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Regulatory Reform and Market Openness

**PROCESSES TO ASSESS EFFECTIVELY THE
TRADE AND INVESTMENT IMPACT OF
REGULATION**

David Shortall

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**TRADE DIRECTORATE
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Working Party of the Trade Committee

**REGULATORY REFORM AND MARKET OPENNESS: PROCESSES TO ASSESS EFFECTIVELY
THE TRADE AND INVESTMENT IMPACT OF REGULATION**

OECD Trade Policy Working Paper No. 48

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ABSTRACT

Evidence suggests that differences in regulatory requirements of individual economies may actually impede gains from trade liberalization, while a smooth functioning, transparent regulatory system can have positive effects on trade and investment flows. This has increasingly induced policy makers to pay closer attention to the complementarities and interconnectedness between domestic regulatory reform and market openness. This study focuses on identifying regulatory processes, tools and policies adopted in order to support market openness and improve trade and investment opportunities. Although the elaboration of a market openness assessment toolkit is still at early stages, a number of promising approaches do come out, even if a number of issues call for further attention and work, on which the trade policy community might wish to focus in the future.

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EXECUTIVE SUMMARY

1. This study focuses on identifying regulatory processes, tools and policies adopted in order to support market openness and improve trade and investment opportunities.

2. The impact of globalization has put emphasis on developing efficient regulation which meets public policy objectives, promotes business competition and minimizes trade barriers, creating a need for greater alignment and harmonization between domestic regulatory policy and trade policy. Yet, historically, the management of regulation has been the sole responsibility of domestic policy makers who are charged with ensuring appropriate levels of protection for their citizens. The trade and investment effects of such policies were often ignored completely or given only cursory attention. As a consequence national regulatory policy has not aimed at consistency with the open international economy but tended to develop in isolation from requirements to meet trade rules and other international obligations.

3. Evidence suggests that differences in regulatory requirements of individual economies may actually impede gains from trade liberalization, while a smooth functioning, transparent regulatory system can have positive effects on trade and investment flows. This has increasingly induced policy makers to pay closer attention to the complementarities and interconnectedness between domestic regulatory reform and market openness. An overview of the OECD and APEC, the two leading policy communities in this field, shows that the elaboration of a market openness assessment toolkit is still at early stages; a number of promising approaches do come out, even if a number of issues call for further attention and work, on which the trade policy community might wish to focus in the future.

4. At the policy level OECD governments have adopted a range of regulatory tools and approaches for assessing market openness effects. Among these are regulatory impact assessment, transparency and consultation, performance-based requirements and regulatory cooperation initiatives.

5. Regulatory impact assessment (RIA) is the best known and most widely implemented tool among OECD governments, although it is a relatively new concept in developing countries. However, very few countries appear to require consideration of the impact on international trade in the conduct of impact assessment and most countries use the more indirect and less rigorous approach of assessing the effect of a potential regulation on competition and business. *The incorporation in RIA of more explicit references to international trade could be a major focus for the trade policy community in the coming years. Further attention could be devoted to capacity building to assist developing countries adopt best practices on regulatory impact assessment and consultation mechanisms.*

6. Other strategies for ensuring a market openness friendly regulatory environment include the adoption of international standards in regulation, the streamlining of conformity assessment procedures and the acceptance of foreign measures as equivalent to domestic measures.

7. The adoption of international standards is both the principle tool for regulatory harmonization and a key mechanism for facilitating trade. However, outside the WTO SPS Agreement, there are no mechanisms to monitor the domestic adoption of international standards, guides and recommendations. The lack of comparative data on national adoptions of international standards makes it difficult to assess the relevance and impact of international standardization on domestic regulatory policy. *A major constraint to the wider adoption of standardization by regulators is the shortage of promotional tools and guides to assist regulators, an issue that would call for the attention of the trade policy community.* This requires greater cooperation between governments, national standards bodies and international standards bodies in order to develop the appropriate tools. National data bases of both standards and standards referenced in regulation are also important factors in the adoption of standards by facilitating regular revision and update and increasing knowledge of foreign market requirements.

