this policy domain. Bennar and Dickinson (2011) stress moreover that the quality of *ex post* evaluation may suffer from cognitive and social biases such as shared causality assumptions and values preventing an unbiased assessment of policies and regulations. Organizational barriers such as hierarchies and bureaucratic "fiefdoms" may further complicate thorough and unbiased evaluation of regulation. Incentive barriers may undermine *ex post* evaluation, as the assessors may be unwilling to critically challenge existing regulation – in part because they may be the authors of the regulation under scrutiny. While these generic challenges are likely to affect the use of *ex post* evaluation for the assessment of trade impacts, trade impacts are relatively easier to quantify and to monetise, compared to social or environmental ones. This should limit assessment errors due cognitive biases, hierarchies, incentive barriers or bureaucratic "fiefdoms".

So from a theoretical perspective, RIA provides an important basis and widely used tool for policy-makers to identify and to evaluate impacts of regulation across public policy domains including impacts on trade. But it needs to be used in conjunction with other regulatory policy tools such as stakeholder engagement and *ex post* evaluation in order to create a virtuous circle of assessment and feedback loop allowing for the continuous improvement of regulation. Together, they can help collect information, support decision-making, increase the efficiency and effectiveness of regulation and ultimately maximise domestic welfare. Ultimately, however, GRP cannot do away with preference heterogeneity across countries or the political use of regulation as market entry barriers. Other, more direct forms of regulatory cooperation are needed to achieve stronger regulatory coherence.

GOOD REGULATORY PRACTICE AND INTERNATIONAL TRADE IN PRACTICE

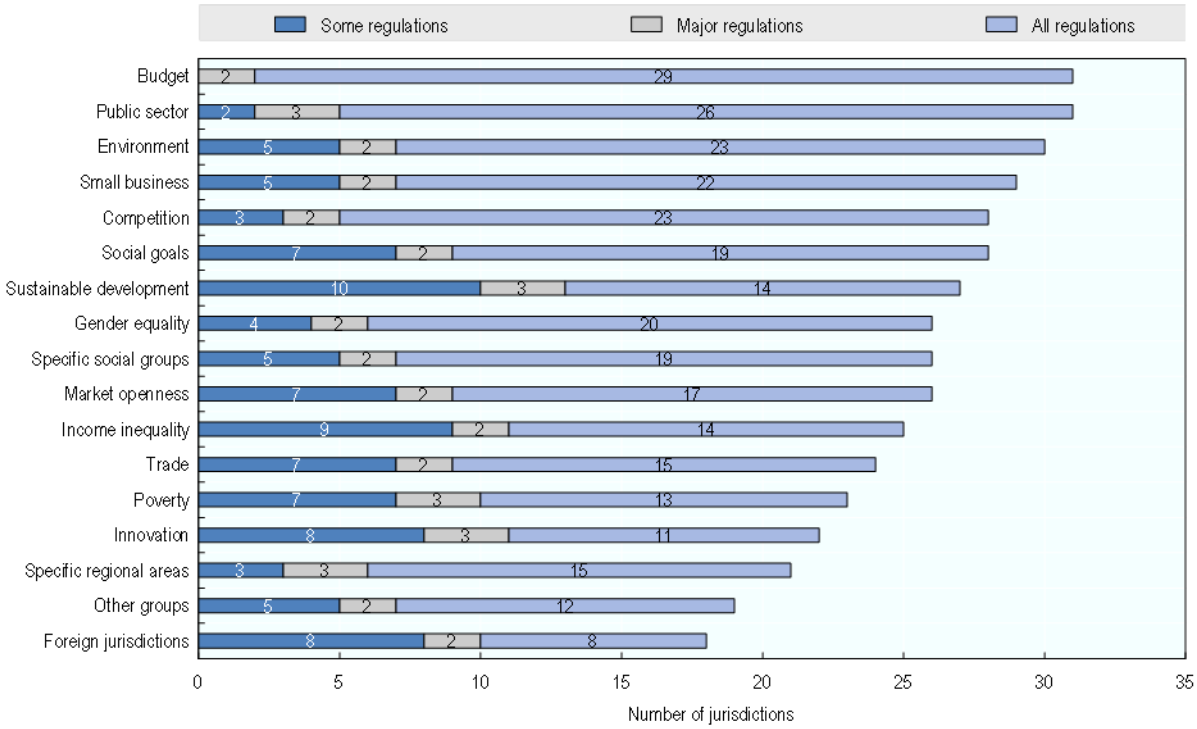
This chapter seeks to complement the theoretical considerations of GRP provided in the previous chapter with lessons learnt from practice. It relies on the 2014 OECD Regulatory Indicators Survey and desk research to evaluate the use of RIA to mainstream trade considerations in domestic regulatory processes in OECD members and then turns to the use of *ex post* evaluation and stakeholder engagement. The chapter is primarily of descriptive nature and seeks to give an overview of when and how, in practice, countries assess trade impacts as part of RIA and GRP in order to draw lessons of relevance to all countries. It also discusses the indicators, methodologies and RIA procedures used by OECD countries to assess trade-related impacts of proposed measures. The chapter finds that many OECD members formally use RIA to assess trade impacts of regulation. The institutional setup, assessment focus and methods however vary considerably across countries, which raises the question of the lessons learnt from these different approaches and of the potential for a more systematic approach.

Overview – the OECD member's use of RIAs to assess trade impacts

According to the 2014 OECD Regulatory Indicators Survey, two thirds of OECD members[4] report to assess the impact of regulatory initiatives on international trade, whereas one third does not systemically evaluate these impacts. Out of 34 respondents[5], 24 indicate to evaluate the impacts of primary laws on trade, while 10 indicate that they never examine these impacts (Figure 2). The picture is similar with regard to RIAs for subordinate regulations. Out of 35 respondents, 22 report to examine the impacts of subordinate regulations on trade, while 13 report to never evaluate these impacts (Figure 3). Fewer countries still report assessing impacts of primary laws on foreign jurisdictions (18). By contrast, assessments of impacts on budget, public sector and competition are quasi systematic across OECD countries (Figure 1).

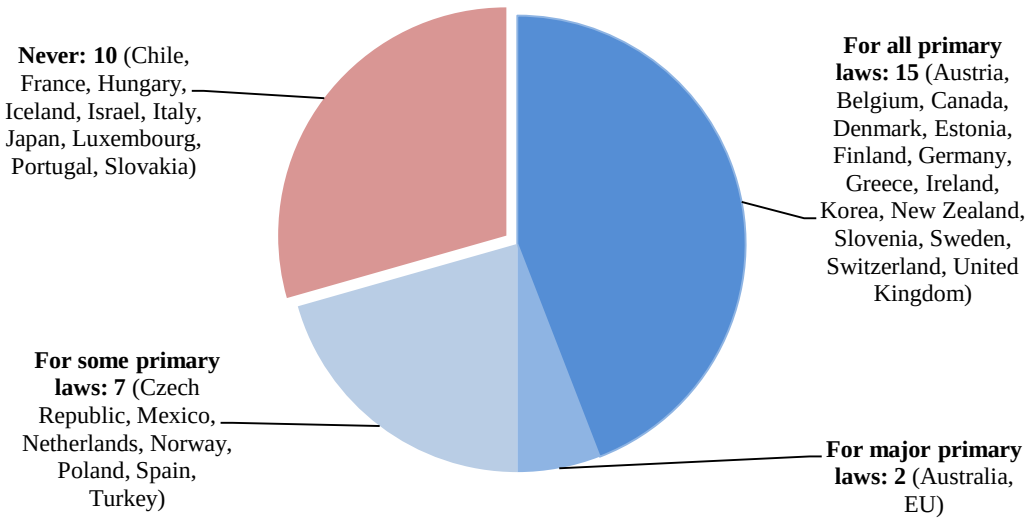
The previous OECD survey of countries' RIA practices (OECD, 2009a) did not contain specific questions on the assessment of trade-related impacts. The survey however asked governments whether they assessed the impacts of proposed measures on "market openness". This should comprise the trade dimension and has the value of putting the focus on the "market" aspect (whatever the provenance of the contributors) rather than favouring a specific source of business (traders). Out of 31 respondent governments, 20 indicated to assess impacts on "market openness" for all or major proposed measures, 8 reported doing it occasionally and 3 indicated never evaluating this impact. According to the 2014 OECD Survey, 27 out of 35 respondents assess impacts of primary laws on market openness. 25 governments also assess impacts of subordinate regulation on market openness. The numbers suggest that countries' use of RIAs for the assessment of trade considerations has slightly increased during the last years.

Figure 1. Assessment of various impacts of primary laws in RIA



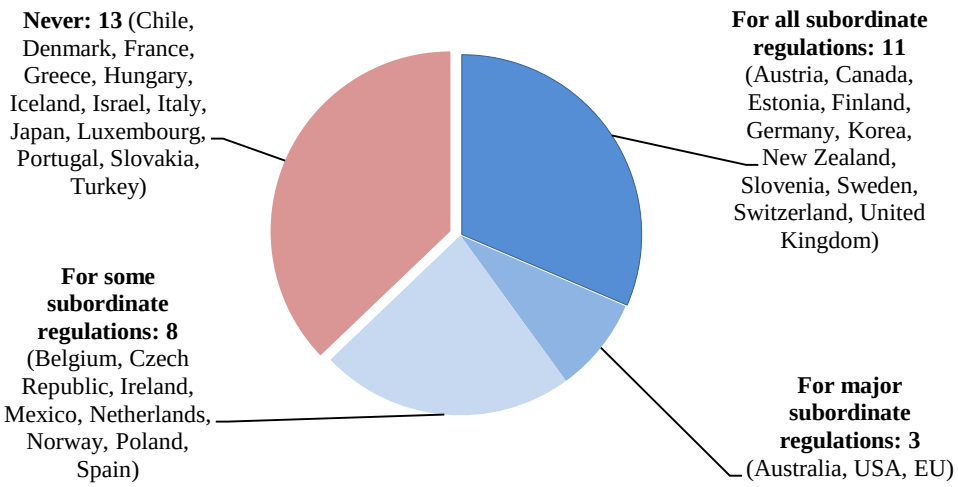
Source: 2014 OECD Regulatory Indicators Survey, www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm.

Figure 2. Evaluation of trade impacts of primary laws in national RIA procedures



Source: 2014 OECD Regulatory Indicators Survey, www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm.

