



17 March 2016

(16-1566)

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Committee on Technical Barriers to Trade

Original: English

THEMATIC SESSION ON GOOD REGULATORY PRACTICE¹

REPORT BY THE CHAIRPERSON TO THE TBT COMMITTEE²

This Report was delivered by the Chairperson of the WTO TBT Committee at the meeting of 9-10 March 2016.

At the Seventh Triennial Review, Members agreed to continue to hold thematic sessions in conjunction with regular meetings of the Committee,³ and agreed to dedicate the 8 March 2016 thematic sessions to the topics of conformity assessment procedures and good regulatory practice. The thematic session on good regulatory practice (GRP) included discussion of: (i) the extent to which RIAs could facilitate the implementation of the TBT Agreement, considering the constraints facing developing Members in carrying out RIAs; and (ii) how trade impacts and TBT Agreement obligations could be taken into account in the preparation of RIAs. The presentations summarized below will be made available through the WTO website.⁴

1. **Mr. Shin Myung-chul** (Republic of Korea) spoke about the use of "Technical Regulatory Impact Assessment" (TRIA) in Korea. He stressed that whenever technical regulations are developed (or amended) their appropriateness needs to be checked. This includes, for example, the need to analyze whether these are harmonized with relevant international standards, and whether there is duplication and/or overlap. In general, the TRIA is expected to improve the quality of regulation. There are four main check-points for the TRIA: (i) ensuring the validity (rationale) of the technical regulation; (ii) its appropriateness (e.g. scientific basis); (iii) the use of conformity assessment (e.g., possible applicability of international schemes); and (iv) competitiveness factors. Looking ahead, Mr. Shin Myung-chul noted, among other things, that the TRIA would strengthen coordination among related ministries.⁵

2. **Mrs. Céline Kauffmann** (OECD) spoke about the use of Regulatory Impact Assessments (RIAs) to assess the trade impacts of regulation. She emphasized that OECD members have recognized the use of RIA, stakeholder engagement and ex post evaluation of regulation as good regulatory practice (GRP) in the 2012 OECD Recommendation of the Council on Regulatory Policy and Governance. According to the 2015 Regulatory Policy Outlook, almost all countries have enacted legal requirements to carry out RIA and stakeholder engagement when developing regulation. About two-thirds of OECD countries report that they assess trade impacts as part their RIA processes. There is however considerable heterogeneity in the use of RIA to assess trade impacts. Challenges may be the lack of political commitment to RIA, the risk of a largely procedural use of RIA or of its overload, ill-defined methodologies to identify impacts of regulatory divergence on trade and the limited attention afforded to trade frictions arising at the enforcement stage. While there are generic and trade-specific challenges, RIAs provide helpful tools in identifying and assessing the trade impacts of regulation and balancing them against expected benefits. RIA and GRP more generally preserve national sovereignty, support evidence-based policy-making, channel voices of affected parties and promote the creation of a non-discriminatory, and high quality regulatory environment in all countries. Countries may further

¹ The list of speakers, including their titles, is contained in document JOB/TBT/170.

² Alana Maria Lanza Suazo (Honduras). This Report is provided on the Chairperson's own responsibility.

³ G/TBT/37, para. 8.3.

⁴ https://www.wto.org/english/tratop_e/tbt_e/tbt_e.htm

⁵ The full presentation is contained in document in RD/TBT/131.

enhance their use of RIA by better integrating the ex-ante evaluation process with stakeholder consultations and ex post evaluation (to capture not only the expected but also the realized impacts), by giving more systemic consideration to international standards in the development of their regulations and by ensuring greater quality control and transparency of RIA. WTO members may moreover reflect about the potential of multilateral RIA to assess trade impacts of regulation.⁶