8. The acceptance of the equivalency of foreign measures is also considered to be an important element of good regulatory practice. However, despite considerable attention on the issue there has been little progress in applying the concept of equivalency in domestic regulatory regimes. *A focus on identifying criteria and principles of good practice could lead to a better understanding of how equivalency can be applied in practice.*

INTRODUCTION

9. This study focuses on identifying regulatory processes, tools and policies adopted by different levels of government that support market openness and improve trade and investment opportunities.

10. Efforts to promote harmonization of regulatory practices and eliminate regulatory barriers to trade have proved particularly challenging. Regulatory policies and practices vary between jurisdictions and are often embedded in different cultural and historic traditions. Historically, the management of regulation has been the sole responsibility of domestic policy makers who are charged with ensuring appropriate levels of protection for their citizens. The trade and investment effects of such policies were often ignored completely or given only cursory attention. As a consequence national regulatory policy has not aimed at consistency with the open international economy and has tended to develop in isolation from requirements to meet trade rules and other international obligations. Nevertheless, evidence suggests that there is a strong relationship between regulatory reform and improved conditions for trade and investment. Consequently it is important for policy makers to understand and pay closer attention to the complementarities and interconnectedness between domestic regulatory reform and market openness.¹

11. Globalization has highlighted the need to enhance competitiveness by reducing the regulatory burden on business. Differences in regulatory requirements of individual economies may actually impede gains from trade liberalization. A smooth functioning, transparent regulatory system can have positive effects on trade and investment flows. At the same time, regulatory efficiency helps ensure better consumer protection. Consequently regulatory issues are increasingly becoming part of the global and international trade agenda. As a result obligations arising from international agreements need to be taken into account in regulatory policy.

12. Efforts have taken place in a number of fora to encourage development of policies and procedures which promote what has come to be known as “good regulatory practice” or “smart regulation”, particularly in OECD and APEC. These efforts seek to integrate trade and regulatory policy to promote greater market openness while at the same time ensuring appropriate levels of protection for health and safety and the pursuit of other social objectives. For many OECD members there has been a trend away from a piecemeal approach of adopting specific reforms and reducing burdensome regulations towards a broader reform agenda which involves developing a range of explicit overarching policies, disciplines and tools (regulatory alternatives, consultation mechanisms, regulatory impact assessment) to ensure a consistent approach to rule making.²

1. OECD, *Regulatory Reform and Market Openness: Understanding the Links to Enhance Economic Performance*, Paris 2004, p. 5.

2. OECD (2005), *Regulatory Impact Analysis in OECD Countries: Challenges for Developing Countries*, Paris, p. 2.

13. The OECD has played a key role in promoting regulatory reform by carrying out assessments of the policies and practices of its member economies and developing guidance to improve regulatory policies and tools that strengthen market openness and competition and reduce regulatory burdens. In 2005 OECD endorsed *Guiding Principles for Regulating Quality and Performance*.³ While the six principles are broadly supportive of efforts to promote policies which favour market openness, the sixth principle is particularly relevant to help eliminate unnecessary regulatory barriers to trade and investment: “Eliminate unnecessary regulatory barriers to trade and investment through continued liberalization and enhance the consideration and better integration of market openness throughout the regulatory process, thus strengthening economic efficiency and competitiveness”.

14. The OECD has also looked at the role of good regulatory practice in helping facilitate adaptation to international competition and technological change. A key element is a sound regulatory framework which keeps the regulatory burden at a minimum while fostering competition and market openness. In this context, six principles of efficient regulation have been identified:

- Transparency
- Non-discrimination
- Avoidance of unnecessary trade restrictiveness
- Use of internationally harmonized measures or acceptance of equivalence of foreign measures
- Streamlining conformity assessment procedures
- Vigorous application of competition principles.

15. The OECD and APEC have also worked cooperatively over the past few years to promote regulatory reform through a series of joint workshops. The result is the *APEC-OECD Integrated Checklist on Regulatory Reform*.⁴ This serves as a self assessment tool for governments and peers. The checklist poses a number of questions related to regulatory reform and in particular three policies which support it: *regulatory policy, competition policy and market openness policies*.