Figure 3. Evaluation of trade impacts of subordinate regulation in national RIA procedures



Source: 2014 OECD Regulatory Indicators Survey, www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm.

The RIA procedure – when do countries assess trade impacts?

A first order question is when countries assess trade impacts as part of their RIAs. Taking into consideration that governments operate under tight budgets and need to carefully decide how to invest their limited resources, threshold and proportionality rules are key to the effective and efficient use of RIAs to enhance regulation and public policy. Policy-makers have been complaining about the overload of RIA procedures limiting the effectiveness and thoroughness of RIA reports. In effect, it may be superfluous to constantly assess trade impacts of regulation, in particular when they are manifestly minor. The analysis of national RIA guidelines of Australia, Austria, Canada, the EU, Germany, Switzerland and the US suggests that the threshold and proportionality rules may be vague. The vagueness is to a certain extent necessary to allow regulators to focus on the relevant information necessary for policy-makers to take political decisions. It may, however, make the assessment of trade impacts more arbitrary.

Thresholds for the assessment of trade impacts

All countries under consideration report to assess trade-related impacts for all/major laws and regulations (OECD, 2014, 2015). The consideration of their practices, however, unveils a more complex picture. Most countries indeed formally assess trade-related impacts in little detail in a first preliminary screening of potential impacts across public policy domains. With regard to trade impacts, the lead service is asked to briefly and qualitatively assess – often in the form of a simple checklist – whether a proposed measure is likely to have an impact on international trade. If the lead service finds at this stage that a proposed measure is likely to have a significant impact in any or a certain number of assessed public policy domains including trade, the threshold for the launch of a fully-fledged RIA procedure is met. The threshold for the launch of RIA procedures as well as for the assessment of trade impacts is vaguely defined in most RIA guidelines.

No examined RIA guideline provides for a 'hard' measurable threshold rule (e.g. a certain variation in trade flows). It may reflect the difficulty to define such thresholds, the lack of a clear understanding of which trade costs and impacts to consider and/or of the availability of data and the need to leave regulators some discretion to focus on relevant impacts and information as part of RIA. To enhance the use of thresholds in the use of RIA it is thus important for regulators to have a definition and ability to measure trade impacts and costs. Short of this understanding, the consideration of trade impacts within the RIA process may strongly depend on the priorities, trade-related expertise, political clout of the lead service.

Proportionality in the assessment of trade impacts

Another procedural question is how to ensure proportionality during the elaboration of RIAs. The principle of proportionality stipulates that the assessment of allegedly insignificant impacts should be avoided in order to free scarce public resources for the assessment of significant impacts. On paper, countries deal with the principle of proportionality in two different ways.

The RIA guidelines of most countries provide for horizontal proportionality. In other words, they distinguish between low, medium or high impact reports, which differ in the degree of detail and often methodology. So-called triage mechanisms inform lead services what type of RIA to choose for a given regulatory initiative. Once a type of RIA is chosen, the lead service has to horizontally assess the impact of a proposed measure on all public policy domains in accordance with the guidelines for low or high impact RIAs. Discussions with national RIA experts and a review of RIA reports, however, suggest that this horizontal proportionality rule is often not followed in practice. The assessment of insignificant impacts receives less attention than the assessment of significant impacts. The observation triggers the question whether a horizontal proportionality rule is sensible as it is likely to undermine the authority of the RIA guidelines in the eyes of lead services.

The RIA guidelines of some countries such as Germany and the EC provide for proportionality in function of the assessed public policy domain. The depth of analysis for a given public policy domain depends on the expected impact in this domain. The expected impacts across various public policy domains are preliminarily assessed on the basis of checklist and/or continuous inter-service consultations, which is then followed by in-depth assessments for significantly affected domains. RIA guidelines do not provide for measurable proportionality rules, which make the depth of analysis for trade impacts for instance dependent on an expected variation in exports and imports or a diversion of trade flows of a certain percentage. The lack of measurable proportionality rules arguably reflects again the problems to define trade impacts and costs and to get reliable data. Nonetheless, sectorial proportionality leaves the lead service some flexibility to assess those impacts which matter and thereby promote an efficient use of resources. As mentioned above, however, even countries formally adopting a horizontal approach to proportionality may in practice follow a sectorial approach to proportionality.

Ensuring relevant expertise through the institutional setup

A flexible and inclusive institutional setup allowing for inter-service consultations and the involvement of experts may be a way to ensure the efficient and effective use of RIAs for the assessment of trade impacts. Experts may quickly understand whether a regulatory initiative might affect trade and how to measure such an impact. The reviewed national RIA guidelines suggest that – on paper – countries follow two distinct strategies with regard to expert involvement and inter-service consultations.

Most RIA guidelines describe the drafting process as a centralised exercise. The lead service, which is in charge of the regulatory process in a given domain, is exclusively responsible for the drafting process. In many countries, it may lean on specialised bodies overseeing regulatory policy to provide support for instance with the quantification, monetisation and econometric modelling of expected impacts. These

oversight bodies usually also ensure quality control. They check whether RIAs are substantively complete and methodologically sound. But it is only at the adoption stage – and thus at the political cabinet level – that other services get to formally express their point of view on a RIA report and regulatory initiative. In practice, lead services often consult with specialised services in order to gather information and expertise as well as to prevent open political clashes at the adoption stage of RIA reports. Within most OECD governments informal networks have formed, which allow officials to exchange information necessary for the drafting of RIAs. This informal common sense approach, however, is reportedly not always followed. At times, different parts of government administrations do not communicate and exchange information and concerns regarding regulatory projects. It may undermine the effectiveness and efficiency of RIAs as a regulatory policy tool and impose opportunity costs on society.

The EC, Germany and New Zealand's approaches to the RIA drafting process provide interesting examples of formal inter-service consultations during the RIA drafting process. In the EC, the lead service has to continuously consult during the drafting process with an inter-service steering group, which encompasses all interested and affected Commission services. The inter-service steering group is meant to provide input and make sure that no significant impacts are ignored or inadequately assessed. In Germany, the lead service is supposed to closely cooperate with the specialised service to assess sectorial impacts. So if a significant trade impact is expected, the lead service should ask the ministry of economics to provide input to the RIA drafting process. Similar obligations exist in New Zealand. The lead service must consult with line services, if a regulation is likely to have significant impact in a given area. If a regulation has an impact on trade – especially on trade-related international obligations – the lead service has to involve the Ministry of Foreign Affairs and Trade inter alia to ensure that regulations are notified as necessary under WTO law or trade agreements. The RIA guidelines of the EC, Germany and New Zealand thereby formally ensure the involvement of technical experts in the drafting and assessment of the report.

Inter-service consultations must ensure balanced influence and assessments. The RIA process must ensure that trade impacts are adequately informed, neither under-, nor over-estimated, to allow for their appropriate consideration against other impacts and the benefits expected from regulation in the first place. Trade ministries are typically strong services within government administrations with political clout. It is the role of the line ministry and the oversight bodies to ensure that the RIA process serves its role of information gathering and analysis to support decision making. Ultimately the weights given to the various considerations highlighted in the RIA and the decisions taken should be made based on societal preferences that are reflected in political leadership (OECD, 2015a)

The substantive RIA focus – What do countries assess?

As in most other domains, the impacts of regulatory initiatives on trade are normally not obvious and cannot simply be "read off" the economy. The examined RIA guidelines recommend lead services to capture trade impacts by assessing four rather high-level and macroeconomic domains: 1) general macroeconomic impacts; 2) more specifically effects on exports, imports, investment, openness, attractiveness and competitiveness of the national economy; 3) interaction between proposed measures and the international regulatory environment; 4) and effects on third countries. The following sections briefly discuss the assessment of these issue areas as foreseen in national RIA guidelines.

Overarching macroeconomic impacts

The RIA guidelines of Australia, Austria, Canada, Switzerland, the United Kingdom and the European Commission provide for the assessment of trade impacts of regulatory initiatives inter alia as part of the overarching macroeconomic analysis. It is important to note that RIA guidelines rarely require lead services to assess sectorial impacts of regulation. They foresee the assessment of overarching economy-wide impacts. Some RIA guidelines explicitly mention the assessment of trade impacts in this category.

Austria's RIA guidelines stand out as a particularly detailed example. They enumerate various macroeconomic indicators and discuss the appropriate methodologies to model impacts. This assessment should include effects inter alia on imports, exports and foreign investment activities (Box 7).

Some RIA guidelines do not specify what exactly the macroeconomic assessment is meant to comprise in general and regarding trade in particular. It is therefore at the discretion of the lead service to interpret the requirement and to eventually look into trade impacts as part of the macroeconomic analysis. The UK guidelines, for instance, suggest that the lead services in charge of a RIA procedure evaluate effects on markets, consumers, businesses and the wider economy including labour markets or competition. While the assessment of these domains may include trade impacts – by affecting businesses and competition – no explicit mention is made.

Box 7. Austria's approach to assessing trade impacts in RIAs

When to assess trade-related impacts: Austria conducts impact assessments for all primary laws, subordinate regulations, international agreements and other major federal projects. According to the official handbook for RIAs, the government commits to evaluating the impact of proposed measures and alternatives in a number of areas including their macroeconomic, financial, sectorial, environmental, social and administrative effects. The assessment of the trade-related impacts is a compulsory element of the overarching evaluation of macroeconomic effects.

Methodology used to assess trade-related impacts: The methodology used to assess trade-related impacts differs across the different stages of the RIA process. At first, the lead service drafting the RIA report needs to determine a proposed measure is likely to have a significant macroeconomic effect on the Austrian economy. The guidelines require the lead service to separately model and roughly quantify the demand- and supply-side effect. A significant demand-side effect is understood as a change in public or private demand including imports of 40 million Euro – roughly equivalent to 0.01% of Austria's GDP – within one year of a projected and examined five-year period. A significant supply-side effect is understood as a change in 40 million Euros in value-adding activity including exports or the creation or destruction of more than 1000 jobs.

In case the lead service finds that a proposed measure is likely to have a significant macroeconomic effect, it must draft an in-depth RIA report. The official handbook lays out a detailed methodology to that end. It foresees distinct analyses of impacts on the 1) demand-side, 2) supply-side and 3) the international competitiveness of Austria. Each sub-analysis touches on international trade.

The *demand-side effects* are quantified and monetised in a five-step process.