3. **Mr. Tim Ward** (Australia) spoke about implementing best practice in RIAs in Australia with a particular emphasis on the importance of transparency and public consultation. Out of 10 principles for policy makers that are set out by the Australian Government Guide to Regulation, four are specifically about consultation and transparency. These include the principles that policy change has to be the subject of a "Regulation Impact Statement" (RIS); that policy makers need to consult with affected businesses, community organisations and individuals – as well as with each other (to avoid creating cumulative or overlapping regulatory burdens); and, that information upon which policy makers base their decisions has to be published at the earliest opportunity. Mr. Ward put particular emphasis on consultation: this is not just a single event in development of a RIS, it informs *all* elements of the RIS. Also, it helps the identification of viable policy alternatives, confirms the accuracy of data, ensures that there are no unintended consequences and helps increase understanding amongst affected stakeholders.⁷

4. **Dr. Eliza Mojduzka** (United States) spoke about the US approach to RIAs and international trade with a particular focus on how RIAs are used by US government agencies. It was noted that the use of RIAs is based on a requirement set out in two Executive Orders⁸ for "economically significant" regulations.⁹ The basic objective is to show whether regulation maximizes net benefit, or at least ensures that net benefit justifies the costs. An RIA also helps show whether a regulation promotes economic efficiency (by addressing market failure) and increases transparency of the regulatory process. Dr. Mojduzka stressed the importance of establishing the rationale for regulation, and the need to evaluate alternatives (including measures other than regulation). On international trade, she said that agencies have an obligation to consider trade impacts in RIAs and that it is important to evaluate carefully concerns that new US rules could act as NTBs. In summing up she said that good RIAs have the following characteristics: they are transparent, clear, have a logical structure, use good science, are well documented and include a discussion of sources and the magnitude of uncertainty.¹⁰

5. **Dr. Yuhua LIU** (China) presented China's Trade Policy Compliance Mechanism (TPCM). Since China's accession to the WTO, China had been engaged in making trade policy measures compliant with WTO rules. Numerous laws and regulations have been amended and optimized and China carefully considered comments on trade policies by other Members that promoted reform. In 2014, the State Council issued a circular on "Further Strengthening Trade Policy Compliance", launching China's trade policy compliance mechanism. For this purpose, MOFCOM developed a working procedure that covered a wide range of areas including technical measures. Until the end of 2015, more than 1,000 policies by the central and local governments have been reviewed, and training programmes have been initiated. Also, more than 150 officials have been trained into proficient teams, and brochures diffused.¹¹

6. **Mr. Fabrizio Sacchetti** and **Mr. Pablo Neira** of the European Commission introduced how trade impacts and TBT Agreement obligations are taken into account in the preparation of regulatory impact assessments (RIAs) in the EU. They explained the basic "Policy Cycle" of Better Regulation (preparation, adoption, implementation and application, monitoring and evaluation); it was noted that the Commission has the right of initiative on regulatory proposals. RIAs are carried out on all regulatory and policy initiatives with significant impacts. An open stakeholder consultation is built into the RIA process. The key analytical steps of RIAs are: to identify the problem; assess the need for EU-level intervention; define the objectives; develop policy options; analyse the impacts of the options; compare the options; and, outline policy monitoring and evaluation. In general terms, following the package of improvements adopted in May 2015, the Better Regulation policy involves: greater transparency throughout the policy cycle; better RIA

⁶ A background document is contained in RD/TBT/134 and the presentation is available in RD/TBT/133.

⁷ The full presentation is available in RD/TBT/135.

⁸ Executive Orders 12866 and 13563.

⁹ Those that have an economic impact of over 100 million USD expressed in 1994 USD (approximately equivalent to USD140 million today).

¹⁰ The full presentation is available in RD/TBT/136.

¹¹ The full presentation is available in RD/TBT/139.

tools and guidelines; enhanced scrutiny in the Commission; and, more focus on implementation and ex-post evaluation. One significant improvement is more involvement of stakeholders in the process. The EU delegates also stressed the importance of considering trade impacts of regulatory initiatives, including compliance with international trade obligations. For instance, it is important to consider: impacts on all economic agents throughout the value chain and on developing countries, in particular the least developed ones; how to increase, when possible, regulatory convergence with the EU's main trade partners; and, how to reduce any potential negative impacts on international trade where there is scope for this without affecting the overall achievement of the public policy objectives being pursued.¹²

¹² The full presentation is available in RD/TBT/140.