16. Under *Market Openness Policies*, the Integrated Checklist poses the following questions:

1. To what extent are there mechanisms in regulatory decision- making to foster awareness of trade and investment implications?
2. To what extent does the government promote approaches to regulation and its implementation that are trade-friendly and avoid unnecessary burdens on economic actors?
3. To what extent are customs and border procedures designed and implemented to provide consistency, predictability, simplicity and transparency so as to avoid unnecessary burdens on the flow of goods?

3. www.oecd.org/dataoecd/24/6/34976533.pdf

4. www.oecd.org/dataoecd/41/9/34989455.pdf

4. To what extent has the government established effective public consultation mechanisms and procedures (including prior notification, as appropriate) and do such mechanisms allow for all interested parties, including foreign stakeholders?
5. To what extent are government procurement processes open and transparent to potential suppliers, both domestic and foreign?
6. Do regulatory requirements discriminate against or otherwise impede foreign investment and foreign ownership or foreign supply of services? If elements of discrimination exist, what is their rationale? What consideration has been given to eliminating or minimising them, to ensuring equivalent treatment with domestic investors?
7. To what extent are harmonised international standards being used as the basis for primary and secondary domestic regulation?
8. To what extent are measures implemented in other countries accepted as being equivalent to domestic measures?
9. To what extent are procedures to ensure conformity developed in a transparent manner and with due consideration as to whether they are effective, feasible and implemented in ways that do not create unnecessary barriers to the free flow of goods or provisions of services?

REGULATORY PROCESSES AND TOOLS FOR ASSESSING MARKET OPENNESS EFFECTS

Regulatory Impact Assessment (RIA)

17. Regulatory impact assessment (RIA) is an analytical and systematic approach to regulation encompassing a range of tools and techniques aimed at assessing the impacts of regulation. Most OECD countries rely on RIA to help ensure development of efficient and effective regulation and reduce the burden of regulation.⁵ Although an underlying consideration in a well developed and comprehensive RIA should be to identify regulations which minimize trade restrictiveness, in practice these are generally not formulated explicitly in terms of market openness, if identified at all.

18. A recent OECD report suggests that market openness considerations and competition are still weak components of RIA.⁶ Where there is a requirement to consider trade and investment effects in a proposed regulatory action, it is generally not specified in terms of demonstrating compliance with international trade obligations, including, for example, the WTO Technical Barriers to Trade (TBT) Agreement and Sanitary and Phytosanitary (SPS) Agreement. The research indicates that only two countries, Australia and Canada incorporate specific language in regulatory policy which mandates compliance with international trade rules. For example, Australia has adopted a set of principles which include minimizing the impact on competition by imposing barriers to entry, exit or innovation and prohibiting practices which restrict international trade including non-discrimination in the way regulations, mandatory standards, conformity assessment procedures are applied between imported or domestic products; national treatment, avoidance of unnecessary obstacles to trade and recognition of equivalency of other countries standards to Australian standards if they meet the objectives of these standards.⁷ Australia also has a policy of subjecting trade agreements to regulatory impact assessment.⁸ In conducting regulatory impact assessment, a number of other countries specify the obligation to consider international trade rules in more general terms. For example, United States regulatory policy requires analysts to consider harmonization with international trade rules and whether new federal regulations might constitute non-tariff barriers to trade.⁹ For most countries compliance with trade obligations is stated more implicitly and commonly specified only indirectly as a broader measure of effects on market entry, business activities and competition.

19. In a comparative analysis of regulatory impact assessment in ten European Union countries, there is not a single reference to the impact of international trade obligations. However, competition is listed as one of nine topics officially considered in the analysis. According to a survey carried out in conjunction

5. A number of countries, including Australia, Canada, New Zealand, the United Kingdom and Ireland have formalized the system of regulatory development by adopting broad principles or codes of good practice for evaluating the impact of new regulatory proposals and reviewing existing regulations.

6. OECD, *Taking Stock of Regulatory Reform: A Multi-Disciplinary Thesis*, Paris, 2004, p. 13.

7. Council of Australian Governments, *Principles and Guidelines for National Standards Setting and Regulatory Action by Ministerial Councils and Standards Setting Bodies*, 2004.