1. The lead service must identify the potentially affected demand categories in accordance with the ESA95 nomenclature of Eurostat. Put differently, it must identify which types of investment (public, private, infrastructure, real estate, etc.), consumption (public, private), imports and exports are likely to be affected by a proposed measure.
2. It must assess the actual impact of a proposed measure on demand by category.
3. It must apply predefined multipliers to the predicted impacts per category in order to reflect indirect effects on other parts of the economy. An increase or reduction in demand in one economic sector should trickle down into other economic sectors. To that end, a government-wide harmonised econometric toolkit is provided.
4. It must econometrically evaluate the impact on labour markets and in particular effective gender equality.
5. The government must present its findings in standardised tables, which inter alia highlight whether the proposed law or regulation may alter the official GDP prognosis for the coming years.

The *supply-side analysis* is less standardised. It seeks to evaluate the mid- and long-term impacts of proposed measures on the availability of labour, capital and effects on productivity and thereby inter alia exports. While the demand-side analysis builds on a clearly documented and partly automated econometric assessment procedure and toolkit, the handbook suggests that officials should draw on available economic research and theories so as to qualitative assess the likely impact of a proposed law or regulation on the supply side.

Box 7. Austria's approach to assessing trade impacts in RIAs (*cont.*)

The *competitiveness analysis* seeks to comprehensively yet roughly evaluate the impact of a proposed law or regulation on the international attractiveness of Austria and its economic competitiveness. To that end, the handbook suggests qualitatively assessing inter alia the likely effects of measures on tax burden, multilateral commitments, market access issues, recognition of foreign diploma, labour costs and wage bargaining, national infrastructure, intellectual property rights, legal and regulatory harmonisation and others. It is in this third section that lead services may assess the interactions between Austrian regulation and international regulation and related costs and benefits.

Source: Austrian Federal Chancellery, Handbuch Wirkungsorientierte Folgenabschaetzung, www.bka.gv.at/DocView.axd?CobId=49873.

Impacts on exports, imports, investment, market openness and attractiveness

The RIA guidelines of Australia, Austria, Canada, Germany, Switzerland and the European Commission all foresee the assessment of impacts of regulatory initiatives on exports, imports and investment flows. Investment typically figures under this heading as investment projects abroad complement traditional trade. Trade and investment are two sides of the same coin. Foreign economic considerations thus explicitly figure on the list of assessed public policy domains. Most RIA guidelines, however, do not specify the indicators to examine in this domain, leaving discretion to the lead service regarding what exactly to assess in this domain.

The Austrian and Swiss guidelines (Boxes 7 and 10), moreover, require the lead service to assess impacts of regulatory initiatives on the market openness, competitiveness and attractiveness of their economies as global business hubs. The guidelines reflect a comprehensive understanding of these concepts. A lead service may have to assess how changes inter alia to their tax regimes, the protection of international property rights, infrastructure, regulatory matches between national and international regulations and standards and alike affect the openness, attractiveness and competitiveness of their economies in the global context. The RIA guidelines of the EC explicitly ask lead services to consider impacts of regulatory initiatives on *global value chains* (Box 8). They emphasise that RIAs should help states to uncover not only regulatory impacts on exports and outward investment but equally on imports and inward investment, which as part of global value chains decisively shape the international competitiveness of the European economy and EU-based companies.

It is noteworthy that most RIA guidelines as well as examined RIA reports implicitly focus on the impact of regulatory initiatives on export performance and unlocking third markets. However, as work on global value chains shows, OECD economies heavily rely on imported intermediary goods and services for their exports (OECD, 2013c). They sit at the end of global value chains. The competitiveness of companies based in OECD economies on world markets hinges on reliable, affordable and high quality input from foreign suppliers. Negative impacts of regulatory initiatives on imports – in the form of increased administrative burden and substantive compliance costs – may have important impacts on national economies and citizens. Regulators may thus have to afford greater attention to the assessment of import impacts in their RIA guidelines in order to reflect the realities and intricacies of global value chain.

Box 8. The European Union's approach to assessing trade impacts in RIAs

When to assess trade-related impacts: The EC assesses the impact of major primary laws and major subordinate regulations on international trade. Once a regulatory initiative with potentially significant impacts has been validated at political level, a RIA procedure is launched. In the beginning, the lead service drafts a so-called Inception RIA, which scopes the expected significance of economic, social and environmental impacts. Depending on the expectable impacts, it may contain a dedicated section on likely impacts on third countries (impact assessments in support of a trade negotiating directive always do), international trade or investment.[6] The Inception RIA is made public. A full impact assessment follows which includes a mandatory 12 weeks public consultation.

Methodology used to assess trade impacts: The RIA must assess the impact of a proposed measure on 1) the economy, society and the environment; 2) most concerned groups within the EU; 3) small and medium-sized enterprises; and 4) the competitiveness of the European economy. The assessment of trade-related impacts forms part of the overarching economic assessment. The so-called 'Better Regulation Toolbox' contains guidelines on how to assess trade impacts in detail if a proposed measure is expected to have such an effect. The toolbox requires the lead service to assess three different potential trade impacts and provides methodological guidance.

First, the toolbox requires the lead service to qualitatively assess the compatibility of a proposed measure with the EU's legal commitments enshrined in the WTO agreements, regional and bilateral trade and investment protection agreements. It has to evaluate on the basis of a catalogue of questions, whether a proposed measure complies to general trade principles such as 'national' or 'most-favoured nation treatment', respects international rules on subsidies, intellectual property rights, technical barriers to trade and sanitary and phyto-sanitary standards.

Second, the toolbox requires the lead service to quantitatively assess the impact of proposed measures on trade and investment flows. It enumerates three areas, which EC services need to analyse in detail. The lead service is asked to evaluate direct and indirect impacts on economic agents most likely to be affected i.e. certain sectors, types of firms and consumers. The toolbox emphasises that this assessment – and related stakeholder engagement – should encompass firms from major trading partners such as the USA, China, Russia, Switzerland, Turkey, Japan or Canada so as to take into account effects of a proposed measure on international supply chains. Furthermore, the lead service should quantify the impacts of a proposed measure on the EU's exports and imports for goods, investment flows and services trade. The toolbox again underlines that the lead service must pay special attention to impacts on international supply chains. In the light of the EU's commitment to policy coherence and development, the toolbox calls on the lead service to study whether a proposed measure has a significant and eventually disproportionate effect on trade with developing and least developed countries. While the toolbox stresses which potential impacts need to be assessed, it does not discuss a methodology to quantify them. Instead, the toolbox points to data sources and a contact point at the directorate-general for trade, which may offer support if need be.

Third, the toolbox requires the lead service to qualitatively evaluate the impact of a proposed measure on the international regulatory landscape. To that end, the lead service should assess to what extent a proposed measure is conform to international regulation and standards as well as equivalent measures of the EU's major trading partners. To avoid regulatory divergence and the creation of unnecessary regulatory trade barriers, the lead service should integrate as far as possible existing international regulatory approaches into its regulatory initiative. It should, moreover, use discussion fora like the WTO, regional or bilateral dialogues to consult on regulatory initiatives with international partners.

Source: European Commission, Better Regulation Guidelines, http://ec.europa.eu/smart-regulation/guidelines/toc_guide_en.htm.

Interaction between regulatory initiatives and the international regulatory environment

The RIA guidelines of Austria, Canada and the EC require the lead service to examine the impact of a proposed measure on the international regulatory environment and thereby foreign economic relations. The Canadian and EC guidelines give detailed instructions on what to assess (Boxes 8 & 9). First, they demand the lead service to assess whether a proposed measure is in line with international legal commitments under WTO law and other trade and investment agreements. Second, they demand the lead service to base any regulatory initiatives as far as possible on existing international regulations and standards as well as on foreign regulations and standards of major trading partners in order to avoid the erection of regulatory

trade barriers. If the lead service proposes to deviate from international regulations and standards, it should demonstrate that it is necessary in order to attain Canadian or European public policy objectives. The EC guidelines also encourage lead services to use international discussion fora like the WTO or bilateral dialogues with trading partners to consult on regulatory initiatives likely to affect trade.

It is noteworthy that only few countries formally give consideration to the international regulatory environment as part of their RIA guidelines. The assessment of interactions between regulatory initiatives and the international regulatory environment suggests itself as an efficient and effective strategy to identify potential trade impacts. The econometric modelling of impacts of regulatory initiatives on exports, imports, investment flows and more generally global value chains is often complex. It requires extensive data and econometric expertise. Both are often in short supply. WTO law, trade agreements and legal expertise, on the other hand, are fairly easily accessible in national administrations. Trade and regulatory policy-makers may thus ponder whether strengthening assessment requirements regarding regulatory interactions between the domestic and international level is a cost-effective way to detect potential trade impacts of regulatory initiatives.

Box 9. Canada's approach to the assessment of trade impacts in RIAs

When to assess trade-related impacts: The Canadian government reports to systemically evaluate the likely effects of proposed primary laws and subordinate regulations on international trade. Much like Austria, Canada follows a two-step RIA procedure. In a first step, the lead service on a proposed measure must complete a so-called triage statement to determine whether a low impact or medium/high impact Regulatory Impact Assessment Statement (RIAS) needs to be carried out. The triage statement requires the lead service to broadly assess whether a proposed measure is likely to have no impact or a low, medium or high impact across various public policy domains. At this stage, the lead service must evaluate the likely impact of a proposed measure on 1) international trade, 2) on international trade agreements and obligations, and 3) on international regulatory coordination and cooperation. If the triage statement suggests that technical regulations, conformity assessment procedures, sanitary or phytosanitary measures are likely to have a trade impact, stakeholders – Canadians, foreign governments or international organisations – must be allowed to provide comments for an extended consultation period of 75 days. Similarly, if the triage statement is carried out for the transposition of international commitments and may have a trade impact, the draft measure must be notified to the TBT or SPS Committees of the WTO if applicable.

Methodology used to assess trade impacts: The lead service is required to assess trade-related impacts of proposed measures in two regards and on the basis of two different methodologies when conducting so-called 'medium/high impact' RIAs.

First, the lead service must qualitatively assess the potential impacts of proposed measures on international trade and international regulatory cooperation. Special 'Guidelines on International Regulatory Obligations and Cooperation' instruct regulators to generally pay attention to the international regulatory context. The guidelines highlight that government services should play an active role in international discussions and efforts to regulate. Regulators should, moreover, engage with and monitor regulation of key partner jurisdiction such as the USA, the EU and emerging markets. In a second and more concrete part, the guidelines contain a catalogue of control questions, which seeks to ensure that Canada adopts uniquely Canadian regulatory approaches only if international or foreign regulatory approaches of partner jurisdictions do not correspond to Canada's public policy objectives. The purpose is to avoid the erection of unnecessary regulatory barriers to trade and economic cooperation through inattentive national regulation.

Second, the lead service has to conduct a cost-benefit analysis for proposed measures as well as regulatory and non-regulatory alternatives for a ten-year period. To that end, government services need to identify potential impacts and how they might affect major macroeconomic variables as inter alia international trade. The 'Canadian Cost-Benefit Analysis Guide' offers general help on how to quantify, to monetise and finally to compute costs and benefits over a projected time period. The cost-benefit analysis must, moreover, report on impacts on major stakeholders, industries and the Canadian labour market, which may again touch on trade impacts such as trade-dependent employment and price levels.

Source: Canadian Federal Government, "Guidelines on International Regulatory Obligations and Cooperation", www.tbs-sct.gc.ca/rtrap-parfa/iroc-cori/iroc-cori-eng.pdf.

Effects on third countries

Finally, the RIA guidelines of Switzerland and the EC require the lead service to assess potential impacts of a proposed measure on third countries. Such impacts on third countries may materialise in altered trade patterns but also in other public policy domains. The assessment requirement is not specified in significant detail. On the one hand, it aims at ensuring policy coherence between domestic regulation and international development aid. The EC guidelines for instance clarify that lead services should assess whether a regulatory initiative disproportionately affects developing and least developed countries. In the case of Switzerland, the assessment requirement also seems to aim at ensuring that appropriate weight is given in the domestic regulatory process to the intricate legal and economic bilateral relationship between Switzerland, the EU and its Member States.

Box 10. Switzerland's approach to the assessment of trade impacts in RIAs

When to assess trade-related impacts: Switzerland reports to evaluate the impact of all primary laws and subordinate regulations on international trade. The RIA guidelines, however, draw a more nuanced picture. The lead service must first determine whether there is a legal or functional requirement to conduct a RIA. RIAs are mandatory for certain types of regulation regardless of the expected significance of impacts. In all other cases, regulators must go through a checklist of ten questions to broadly and qualitatively assess whether a proposed measure is likely to have an impact in the issue areas under consideration. This checklist encompasses three questions, which seek to capture trade-related impacts: 1) does a proposed measure reduce or increase Switzerland's economic openness; 2) does a proposed measure reduce or increase the international attractiveness of the Swiss economy; 3) does the proposed measure have an impact on Switzerland's macroeconomic situation. A RIA procedure must be launched, if the lead service gives affirmative answers to at least three out of the ten questions. Depending on the significance of the expected impacts, normal or in-depth RIAs must be drafted. The guidelines do not contain rules on how to assess the significance of expected impacts.

Methodology used to assess trade-related impacts: Simple and in-depth RIAs examine the same substantive policy domains and key questions. The policy domains and questions subject to analysis are enumerated in the official RIA guidelines. The lead service must assess the following trade-related impacts: 1) impacts on third countries (developed/developing countries); 2) impacts on the openness of the Swiss economy (market entry barriers for foreign companies and products, etc.); and 3) the attractiveness of Switzerland as business location (access to foreign markets, international acceptance of national regulation, etc.).

While simple and in-depth RIAs cover the same substantive areas, they differ regarding the employed methodology and detail. Simple RIAs draw on qualitative assessment methods and remain fairly vague. In-depth RIAs, on the other hand, should quantify impacts as far as possible. To that end, the lead service must closely cooperate with the Swiss ministry of economy (SECO), which is in charge of developing the national RIA procedure and provides advice and support in the assessment and drafting process. The RIA guidelines contain some general rules for data selection and quantification methods, but concede that the degree of quantification, available data and necessary analytical detail depend on the examined measure and impacts. The methodology used to quantify and analyse inter alia trade-related impacts must be determined on a case-by-case basis.

Source: Swiss State Secretariat for Economic Affairs, Checkliste RFA, www.seco.admin.ch/themen/00374/00459/00465/04053/index.html?lang=de.

The RIA methodology – How do countries assess trade impacts?

The assessment methods are of importance for epistemological reasons. They shape the findings and ultimately policy recommendations of RIA reports. They determine what information RIAs require and produce. They may, moreover, clarify or obscure certain impacts. Finally, they may influence the weight of RIA reports in policy-making debates. Policy-makers tend to be more receptive to supposedly 'hard' and concise quantified and monetised findings than to 'soft' qualitative findings.

Quantitative and qualitative assessment methods

The examined RIA guidelines favour the quantification and monetisation of regulatory impacts in general and in particular with regard to trade. Taking into consideration the economic nature of most trade impacts, this approach seems appropriate to model and represent many trade impacts in RIA reports. Impacts on exports, imports, investment flows as well as trade creating and trade diverting effects are indeed relatively easily modelled and represented through quantitative and eventually monetised data.

The detail of national guidelines on how to quantify and monetise trade impacts differs across countries. Some RIA guidelines describe the quantification and monetisation of trade impacts in detail. Others remain fairly vague in describing quantification and monetisation methods. They implicitly or explicitly state that the quantification and monetisation of trade impacts remains despite their economic nature a challenging task due to the great variety of possible trade impacts. The quantification and monetisation of trade impacts may thus require a case-by-case handling rather than a static approach as codified in RIA guidelines. This underlines once more the importance of the institutional setup and involvement of relevant experts in the RIA procedure.

While quantification and monetisation seem to be appropriate methods to model and to represent many trade impacts of regulatory initiatives, some trade impacts may nevertheless defy quantitative methods and require qualitative assessment. The impact of regulatory initiatives on third countries as well as interactions between domestic regulatory initiatives and international and foreign regulations for instance may be difficult to fully grasp and to analyse through quantitative models. The legal nature of such impacts may lend itself rather to qualitative assessments in order to accurately depict effects on global value chains. Some RIA guidelines acknowledge this fact and provide lead services for instance with questionnaires to facilitate the qualitative assessment of trade impacts.

Methodologies to assess national impacts but not international regulatory divergence

The examined RIA guidelines build on methodologies geared toward assessing domestic impacts. Their substantive and methodological foci enable regulators to measure impacts of regulations for instance on national exports or imports. They make it, however, difficult for regulators to assess truly international impacts of regulatory initiatives. The examined RIA guidelines hardly contain methods to measure the costs or benefits of divergences of regulations across jurisdictions. Consequently, they do not inform policy-makers about the net costs or benefits of IRC efforts as the costs or benefits of regulatory divergence remain largely unknown.

This is an important observation to make for two reasons. First, it is often claimed that current IRC efforts aim at reducing regulatory divergence and related costs. Most states, however, do not measure divergence or its costs. Hence, the claim or actions taken in this direction are not evidence based. Second, production processes are highly fragmented across jurisdictions. The total costs or benefits from regulatory divergence on global value chains and multinational trade flows remain unknown. In order to get the full picture of regulatory impacts on trade, it may be necessary to develop a methodology to assess regulatory divergence across global value chains.

Box 11. An example of the assessment of trade impacts in RIA reports – Coastal Shipping Reform in Australia and international service trade

In 2014, the Australian government launched a reform of the Coastal Trading Act. The Australian government argued that a reform and thus regulatory intervention in the market for coastal shipping services had become necessary as freight rates for intra-Australian coastal shipping services had considerably increased. Intra-Australian freight rates exceeded freight rates on international and foreign shipping routes. The high intra-Australian freight rates increased costs for Australian manufacturers relying on coastal shipping services as part of their supply and sales networks and reduced their domestic and international competitiveness. The Australian government concluded that a reform of the Coastal Trading Act – through the partial opening of the Australian coastal shipping market to foreign ships and carriers – was indispensable to address the problem. At the same time, a continued partial protection of the market was crucial to preserve maritime jobs and skills within Australia.

The RIA report developed and assessed four reform options ranging from a complete deregulation to a regulatory overhaul allowing for a more flexible use of foreign ships in intra-Australian coastal shipping services. First, it qualitatively and quantitatively (through monetisation) assessed the costs and benefits of each policy option for consumers, national and international service providers and public administrations. Second, it reported that no international regulation or standards constrained Australia in this domain or was likely to cause negative interactions. Third, the report provided a detailed discussion of the methodology and results of the stakeholder engagement. Fourth, the report summed up and clarified the benefits of the preferred option. The last section briefly described how the government could monitor and evaluate the successful implementation of the reform in the coming years.

Source: Australian Government (2015), "Regulation Impact Statement – Coastal shipping Reform", http://ris.dpmc.gov.au/2015/07/31/coastal-shipping-reform/

Taking RIA to the next level – the practices around RIA at the international level

RIA is a tool for domestic welfare maximisation. Except in a few notable exceptions, impacts of regulation beyond national borders are by design and purpose largely ignored in national RIA approaches. Yet, this focus may largely overlook the distributional impacts of regulation among key trade partners. The trade costs of regulatory divergence across jurisdictions are also rarely the focus of RIAs in practice. A possible remedy to these limitations is the internationalisation of RIA and GRP by either delegating assessments to the international sphere or adopting a transnational assessment perspective. Alemano (2013, 2015) proposes to introduce international RIA and cost-benefit analyses under WTO law to ensure that domestic and international trade impacts of regulation are captured through GRP. He underlines that such international RIA may bring about a convergence in regulation without seriously limiting states' regulatory space. While not widely done, some countries and organisations have sought to internationalise RIA and GRP procedures.

Australia and New Zealand have conceived an innovative approach to RIA in the context of the Trans-Tasman Mutual Recognition Agreement (TTMRA). Decision-making by Ministerial Councils in relation to subject matters governed by the TTMRA must follow the "Principles and Guidelines for National Standard Setting and Regulatory Action", which foresee inter alia the preparation of so-called Regulatory Impact Statements (RIS). These RIS, while drafted at the domestic level, are reviewed by both the Australian Office of Best Practice Regulation and the New Zealand RIA Unit. In consequence, RIS must satisfy the expectations regarding information and evaluation of both Australian and New Zealand regulators, which should translate into a distinctly transnational evaluation perspective (OECD 2013).