8. See for example, the assessment of Australia/Canada MRA on medical devices.

9. G/TBT/258 26 October 2005, p. 4.

with the study, only two of the ten countries, Italy and the Netherlands, indicated that competition was not a topic for impact assessment.¹⁰ At the European Union level all legislative proposals contained in the Legislative and Work Programme are subject to integrated impact assessment including the potential impact on competition. A comprehensive independent evaluation of the review of the system of impact assessment was expected to be launched in early 2006 with a view to obtaining external advice on existing methodology.¹¹

20. An OECD study in 2004 reported that a large number of member countries, including Australia, Canada, Denmark, Finland, Germany, Iceland Italy, Korea, Mexico, Poland, Sweden, Turkey and the United Kingdom require the effect on competition and market openness to be assessed for all regulatory proposals. The Netherlands, Norway, Switzerland and the United States require these effects only in the case of major regulations. (The information on the Netherlands appears to conflict with the results of the survey cited above). Austria, Japan, the Czech Republic, France and Portugal require the effects only in selected cases.¹² Such screening is often warranted, as, in practical terms, regulatory impact assessment is costly and resource intensive and many regulations which are primarily domestic in nature do not need to be assessed in terms of market effects. Only a few countries provide specific language couched in terms of market openness principles. In assessing competition, the United Kingdom provides some of the most detailed requirements, including a rigorous “competition filter test” to each of the proposed options under assessment. While the analysis is directed primarily at internal competition between firms the RIA requires specifying the impact on importers where importers compete with UK firms. The regulatory review bodies in Australia and New Zealand have developed a protocol to identify whether any proposal gives rise to any “trans-Tasman issue” arising from regulatory impact assessments developed by Australian Ministerial Councils in which New Zealand participates. While the issues are recognized as being broad, presumably possible trade and competition effects are included, specifically those which might arise under the *Trans-Tasman Agreement* which defines the close economic collaboration between Australia and New Zealand.

21. In view of the disparity with respect to consideration of market openness principles one study recommends that a systematic review of trade effects should be incorporated in regulatory impact assessment with opportunity for both foreign and domestic stakeholders to comment on proposed measures.¹³ Ideally language should incorporate specific obligations found in the WTO agreements. Regulators need have a better understanding of key obligations and principles of international trade agreements, including the World Trade Organization and other international agreements which impact on domestic regulatory activity.¹⁴ There is also the need for greater collaboration and coordination between trade and regulatory officials during the development of regulatory proposals.

10. See Italian, Irish and Dutch Presidencies of the Council of the European Union, *A Comparative Analysis of Regulatory Impact Assessment in Ten EU Countries*, 2004.

11. European Union G/TBT/254, 14 June 2005, paragraph 16.

12. OECD *Regulatory Impact Analysis Report*, May 2004, p. 8.

13. OECD *Regulatory Impact Analysis in OECD Countries, Challenges for Developing Countries*, Paris 2005, p. 19.

14. In Canada, a workshop entitled “TBT 101” which relates the TBT Agreement to the needs of particular regulators has been presented to a number of departments and agencies.

Regulatory impact assessment in developing countries

22. A review of the literature suggests that regulatory impact assessment is a relatively new phenomenon in developing countries and economies in transition. Nevertheless regulation is recognized as an important instrument in the development policy toolkit which when conducted properly can support market led, pro-poor growth and development.¹⁵ Regulatory impact assessment where it is used is often applied only partially and not government-wide. In such applications reference to trade and investment impacts is virtually unknown.

23. Costa Rica is an example of a more advanced developing country which has the capacity to implement impact assessment in its regulatory regime. Currently impact assessment is applied only to the development of mandatory technical regulations and conformity assessment procedures. This work is part of the National Quality System which is designed to help foster a culture of quality to enable the country's products to meet the highest standards and compete in global markets. A link has been established between international obligations and domestic regulation and role of business and consumers in ensuring standards of highest quality. The *National Quality System Law* resulted in the establishment of the Technical Regulation Unit (TRU) which consists of representatives of different ministries with regulatory authority and is administered by the Ministry of Economy, Industry and Commerce. The TRU is responsible for coordinating elaboration of technical regulations with all relevant ministries to ensure that such regulations assure appropriate levels of protection while complying with international trade obligations.