The EC "Better Regulation" initiative is another example of an internationalisation of RIA and GRP. The EC drafts so-called Impact Assessments (IAs) for primary laws and subordinate regulations, which it initiates in conformity with its prerogatives under the European Treaties. Many laws and regulations initiated by the EC have an impact on cross-border trade within the Single Market. Proposed regulations

and laws should often have a positive effect on intra-EU trade through regulatory convergence and harmonisation bringing down the trade costs of regulatory divergence within the EU. An EU measure may, however, also adversely affect certain intra-EU trade flows. An EU initiative may for instance seek to increase competition on the Single Market or implement new environmental or health standards. Such measures may limit the competitiveness of producers in certain Member States and thereby reduce their intra-EU trade. In principle the EC commits to assessing all significant impacts of laws and regulations as part of IAs. In practice, the EC may assess negative trade impacts at the sectorial and European level. It typically refrains, however, from disaggregating effects to the national level i.e. pinpointing winners and losers among EU member states.

The EU example suggests that the internationalisation of RIA for the assessment of trade impacts may encounter important political obstacles. International RIA identifying and disaggregating costs and benefits of IRC efforts across and within countries may de facto devolve into a bargaining chip in international negotiations rather than a technical and neutral assessment of costs and benefits of joint action. An authority in charge of drafting an international RIA is likely to be under political pressure from the involved countries. Even the EC, which may be considered as a unique powerful international body given its regulatory powers, shies away from this exercise so as to ward off political pressure from member states. Hence, proposals to establish multilateral RIA procedures for IRC endeavours for instance under the ambit of the WTO secretariat must be assessed with a grain of salt. Efforts of multiple governments or regulators to jointly draft RIA, on the other hand, are likely to go through difficult discussions over the assessment focus and methods. Focus and methods are likely to shape results and thereby to affect bargaining positions and negotiating outcomes.

These considerations are not meant to discourage international RIAs per se. Instead they highlight that the internationalisation of RIA is most likely to succeed in international settings, where governments and regulators share common objectives and interact on the basis of trust and technical expertise rather than in an adversarial and redistributive perspective.

GRP beyond RIA – How are countries using stakeholder engagement and *ex post* evaluation to account for trade impacts?

GRP goes well beyond conducting *ex ante* RIAs. As established in the 2012 OECD Recommendation, it involves a whole of government approach, the use of a number of tools, and has consequences for the institutional set-up (in particular the establishment of oversight functions). It is the complementary pursuit of these different components that should enable states to engage in welfare-maximising rule-making. On-going attempts to establish binding IRC commitments inter alia through GRP under TTIP and TPP echo this insight. They go beyond the use of RIA to promote regulatory cooperation (TTIP and CETA) or coherence (TPP) with a view to facilitate trade (Box 12).

Box 12. IRC as foreseen under the TPP, TTIP and CETA drafts: a strong focus on regulatory disciplines

The regulatory coherence chapter of the Trans-Pacific Partnership (TPP)

Negotiations on the TPP were concluded in October 2015 and involved 12 countries: Australia, Canada, Japan, Malaysia, Mexico, Peru, United States, Vietnam, Chile, Brunei, Singapore and New Zealand. It is the first time that a trade agreement involves an horizontal chapter on regulatory coherence relying on Good Regulatory Practices (GRP). The adoption of GRP is supposed to promote regulatory coherence thereby limiting regulatory divergence and trade costs.

Box 12. IRC as foreseen under the TPP, TTIP and CETA drafts: a strong focus on regulatory disciplines (*cont.*)

The chapter encourages GRP including impact assessments of proposed regulatory measures, communication of the grounds for the selection of chosen regulatory alternatives and the nature of the regulation being introduced. The chapter also includes provisions to help ensure regulations are written clearly and concisely, that the public has access to information on new regulatory measures, if possible online, and that existing regulatory measures are periodically reviewed to determine if they remain the most effective means of achieving the desired objective. In addition, it encourages TPP Parties to provide an annual public notice of all regulatory measures it expects to take. Toward these ends, the chapter establishes a Committee which will give TPP countries, businesses, and civil society continuing opportunities to report on implementation, share experiences on best practices, and consider potential areas for cooperation. (USTR, 2015).

The commitments are soft ones and are not subject to the TPP dispute settlement mechanism. This approach - which can be interpreted as a modest level of ambition - reflects the significant differences in the uptake of regulatory policy in the twelve TPP countries. The agreement lays however the ground for more ambitious regulatory cooperation in the future.

Regulatory cooperation in the Trans-Atlantic Trade and Investment Partnership (TTIP)

The TTIP negotiations are still on-going. A draft chapter on regulatory cooperation published by the European Commission in 2015, however, gives a fairly precise picture of the envisaged disciplines. The draft chapter does not foresee joint rule-making at the international level but focuses on coordination of rule-making among the parties. The parties would establish a transparent regulatory environment to ensure that information about regulation and regulatory initiatives is publically available to domestic and foreign stakeholders. The parties moreover would commit to using regulatory policy tools such as RIAs, stakeholder engagement and *ex post* evaluation at the domestic level. These domestic steps should be complemented by the creation of a regulatory cooperation body. This body would monitor the implementation of the regulatory cooperation chapter and work in specific sectors and publish an annual regulatory cooperation agenda, which lists major regulatory initiatives and identifies areas in need of cooperation. It would be a platform where the EU and the US would discuss and consider the priorities for transatlantic regulatory cooperation on the removal of technical barriers – without jeopardizing each side's right to regulate - taking into account input from stakeholders and with the full involvement of regulators and competent authorities from both sides (European Commission, 2015a). A study done for the European Commission estimates that a reduction of regulatory trade barriers through TTIP may boost US exports by up to 6.1% and EU exports by 2.1% translating into an increase in US GDP by 0.3% and EU GDP by 0.7% (Berden et al., 2009).

Regulatory cooperation in the Comprehensive Economic and Trade Agreement (CETA)

The CETA between Canada and the EU was concluded in 2014. The agreement is going through legal scrubbing, translation and ratification. Like TPP and TTIP, it has a strong regulatory focus. The European Commission published a draft text in September 2014. The parties first underline the societal benefits and necessity for regulation. They commit to establish a transparent regulatory environment, to build on good regulatory practice such as RIA, stakeholder consultations and *ex post* evaluation, to share their experiences with these tools in view of enhancing them, and to create "Regulatory Cooperation Forum" (RCF) to facilitate dialogue, exchange of information and identify areas in need of cooperation (European Commission, 2014).

Stakeholder engagement and trade impacts

In line with the 2012 OECD Recommendation, OECD countries have endorsed stakeholder engagement as part of their regulatory policy. The rationale behind this trend is that regulators can only deliver welfare-maximising regulation in the public interest, if those subject to regulation – citizens, business, civil society and other members of the community – provide their inputs in the development of regulation and to support the evaluation of the impacts of regulation. Consequently, according to OECD (2015a), stakeholder engagement is a formal requirement in the development of regulation (either primary or subordinate) in all OECD countries. Its effectiveness hinges on when engagement takes place in the regulatory process, how it is conducted and what actors participate (OECD, 2015a). Experience with stakeholder engagement, moreover, suggests that stakeholders may not always have the relevant

information or understand the impact of regulatory projects, which may limit the usefulness of their engagement.

Stakeholder engagement may contribute to identifying and dealing with trade impacts of regulatory initiative if foreign stakeholders are allowed to participate and to submit their views (Shortall, 2007). Along these lines, the APEC-OECD Integrated Checklist on Regulatory Reform (2005) recommends that countries allow foreign stakeholder to take part in consultations at the design and *ex post* evaluation stage in view of assessing regulatory impacts inter alia on trade and to avoid discrimination. Foreign stakeholders are likely to raise awareness for regulatory approaches in other jurisdictions, to provide information about unintended impacts and to highlight the costs and benefits of opting for or maintaining the same or different regulatory approaches.

De facto, access of foreigners to stakeholder engagement processes considerably varies across OECD members. The US and the EC stand out in this context for their open consultation procedures. Any kind of national or foreign stakeholder – be it a public authority, legal entity or citizen – can take part in consultations and submit comments to regulatory projects. Canada allows for submissions from foreign governments and international organisations and grants an extended period for comments of 75 days and notification to the WTO in case a measure is expected to have a trade impact as defined under WTO law. New Zealand and Australia have opened their consultation processes for stakeholders from each other's jurisdictions. In addition to formal access rules, linguistic requirements may de facto limit access of foreign stakeholder to consultation. If consultations are publicised only in a local language and submission limited to such languages, foreign stakeholders may find it prohibitively expensive to take part in consultations and to provide input inter alia on trade concerns.

Scholars of regulation and multilevel governance (Majone, 2014; Scharpf 1988) have however cautioned that the internationalisation of the regulatory process may raise questions over the legitimacy, accountability and effectiveness of regulation. Open consultation procedures may trigger concerns over regulatory sovereignty, the loss of which is a primary concern of OECD countries in relation to IRC according to the OECD (2013). Open consultations may be perceived as providing foreigners too much influence in national rule-making and democratic public policy choices. In this perspective, it may be useful to adopt a nuanced approach to the participation of foreign stakeholders in consultations and condition the participation of foreign stakeholders on the nature of the regulation under assessments. While some regulation may indeed be highly sensitive and touch on fundamental democratic choices, other measures may be less sensitive but have strong trans-border effects. Hence, depending on the nature of regulation, the participation of foreign stakeholders may be more or less sensitive and useful.

Stakeholder engagement in the realm of trade policy has also attracted criticism in the context of the heated debates on the TTIP and the TPP (Mendes, 2015; CEO 2015). Critics warn that stakeholder engagement may function as backdoors for lobbyists of multinational enterprises that have the capacity to engage in a consultation process that may be remote from their domestic base – contrary to other affected parties whose capacity to reach out beyond their own jurisdiction may be limited. Critics thus highlight that stakeholder engagement may lead to regulatory capture and ultimately biased regulation, which ignores public interest and undermines democracy. The criticism concerns mainly the setup and input of stakeholder engagement rather than the instrument per se. It is a call to regulatory policy-makers to put increased efforts into the identification of "weak" constituencies i.e. potentially affected stakeholders with little capacity to get organised and to proactively take part in such consultations.

Having said that, the distinction between foreign and domestic stakeholders may not be that relevant in a number of cases. International investment activity has been surging since the 1980s as global value chains and internationally decentralised production developed. The increase in investment stocks was accompanied with a rise in foreign affiliates, which often are legal persons under the law of host countries.