24. In developing regulatory proposals Costa Rican officials are required to follow the *Guide to Elaborate Technical Regulations*. This is modelled on guidance documents typically used for regulatory impact assessment and provides detailed information on principles and concepts underlying the development of good regulation as well as the negative effects of poorly designed regulations. As such it represents an important educational tool in an environment where experience in regulatory policy and its effects is limited and where jurisdictional mandates may be blurred and policies and approaches subject to challenge. The guide also represents a practical tool which lays out the necessary steps and requirements to develop and submit regulatory proposals. One key element is the obligation to consider the negative effects on market access and competitiveness of poorly designed regulations. This includes assurance that, prior to promulgation and publication, a proposed measure has been reviewed to ensure that it does not constitute an unnecessary obstacles to trade and is otherwise consistent with obligations of the WTO TBT Agreement. This includes the requirement to complete the TBT notification form, provide a reasonable time for comments (usually 60 days) and analyse comments from WTO members prior to implementing the proposed regulation. In formalizing TBT obligations in the review of regulatory proposals Costa Rica is ahead of some of its developed country trading partners.

Transparency and Consultation

25. An open and effective transparency regime provides easy access to regulatory information and opportunity to comment on proposed measures by both foreign and domestic interests. These are seen as key elements of good regulatory practice which are commonly built in to regulatory impact assessment.

15. Colin Kirkpatrick, David Parker and Yin-Fang Zhang, *Regulatory Impact Assessment in Developing and Transition Economies: A Survey of Current Practice and Recommendations for Further Development*, 2003, p. 2.

WTO Transparency Obligations

26. Many of the WTO Agreements, notably TBT, SPS and the General Agreement on Trade in Services (GATS) require prior consultation on a non-discriminatory basis before the implementation of regulatory measures. Generally OECD countries are compliant in providing timely notification of proposed actions and publication of final regulations. However, there has been considerable discussion on ways and means to improve the implementation of the agreements in the area of transparency. For example, in the TBT Committee improving performance with respect to the comment period for notifications is an ongoing agenda item. In 2004, only 55 per cent of the notifications provided for a comment period 60 days or more, with 60 days being the recommended minimum period for comments. An additional concern is the desire to raise overall awareness of comments submitted by different members on other member's notifications. The third triennial review of the TBT Committee urged members when responding to comments to share those comments with the TBT Committee, to draft comments in one of the official languages of the WTO and to share their comments and responses on a voluntary basis on national websites. To date only two economies, the European Union and the United States share comments and responses on easily accessible national websites.

Prior Consultation

27. There are three elements for evaluating prior consultation practices: transparency, non-discrimination and non-discretion. These are fundamentally linked to elements of trade and market openness. Reviews of eight OECD countries suggest that prior consultation is important for regulatory authorities to collect information, identify issues and define the most appropriate measures. A number of countries have adopted formal policies to help streamline the consultation process when carryout regulatory impact assessment. This includes use of the internet to solicit comments. The above referenced review suggests that while consultation practices differ between countries with respect to the method of consultation and the timeframe, in most cases the process is open to foreign interests and is conducted in a non-discriminatory fashion.¹⁶ In Norway, only foreign entities established in the country are invited, as rule to participate in the consultation process.

28. In the European Union public consultation is in practice pursued in all countries. In 2003 The EU Commission published *General Principles and Minimum Standards for Consultation* to streamline and improve consultation practices and make them more transparent. Among the objectives is to ensure that all interested parties, including those from non- EC countries have an opportunity to express their opinions. Consultations are also made known through a single access point on the Europa website. However, it appears that few EU members follow the EU consultation standards. The EU recently announced it is updating these standards. Among the member states, only Sweden, UK, Germany, and Austria have established minimum consultation standards.¹⁷

29. The United Kingdom has implemented prescriptive requirements for consultation among stakeholders. Regulators are required to apply a mandatory *Code of Good Practice on Consultation* which provides basic minimum principles for running consultation within the government, including minimum time frames for completing the process. Regulators are also required to follow an interactive step-by-step guidance which includes publicly reporting the number of consultations carried out on an annual basis. A completed RIA is published on the relevant government website. Canada has taken a similar approach with the development of a draft manual on the conduct of consultations as part of a comprehensive revision of the government's regulatory policy.

16. OECD, *Trade and Regulatory Reform: Insights from the OECD Country Reviews and Other Analysis*, Paris, 2000, p. 5.

17. *A Comparative Analysis of Regulatory Impact Assessment in Ten EU Countries*, 2004, p. 15.

Transparency and regulatory impact assessment

30. There appears to be no consistent policy with respect to the disclosure for public consultation on regulatory impact proposals. Some countries, including Canada, the United Kingdom, Denmark, Finland, Norway, Poland, the European Union, Switzerland Mexico, United States and New Zealand post draft RIA for consultation in the official gazette or ministry website at the beginning of the consultation process. Japan and Portugal disclose their RIA for consultation only in case of major regulations or in selected cases. Countries which do not disclose RIA include Austria, Hungary, Ireland, Korea, Spain and Turkey.

Simplification of administrative burden

31. Several countries, notably Canada, the United Kingdom, and the United States have a long history of regulatory reform aimed at serving business needs and reducing regulatory burden.¹⁸ Measures to reduce impact on small business in particular are common elements of regulatory policy and RIAs. The trend towards e-government and commitment to electronic service delivery for information, business registration and licensing is apparent throughout OECD countries. However, availability of one stop registration and other online services is still relatively limited in most countries.

32. In the area of minimizing and simplifying regulations, the European Union has taken significant steps. In 2003 the European Commission implemented a simplification proposal for EU regulation with the goal of significantly reducing the existing volume of legal texts and to make the texts simpler and more user-friendly. A new phase of the programme is expected to be launched in 2006/2007. The European Commission also proposes to strengthen mechanisms for when to legislate in the traditional format and when to use less prescriptive measures, such as voluntary standards when conducting regulatory impact assessment.

Performance-based regulation

33. The development of regulations based on performance criteria instead of design or descriptive elements is one of most commonly cited features of good regulation. Historically, regulators relied on setting prescriptive requirements in legislation. In specifying regulations in term of outcomes, alternative solutions can be used to achieve the required policy objective, thereby stimulating technological change. Performance based regulation is also more amenable to objective measurement for compliance purposes and to updating and modification.

34. Perhaps the best known example of the performance-based approach is the European Union's New Approach to technical harmonization and standardization which was introduced in 1985. Under the New Approach harmonization of legislative requirements among EU member states is limited to essential health and safety requirements that products must meet if they are to benefit from the free movement of goods with the European Union. The essential requirements for products meeting the European Union Directives are prescribed in standards and, while such standards remain voluntary, products designed in compliance with the standards are deemed to conform to the corresponding essential requirements.¹⁹

18. OECD, *Integrating Market Openness into Regulatory Process: Emerging Patterns in OECD Countries*, Paris, 2003, p. 27.

19. WTO, *World Trade Report 2005*, p. 80.

35. Under New Zealand's *Code of Good Practice for Regulations*, the guidelines for effective regulation specify that performance-based requirements that specify outcomes rather than inputs should be used, unless prescriptive requirements are unavoidable. This will help ensure predictability of regulatory outcomes and facilitate innovation.²⁰ New Zealand also assists regulators by providing concrete examples of alternatives, including standards and how they can be used to satisfy regulatory outcomes.

36. Canada's regulatory policy has an explicit statement that requires, where possible that regulatory requirements be specified in terms of performance rather than design or descriptive characteristics. Canada has also established a web link entitled *Instrument Choice* which provides a variety of presentations, policy statements and background papers on alternative approaches to regulation, including self-regulation, voluntary agreements between government and industry and voluntary codes and standards, as well as applications to different products and sectors.²¹ This represents an important resource for the regulatory community.

37. Many RIAs specify alternatives to regulation which help limit application of potentially trade restrictive measures. Typically these include a range of options such as status quo, voluntary options, co-regulation, incentives (e.g. subsidies), contracts, tradable permits, and taxation. While there are few references to performance-based regulation per se, a number of countries place particular emphasis on the use of voluntary alternatives, including standards. However evidence suggests that while expected to give consideration to non-prescriptive measures, there is little indication of a consistent record in applying such measures in regulatory actions. A survey of RIAs in 10 European Union members showed that the status quo and voluntary options were cited most frequently among the various options available.²² However, few countries provide examples of voluntary measures and how they could be used for regulatory purposes.