Hence, foreign traders and investors may be able to submit their views in consultations through their affiliates regardless of nationality requirements. In this perspective resisting the engagement of foreign stakeholders may be illusory or may even bias the regulatory process against the smaller stakeholders that may not have the resources for a local presence.

It is worth noting that beyond the regulatory policy making sphere, the WTO transparency process under the TBT and SPS Agreements provides an interesting multilateral mechanism for the disclosure of regulations and the engagement of foreign countries in the domestic regulatory process. It is in line with the WTO approach, which largely focuses on the importance of GRP to minimise adverse effects on international trade, in particular transparency (Box 13).

Box 13. The WTO and Good Regulatory Practices (GRP)

WTO law and practice touches on GRP in several regards and largely emphasises the importance of transparency. The Agreement on Technical Barriers to Trade (TBT) includes several provisions that help contribute to better regulation, and WTO Members have been increasingly discussing in their Committee meetings how to most effectively foster GRP. According to the TBT Agreement, WTO Members are free to adopt the measures they consider necessary to fulfil a legitimate policy objective, without intentionally creating hurdles for trade (art. 2.2), as long as they do discriminate between domestic and foreign products ('National treatment') or between foreign products of different origin ('Most Favoured Nation') (art. 2.1). They are required to use as far as possible international standards (TBT Art. 2.4), to be transparent and to enable foreign countries and stakeholders to get acquainted to and to comment on proposed measures if trade effects are expectable (TBT Art. 2.9). In 2012, WTO Members agreed to build on a few elements of GRP that would guide Members throughout the regulatory lifecycle in their implementation of the TBT Agreement (WTO, 2012). Among these, RIA, stakeholder consultations and *ex post* evaluation are identified as ways to create a transparent, non-discriminatory and effective regulatory environment.

The Agreement on Sanitary and Phytosanitary Standards (SPS) by and large echoes the provisions of the TBT Agreement. It does not contain any substantive sanitary or phytosanitary standards. Its provisions seek to ensure that WTO members do not use such measures for protectionist purposes. SPS Art. 2.2 and 2.3 state that SPS measures shall be based on scientific evidence and that they should be applied to the extent necessary to protect human or animal health. SPS Art. 3 states that WTO members should where possible base their measures on existing international standards. And SPS Art. 7 calls on WTO members to be transparent about their standards, with similar procedures as under the TBT Agreement described in Annex B of the SPS Agreement.

The General Agreement on Services Trade (GATS) generally prohibits WTO members from adopting regulations which discriminate among foreign service suppliers ('Most favoured nation treatment') (GATS Art. 2.1). The GATS, moreover, requires WTO members to regulate reasonably, objectively and impartially and provide foreign service providers with a possibility to express concerns and have a regulation reviewed (GATS Art. 6). The GATS also requires WTO members to be transparent about regulation, which may affect services trade (GATS Art. 3).

Members are required to publish draft and adopted measures in order to allow stakeholders to become acquainted with them. This remains more of a disclosure requirement, without opening the right for a dialogue between Members and stakeholders. It is through the notification obligations and related practice that a consultation process on regulatory measures takes place. The TBT and SPS Agreements require countries to notify any draft regulation, standard or conformity assessment procedure, which deviates from relevant international standards and may have a significant effect on trade of other WTO members. The Agreements ensure that any WTO Member may comment and discuss with the regulating Member on trade impacts of their proposed measures. Such comments and discussions should be taken into account. Each WTO Member is to set up an "enquiry point" to respond to enquiries both by other Members and interested stakeholders. The USA relies on the Administrative Procedure Act to implement the WTO requirements to take trading partners' comments into account (Shub, 2015). The USA treats comments of third countries on technical, sanitary and phyto-sanitary measures received in discussions of the TBT and SPS Committees of the WTO as input to its domestic stakeholder engagement process (Liberante, 2015).

In addition, practice in both TBT and SPS Committees has led to the possibility for Members to raise "Specific Trade Concerns" (STCs) at the Committee meetings, thus opening a dialogue regarding TBT or SPS measures of other Members which cause any sort of concern, to exchange information and eventually request the adaptation of the measure to fit common interests (WTO, 2014). This multilateral consultation process has taken a significant place in the TBT and SPS Committee meetings, and though its effects on Members' regulatory process remain uncertain, it is a mechanism highly used (Wijkström, 2015). While the notification procedures of the two Agreements and the related Committee discussions remain reserved to WTO Members – therefore excluding the right for other stakeholders to participate – practice shows that the information publically disclosed through notifications and the centralization of this information by the WTO Secretariat through web-based tools also engages private stakeholders. Not only do these public procedures allow stakeholders to become aware about foreign measures, but they also offer them the possibility to contribute to the regulatory dialogue, both directly, by engaging with national contact points, and indirectly, by bringing trade concerns to the attention of WTO Member who may then raise an STC at the Committee meeting (Karttunen, 2015).

Ex post *evaluation and trade impacts*

The 2012 OECD Recommendation advises states to monitor and to evaluate the application and impact of regulation and legislation already in force. *Ex post* evaluation potentially has a significant role to play in limiting unnecessary regulatory frictions hindering trade. It may draw attention to unexpected impacts of regulation – especially at the enforcement stage – and may provide information on the impact of the regulatory environment at large on traders.

According to OECD (2015a), however, the practice of *ex post* evaluation significantly lags behind RIA and stakeholder engagement in most OECD countries. An increasing number of OECD members acknowledge the importance of *ex post* evaluation in ensuring a high quality of regulation and legislation, but many countries make only sporadic use of the instrument yet. Most OECD members have yet to define the standard procedures, criteria and methodologies for *ex post* evaluation of laws and regulations. What is more, most *ex post* evaluations do not assess the actual effectiveness and/or unintended and undesired effects of measures but primarily examine the administrative burden and eventually compliance costs tied to a measure. Other public policy considerations typically receive little to no attention in *ex post* evaluation.

In accordance with these overarching findings, *ex post* evaluation rarely focuses on assessing the trade impacts of regulatory measures (Box 14 provides an example). Results from the 2014 Regulatory Indicators Survey suggest that the use of *ex post* evaluation to assess the consistency of domestic legislation and regulation with other jurisdictions is limited across OECD members. Out of 35 respondents, 19 never assess through *ex post* evaluation whether laws and regulations may duplicate or even trigger regulatory inconsistency between domestic and international regulation and legislation; 8 report doing it for some (Belgium, Canada, Denmark, Germany, Korea, Luxembourg, Poland, Switzerland); 8 say it is systematic (Australia, Israel, Italy, Japan, Mexico, Sweden, United Kingdom, EU). Similarly, 22 respondents indicate that they never assess as part of *ex post* evaluations whether legislation and regulation are in compliance with existing international regulations and standards; 11 report doing it for some (Australia, Belgium, Canada, Denmark, Germany, Hungary, Luxemburg, Sweden, Switzerland, United Kingdom, EU); 2 say it is systematic (Israel, Mexico) (Figure 4).

Box 14. An example of an in-built *ex post* evaluation requirement for a trade-related EU regulation

In 2014, the EC examined in a RIA report (SWD(2014) 53 final) different options to stop imports of certain ores from conflict regions in Africa. A key policy objective of the regulation was thus to alter trade patterns. The Commission explained that the draft regulation sought to cut off financing for armed groups and tackle market distortions due to illegally extracted ores. It assessed policy options ranging from non-intervention to a complete import ban for the ores in question. On the basis of econometric modelling and a cost-benefit analysis, the Commission came to the conclusion to propose the adoption of a EU regulation building on public-private regulatory cooperation. It proposed to introduce a system for supply chain due diligence self-certification for responsible importers. Importers should voluntarily subscribe to due diligence principles for supply chains in order to increase transparency and shift demand away from ores imported from conflict regions.

In the last section of the RIA report, the EC discusses how the effectiveness of the EU Regulation in terms of altered trade patterns might be monitored and evaluated. The continuous monitoring of the operation of the EU Regulation should focus inter alia on the import volumes of ores coming from conflict zones, the number and market share of smelters and refiners adhering to and sourcing from certified importers and the number of relevant public procurement contracts containing due diligence clauses. The EC moreover proposed to include into the Regulation an obligation to undertake within three years of adoption a summarizing *ex post* evaluation of the measure based by and large on the same evaluation criteria as the continuous monitoring. The evaluation should inform policy-makers on the question of whether to continue the policy or whether amendments may be needed.

Source: European Commission (2014),"Impact assessment on Proposal for a Regulation setting up a Union system for supply chain due diligence self-certification of responsible importers of tin, tantalum and tungsten, their ores, and gold originating in conflict-affected and high-risk areas", http://ec.europa.eu/smart-regulation/impact/ia_carried_out/cia_2014_en.htm.

Upon closer examination, even the few governments which formally assess compliance with international standards in *ex post* evaluations rarely do so in practice. According to the 2014 Regulatory Indicators Survey, 32 governments report to have never assessed compliance of domestic measures with international standards as part of *ex post* evaluations in the course of the past 12 years. Only Belgium, Switzerland, and the EU have reported having done so (Figure 5). These findings demonstrate that there is considerable potential for improvement across OECD members in their use of *ex post* evaluation generally, and to check on regulatory divergence, promote regulatory coherence and ultimately to lower unnecessary trade costs more specifically. When applied more generally to an entire regulatory framework, the use of *ex post* evaluation has the additional benefit to extend the scope of the analysis beyond the regulatory measure developed by the executive and to take into account other sources of norms – private or public, executive or legislative, national or sub-national – hence overcoming one limitation of RIA.

Box 15. Cross-jurisdictional regulatory reviews in Australia and New Zealand

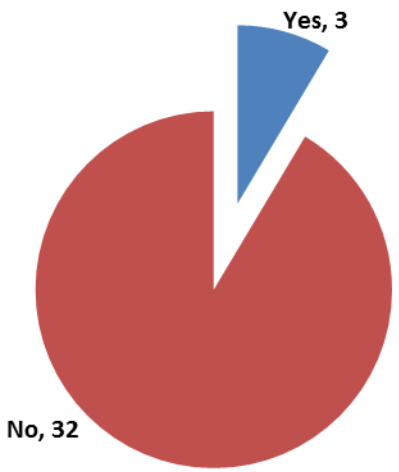
New Zealand and Australia have been piloting a new innovative form of cross-jurisdictional *ex post* evaluation. In 2009, they carried out a joint review of their business regulation in view of enhancing food safety regulation. The purpose was to remove unnecessary compliance costs, duplications and inconsistencies in food safety regulation thereby facilitating trade. The joint report identified potential to substantively improve food safety regulation in both countries, to enhance enforcement and to lower compliance costs for business as well as society. It moreover pointed regulators to persisting problems in need for further action such as inconsistencies in risk assessments and superfluous regulations. It highlighted in particular that food exporters in Australia still faced higher trade costs due to regulatory divergence than those in New Zealand. The joint *ex post* evaluation of New Zealand and Australia constitutes a promising strategy to make full use of the potential of GRP to identify and reduce unnecessary trade costs of regulatory divergence.