38. An interesting sectoral application of performance-based requirements is found in the development of national regulations for the design and construction of different types of buildings. This is a large and highly regulated area of standardization encompassing building codes, fire codes and plumbing codes. There has been a trend in certain countries, including Australia, the United Kingdom, New Zealand and Canada to replace existing prescriptive codes with those based on objectives or performance. As a result alternative approaches to meet regulatory specifications are accepted if sufficient evidence exists to demonstrate performance.

Regulatory Cooperation Initiatives

39. A relatively recent phenomenon is the emergence of bilateral regulatory cooperation initiatives. This process has been fostered by discussions on good regulatory practice in the WTO TBT Committee with the emphasis on eliminating or reducing regulatory barriers to trade. Such efforts are seen as an element of good regulatory practice. Activities to date have been concentrated primarily among G8 countries and while largely embryonic in nature, these initiatives represent a new element in the trade policy agenda. Regulatory cooperation initiatives are largely voluntary and informal in nature where regulators from different countries exchange information on their regulatory systems and different national approaches to regulation and conformity assessment. However, these efforts offer longer term promise for improved international harmonization leading to the reduction in regulatory barriers to trade.

20. www.med.govt.nz/templates/Page__15062.aspx

21. www.regulation.gc.ca/default.asp?Language=E&Page=instrument

22. *A Comparative Analysis of Regulatory Impact Assessment in Ten EU Countries*, 2004, p. IV.

40. As noted above Canada is currently undergoing a review of its regulatory policy. A key element of the revised policy is the promotion of greater regulatory cooperation with principal trading partners with a view to improving national regulatory outcomes and regulatory compatibility. A draft *Framework for International Regulatory Cooperation* outlines policies and approaches for regulatory cooperation through bilateral, regional and multilateral engagement. International cooperation is seen as an important mechanism to improve competitiveness and promote innovation and investment by reducing duplicative regulatory requirements. Among the recommended proposals are systematic discussions with key international counterparts at an early stage in the policy process to prevent unnecessary differences and to find ways to coordinate efforts or to align existing approaches that will meet national policy objectives.

Avoidance of unnecessary trade restrictiveness

41. Measures related to minimizing trade restrictiveness are incorporated in other sections of this report. These include use of internationally harmonized standards; consideration of alternatives to regulation, use of regulations based on performance instead of prescriptive or design requirements, acceptance of foreign regulations and standards as equivalent and consideration of trade impacts in the application of regulatory impact assessment. The decision by some governments to incorporate into domestic law WTO principles including avoidance of unnecessary obstacles to trade is particularly important in this context.

MECHANISMS FOR ENSURING A MARKET OPENNESS FRIENDLY REGULATORY ENVIRONMENT

Implementation of international obligations

42. A number of countries have established laws or other formal procedures to implement international trade obligations with respect to goods and services or other commitments. For example, the United States *Trade Agreements Act of 1979* prohibits federal government agencies from using standards and conformity assessment procedures as unnecessary obstacles to trade.

43. Members of the TBT Committee are required to submit a statement under Article 15.2 to explain what measures are being taken to implement the TBT Agreement domestically. Members often use the statement to provide information on laws, policies and procedures with respect to regulations, standards and conformity assessment procedures or other information on the regulatory regime. Some members notify formal adoption of the TBT Agreement into domestic law or adoption of key principles and obligations. Typically members also provide information on details of National Enquiry points for the notification of draft technical regulations and conformity assessment procedures. As there are no rules on the kind of information required, some statements are more detailed than others. Nevertheless, with more than 100 Article 15.2 initial statements and revised statements submitted to date, this is an important tool to demonstrate domestic compliance with international trade rules and promote regulatory transparency. The following represent some illustrative examples.

44. Saudi Arabia in its statement in May 2006 indicated that the Saudi Standards Organization (SASO) is responsible for overall implementation of the TBT Agreement. This was done by issuing the SASO Technical Directive (having the force of law) which describes the features of the Saudi standardization regime, including the requirement that all SASO technical regulations, standards and conformity assessment procedures are intended to be fully compliant with the TBT Agreement, including the transparency provisions, application of national treatment and non-discrimination and the requirement to consider international standards as the basis of technical regulations.