Source: OECD (2015), "Regulatory Policy Outlook", OECD Publishing, Paris, p. 132.

Figure 4. Consideration of regulatory consistency and comparability with international standards in *ex post* evaluation

Source: 2014 OECD Regulatory Indicators Survey, www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm.

Figure 5. Number of countries having carried out ad-hoc reviews based on compliance with international standards in the past 12 years



Source: 2014 OECD Regulatory Indicators Survey, www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm.

CONCLUSION AND OUTLOOK

The tools of regulatory policy including RIA, stakeholder engagement and *ex post* evaluation are critical tools in the hands of policy makers to ensure evidence-based policy making in law-making. From this perspective they have a decisive role to play in assessing and limiting unnecessary regulatory frictions hindering trade. Yet, the paper shows that GRP cannot do away with all regulatory frictions to trade for different reasons. Countries may not use the full potential of these tools to identify and evaluate the trade consequences of regulatory measures. There are a number of methodological difficulties, resource constraints and lost opportunities in the use of these tools. Then, even if countries made a better use of GRP in this context, they will not and cannot do away with the regulatory divergences that reflect diverging underlying democratic public policy choices. They will not either fully address the impacts of divergence that may arise from norms and standards developed mostly outside of the national executive and not subject to these disciplines, i.e. by the legislative, other levels of government or even private regulators.

In practice, there is a potential to enhance the use of each single regulatory policy tool – RIA, stakeholder engagement and *ex post* evaluation – as well as in an integrated way to identify and to assess trade impacts in view of limiting unnecessary regulatory trade frictions. The report highlights a number of procedural, methodological or institutional bottlenecks that need to be overcome.

First, RIA overload risks undermining the quality of assessments. Defining in more detail threshold and proportionality rules would help to ensure that trade impacts are soundly assessed when necessary, without overloading the RIA process. While it is important that regulators systemically check on potential trade impacts, it is not useful to analyse trade impacts if insignificant. Regulators would also benefit from a clearer understanding of which costs and impacts matter for trade and of related data and information availability.

The institutional setup significantly contributes to the effective and efficient use of RIAs to assess and weigh trade and other public policy considerations. Better coordination across line ministries can enhance the free flow of information and strengthen proportionality by enabling trade experts to participate in the RIA drafting when necessary. As it is impossible to define static and detailed rules in RIA guidelines for all potential impacts of regulatory initiatives, the involvement of experts is key to efficient and sound assessments. Legal obstacles may also need to be overcome to enable regulatory agencies to assess regulatory impacts beyond borders.

By definition, trade impacts transcend national borders and affect foreign segments of global value chains. Most OECD economies are not only exporters. They sit at the end of global value chains, i.e. their competitiveness crucially depends on imports. It is a dimension that is rarely considered in RIAs. Regulatory policy-makers should be aware of this methodological limitation and consider how to extend the assessment focus to impacts on global value chains. This could involve combining the often implicit outward and export orientation of RIA with a consideration of imports. RIAs could also more systematically assess the value of departing from recognised international norms and standards that support a consistent regulatory approach to supply chain.

Going beyond RIA, opening stakeholder consultations to foreigners, while ensuring the contribution of all affected parties, would strengthen the RIA process and facilitate the collection of information on the costs and benefits of regulatory divergence. Beyond formally opening up consultations to foreigners, policy-makers may want to ponder about how to overcome language barriers and how to publicise such procedures among foreign stakeholders to ensure de facto participation. The more systematic use by OECD

countries of *ex post* evaluation to identify trade frictions and the impacts of regulatory divergence at the level of an entire regulatory framework (and not only a single measure) would also go a long way to improve the understanding and consideration of the interface between trade and rule-making and would help to overcome the limited scope of regulatory disciplines applied to rules initiated by the national executive only.

Finally, despite their important role, public regulators have only partly acknowledged the role of non-executive, sub-national and private regulation and standards in modern economies and their contribution to states' public policy objectives. GRP and in particular RIA are typically not used to assess trade impacts of measures initiated by sub-national governments or in parliaments and therefore fail to inform policy-makers on relevant impacts. In a similar vein, private regulators such as non-governmental organisations, sector associations or major companies do not necessarily follow GRP. Private regulation may be – deliberately or unintentionally – discriminatory, opaque and shield markets from international competition. As discussions in the WTO and UNCTAD have shown (WTO, 2011b, 2007; UNCTAD 2007), neither international trade law, nor regulatory policy strategies and RIAs geared toward public regulation can adequately address this problem. Hence, policy-makers may want to think about how to involve private, sub-national, international and non-executive regulators in their regulatory policy efforts including with regard to international trade. Otherwise GRP and RIA will continue to cover only part of the picture.

NOTES

1. Initial work by the RPC on IRC dates back to 1994 with a publication on Regulatory Cooperation for an Interdependent World. The 2012 Recommendation of the Council on regulatory Policy and Governance dedicates one principle to the importance of regulatory cooperation to promote regulatory quality. From then, work intensified with a stocktaking of various IRC mechanisms (OECD, 2013 and 4 volumes of case studies). The TC has examined the practices that help to minimise the potential trade impeding effects of domestic regulations. Other work has explored how transparency provisions within RTAs have had significant positive effects on trade between RTA partner countries, suggesting that transparency is of particular relevance to trade in agriculture.

2. www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm.

3. Such as provided in the RIA on the US Food Safety Modernization Act: www.fda.gov/downloads/food/guidanceregulation/fsma/ucm334116.pdf.

4. The survey comprises all 34 OECD members and the European Commission.

5. In the case of the US, the question is not applicable to primary laws.

6. For an example see http://ec.europa.eu/smart-regulation/roadmaps/docs/2016_ener_007_cwp_electricity_market_design_en.pdf.

BIBLIOGRAPHY

Alemanno, A. (2015), "The regulatory cooperation chapter of the transatlantic trade and investment partnership agreement: institutional structures and democratic consequences?", *Journal of International Economic Law*, Vol. 18/3, pp. 625-640.

Alemanno, A. (2013), "Is there a role for cost-benefit analysis beyond the nation-state?", *HEC Paris Research paper*, No. 973/2013, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2194299.

Alemanno, A. (2009), "The better regulation initiative at the judicial gate: A Trojan horse within the Commission's Walls or the way forward", European Law Jorunal, Vol. 15(3), pp. 382-400.

Allio, L. (2015), "*Ex post* Evaluation of Regulation: An Overview of the Notion and of International Practices", in Regulatory Policy in Perspective: A Reader's Companion to the OECD Regulatory Policy Outlook 2015, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264241800-en.

APEC-OECD (2015), "APEC-OECD integrated checklist on regulatory reform – a policy instrument for regulatory quality, competition policy and market openness".

Bennar, L., Dickinson, K. (2011), "Incorporating evaluation into the regulatory process", *Duke Environmental Economics Working paper Series*, EE 11-06.

Berden et al. (2009) "Non-tariff measures in EU-US trade and investment – and economic analysis" ECORYS Nederland, Rotterdam, http://trade.ec.europa.eu/doclib/docs/2009/december/tradoc_145613.pdf.

Buchanan, J. (1965), "An economic theory of clubs", *Economica*, Vol. 32, 1-14.

Buell, N., Tortorella, J. (2011), "An analysis of teh program assessment rating tool: measuring the performance of federal environmental and natural resource programs", Duke University.

Casella, A. (1996), "Free trade and evolving standards", in Bhagwati, J., Hudec, R., (eds), *Free Trade and Harmonization*, vol.1, MIT Press, Cambridge, 119-156.

CEO (Corporate Europe Observatory) (2016), "Dangerous regulatory duet – How transatlantic regulatory cooperation under TTOP will allow bureaucrats and big business to attack the public interest", http://corporateeurope.org/international-trade/2016/01/dangerous-regulatory-duet.

CEO (Corporate Europe Observatory) (2015), "Regulatory cooperation in TTIP: united in deregulation" http://corporateeurope.org/international-trade/2015/04/regulatory-cooperation-ttip-united-deregulation.

Sunesen, E. et al. (2016), "How a strong pharmaceutical chapter in TTIP will benefit the EU", Copenhagen Economics, Copenhagen.

Deighton-Smith, R., Erbacci, A., Kauffmann, C. (2016), "Promoting inclusive growth through regulatory policy: the role of regulatory impact assessments", *OECD Regulatory Policy Working Papers*, No. 3, OECD Publishing, Paris.

Dutt, P., Mitra, D. (2002) "Political ideology and endogenous trade policy: an empirical investigation" in: *NBER working paper,* No. 9239, www.nber.org/papers/w9239.

Eberlein, B., Abbott, K. Black, J., Meidinger, E., Wood, S. (2014)," Transnational business governance interactions: conceptualisation and framework for analysis", *Regulation & Governance*, Vol. 8, pp. 1-21.

Economist (2013), "The hidden persuaders", London, www.economist.com/news/special-report/21587381-protectionism-can-take-many-forms-not-all-them-obvious-hidden-persuaders.

European Commission (2015a), "Initial provisions for chapter ( ) on regulatory cooperation", Brussels, http://trade.ec.europa.eu/doclib/docs/2015/february/tradoc_153120.pdf.

European Commission (2015b), "Tool#22: External trade and investment", Brussels, http://ec.europa.eu/smart-regulation/guidelines/tool_22_en.htm.

European Commission (2014), "Consolidated CETA text", Brussels, http://trade.ec.europa.eu/doclib/docs/2014/september/tradoc_152806.pdf.

Gerstetter (2014), "Regulatory Cooperation under TTIP – A risk for democracy and national regulation", Heinrich Böll Stiftung TTIP Series, Berlin, https://www.boell.de/sites/default/files/ttip_study_regulatory_cooperation_under_ttip_1.pdf.

Heckman, J. Heinrich, C., Smith, J. (1997), "Assessing the performance of performance standards in public bureaucracies", *The American Economic Review,* Vol. 87/2, pp.389-395.

Heynen,J. (2013), "The Canada-U.S. Regulatory Cooperation Council", in OECD, *International Regulatory Co-operation: Case Studies, Vol. 2: Canada-US Co-operation, EU Energy Regulation, Risk Assessment and Banking Supervision*, OECD Publishing, Paris. DOI: http://dx.doi.org/10.1787/9789264200500-3-en.

Hoekmann (2015), "Fostering transatlantic regulatory cooperation and gradual multilateralization", *Journal of International Economic Law*, Vol. 18/3, pp. 609-624.

Hoekmann, B. (2014), "Trade agreements and international regulatory cooperation in a supply chain world", European University Institute: Florence, http://cadmus.eui.eu/bitstream/handle/1814/34207/RSCAS%202015_04.pdf?sequence=1.

Hoekmann, B., Mavroidis, P. (2015), "Regulatory spillovers and the trading system: from coherence to cooperation", E15 Initiative working paper, http://e15initiative.org/wp-content/uploads/2015/04/e15-regulatory-op-hoekman-and-mavroidis-final.pdf.

Jacob, K., Volkery, A., Lenschow, A. (2008), "Instruments for environmental policy integration in 30 OECD countries", in Jordan, A., Lenschow, A. (Eds.), *Innovation in Environmental Policy? Integrating the Environment for Sustainability*, Edward Elgar, Cheltenham, pp. 24-47.

Jacobs, S. (2006), "Current Trends in Regulatory Impact Analysis", *Working Paper – Jacobs and Associates*.

Karttunen, Marianna. 2015. "Private Sector Involvement in TBT Transparency: Preliminary Results from a Survey." European University Institute, Unpublished Doctoral Research.

Kauffmann, C. (2014), "The OECD Perspective on Good Regulatory Practices and International Regulatory Cooperation", remarks made at the George Washington University Regulatory Studies Center's conference, *Enhancing the Transatlantic Trade and Investment Partnership: Reducing Regulatory Barriers*, http://regulatorystudies.columbian.gwu.edu/oecd-perspective-good-regulatory-practices-and-international-regulatory-cooperation

Liberante, W. (2015), "Taking comments into account: U.S. notice and comment rulemaking – a sampling of U.S. agencies' methods for responding to public comments", APEC workshop: public consultations, 3-4 December 2015, Zacatecas.

Majone, G. (2014), "Policy harmonisation: limits and alternatives", Journal of comparative policy analysis, Vol. 16/1, pp. 4-21.

Majone, G. (2009), "The transformation of the regulatory state", Osservatorio sull'Analisi di Impatto della Regolazione, http://www.osservatorioair.it/wp-content/uploads/2010/10/Paper_Majone_RegulatoryState_sept2010.pdf.

Majone, G. (1994), "The rise of the regulatory state in Europe, *Western European Politics*, Vol.17/3, pp. 77-101.

Mendes, J. (24 September 2015), "Regulatory Cooperation under TTIP: Democracy on this side of the bridge". Verfassungsblog, http://www.verfassungsblog.de/en/regulatory-cooperation-under-ttip-democracy-on-this-side-of-the-bridge/.

Metzenbaum, S. (1998), "Making measurement matter: the challenge and promis of building a performance-focused environmental protection system", Brookings Institute, Washington D.C..

Nykvist, B., M. Nilsson (2009), "Are impact assessment procedures actually promoting sustainable development? Institutional perspectives on barriers and opportunities found in the Swedish committee system", *Environmental Impact Assessment Review*, Vol. 29, pp. 15-24.

OECD (2015a), *Regulatory Policy Outlook*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264238770-en.

OECD (2015b), "Benefits from trade-related international regulatory cooperation – a theoretical framework (TAD/TC/WP/RD(2015)5)" OECD, Paris.

OECD (2014), *OECD regulatory compliance cost assessment guidance*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264209657-en.

OECD (2014b), "OECD International Business Dialogue: Business Survey", OECD Publishing, Paris, www.oecd.org/tad/events/IBD_2014_business_survey_results.pdf.

OECD (2014c), "2014 OECD Regulatory Indicators Survey", OECD, Paris, www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm.

OECD (2013), *International Regulatory Co-operation – Addressing global challenges*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264200463-en.

OECD (2013b), *International regulatory co-operation: case studies, Vol. 3 – Transnational private regulation and water management*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264200524-en.

OECD (2013c), *Interconnected economies – benefiting from global value chains*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264189560-en.

OECD (2012), *Recommendation of the Council on Regulatory Policy and Governance*, OECD Publishing, Paris, www.oecd.org/gov/regulatory-policy/2012-recommendation.htm.

OECD (2009a), "Indicators of regulatory management systems", OECD Publishing, Paris, www.oecd.org/gov/regulatory-policy/44294427.pdf.

OECD (2009b), *Regulatory impact analysis: a tool for policy coherence*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264067110-en.

OECD (2005), *OECD Best Practice Principles for Regulatory Policy – The Governance of Regulators*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264209015-en.

O'Rourke, K. and R. Sinnott (2001), "The determinants of individual trade policy preferences: International survey evidence", Brookings Trade Forum, pp. 157-206, http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.318.45&rep=rep1&type=pdf.

Owens, S. (2005), "Making a difference? Some perspective on environmental research and policy", *Transactions of the Institute of British Geographers*, Vol. 30/3, pp. 287-292.

Renda, A. (2015), "Regulatory Impact Assessment and Regulatory Policy", in *Regulatory Policy in Perspective: A Reader's Companion to the OECD Regulatory Policy Outlook 2015*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264241800-en.

Robinson, L.A., Hammitt, J.K., Zeckhauser, R. (2014), "The Role of Distribution in Regulatory Analysis and Decision Making", *Regulatory Policy Program Working Paper RPP-2014-03*, Harvard University, Cambridge, MA.

Ruddy F.T., Hilty, L.M. (2008), "Impact assessment and policy learning in the European Commission", *Environmental Impact Assessment Review*, Vol. 28, pp. 90-105.

Russel, D., Jordan, A. (2007), "Gearing-up governance for sustainable development: Patterns of policy appraisal in United Kingdom central government", *Journal of Environmental Planning and Management*, Vol. 50/1, pp. 1-21.

Sharma, M. et al. (2013), "Expert report on the implementation of *ex post* evaluation – good practice and experience in other countries", Prognos, Berlin, https://www.normenkontrollrat.bund.de/Webs/NKR/Content/EN/Publikationen/2014_02_24_evaluation_report.pdf?__blob=publicationFile&v=2.

Shortall, D. (2007), "Regulatory Reform and Market Openness: Processes to Assess Effectively the Trade and Investment Impact of Regulation", *OECD Trade Policy Papers*, No. 48, OECD Publishing, Paris. DOI: http://dx.doi.org/10.1787/154631866770.

Shub, R. (2015), "Transparency, public consultation practices and government accountability in U.S. rulemaking", European Parliament, Brussels.

Turnpenny, J. (2008), "Are we nearly there yet? Lessons for integrated sustainability assessment from EU environmental policy-making", *International Journal of Innovation and Sustainable Development*, Vol. 3/1, pp. 33-47.

Turnpenny, J. et al. (2008), "Why is integrating policy assessment so hard? A comparative analysis of the institutional capacities and constraints", *Journal of Environmental Planning and Management*, Vol. 51/ 6, pp. 759-775.

UNCTAD (2007) "Food safety and environmental requirements in export markets – friend or foe for producers of fruit and vegetables in Asian developing countries? (UNCTAD/DITC/TED/2006/8)", UNCTAD, Geneva.

USTR (2015), "Chapter 25 – Regulatory coherence", https://medium.com/the-trans-pacific-partnership/regulatory-coherence-6672076f307a#.t97djhtu8.

Wiener, J., Alemanno, A. (2015) "*Improving International Regulatory Cooperation: TTIP as a Step Toward a Global Policy Laboratory* " *Law & Contemporary Problems*, Issue No. 75.

Wijkström, Erik N. *The Third Pillar: Behind the Scenes, WTO Committee Work Delivers.* E15Initiative. Geneva: International Centre for Trade and Sustainable Development (ICTSD) and World Economic Forum, 2015, www.e15initiative.org/.

Wilkinson, D., Fergusson, M., Bowyer, C., Brown, J., Ladefoged, A., Monkhouse, C., Zdanowicz, A. (2004), "Sustainable Development in the European Commission's Integrated Impact Assessments for the 2003", Institute for European Environmental Policy, London.

WTO (2014), "The WTO Agreement Series – Technical Barriers to Trade", WTO, Geneva.

WTO (2012) "Sixth triennial review of the operation and operation of the agreement on technical barriers to trade under article 15.4 (G/TBT/32)", WTO, Geneva.

WTO (2011) "Compilation of sources on good regulatory practice (G/TBT/W/341)", WTO, Geneva.

WTO (2011b) "Report of the ad hoc working group on SPS-related private standards to SPS Committee (G/SPS/W/256)", WTO, Geneva.

WTO (2007) "Private standards and the SPS Agreement (G/SPS/GEN/746)", WTO, Geneva.

GLOSSARY

***Primary laws*:** Primary laws, which are defined as regulations which must be approved by the parliament or congress. Primary laws are also referred to as "principal legislation" or "primary legislation".

Regulation: The diverse set of instruments by which governments set requirements on enterprises and citizens. Regulation 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.

Regulators: Administrators in government departments and other agencies responsible for making and enforcing regulation.

Regulatory Impact Assessment (RIA): Systematic process of identification and quantification of benefits and costs likely to flow from regulatory or non-regulatory options for a policy under consideration. May be based on benefit-cost analysis, cost effectiveness analysis, business impact analysis etc. Regulatory Impact Assessment is also routinely referred to as Regulatory Impact Analysis, sometimes interchangeably (OECD, 2012, p. 25).

Regulatory policy: The set of rules, procedures and institutions introduced by government for the express purpose of developing, administering and reviewing regulation.

Subordinate regulation: Regulations that can be approved by the head of government, by an individual minister or by the cabinet – that is, by an authority other than the parliament/ congress. Please note that many subordinate regulations are subject to disallowance by the parliament/congress. Subordinate regulations are also referred to as "secondary legislation" or "subordinate legislation" or "delegated legislation".