45. Chile adopted a decree in 2004 which incorporated virtually the entire text of the TBT Agreement into domestic law. The decree has the effect of proscribing for domestic regulators requirements that mirror the key principles and obligations of the TBT Agreement, including non-discrimination and national treatment and use of performance-based regulations. The decree also specifies the transparency obligations and incorporates elements of regulatory impact assessment including information on the impact of a proposed regulation on the domestic market and small and medium sized enterprises (SMEs).

46. China as a new member of the WTO has adopted a number of domestic laws and regulations, including the *Standardization Law* which incorporates many TBT principles and obligations. These include non-discrimination in the application of standards, technical regulations and conformity assessment procedures, consideration of acceptance of equivalency for technical regulations and recognition of test reports from the IECEE CB Scheme, a private system of conformity assessment. China also provided a list of the bodies with authority for the development of technical regulations and conformity assessment procedures and their implementation.

47. Mexico has established a legal framework for the preparation of technical regulations, standards and conformity assessment procedures. This is contained in the 1992 *Federal Law on Metrology and Standardization* which provides a uniform procedure for drafting and amending any technical standard or regulation whether for goods, processes or services. The law lays down specific disciplines including those regarding transparency, non-discrimination, harmonization based on international standards and periodic review. The law was amended in 1997 making it mandatory to align standards and technical regulations with international standards, unless inappropriate to fulfill legitimate objectives and to review standards every five years.

48. In 2001 Australia revised its initial Article 15.2 statement with a comprehensive description of all aspects of its regulatory regime, including information on areas covered by mandatory technical regulations, a list of federal and national regulators as well as the role of the standards and conformity assessment system. The statement referenced a binding guide entitled *Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard-Setting Bodies* which requires that regulatory measures or standards be compatible with international standards or practices to minimize trade barriers. In 2002 Canada made a similar revision which contained a detailed description of national regulatory policy, including the conduct of regulatory impact assessment.

49. A number of WTO Members have updated their Article 15.2 statement to report on changes in laws and regulations or the introduction of new regulatory policies or procedures. This has become an effective tool to improve ongoing transparency.

Adoption of International Standards in Regulation

50. The development of international standards is the principal means of regulatory harmonization at the global level. To facilitate the process of harmonization WTO members are required to participate in the work of international standardization bodies. The requirement to use international standards as the basis of technical regulations and sanitary and phyto-sanitary measures are key WTO obligations. In addition, central government standardizing bodies of WTO members are required to adopt the TBT Agreement's *Code of Good Practice for the Preparation, Adoption and Application of Standards*. In formally adopting the Code such bodies are deemed to be in compliance with the principles of the TBT Agreement.²³ The Code requires that, where appropriate national standards are based on international standards. These elements help mitigate the risk for regulators who may require assurance that regulations that make use of international standards are deemed to be in compliance with trade obligations.

51. The WTO SPS Agreement has adopted a procedure to monitor the process of international harmonization and the use of international standards, guides and recommendations. However, there is no similar requirement in the TBT Agreement. Nevertheless, as noted previously, a number of countries have taken steps to incorporate TBT obligations and principles, including the requirement to use international standards, into domestic law and/or in the conduct of regulatory impact assessment. In the periodic Trade Policy Reviews of members undertaken by the WTO, the reports often cite data on national adoption of international standards. However, comparative data is lacking. National standards bodies which are primarily responsible for implementing international standards domestically are inconsistent in recording the adoption of standards. Similarly international standards bodies which develop the standards have no mechanisms to collect data on adoption of these standards at the national level.

23. Some 150 standardizing bodies from 108 members have notified acceptance of the Code of Good Practice.

Processes for incorporating relevant international standards into national legislation

52. Many international standards have been adopted for regulatory purpose. However, policies for the transposition of such standards vary between jurisdictions. For most countries no distinction is made with respect to policies and practices in adopting international and national standards when incorporating them into legislation. Legally standards, as voluntary instruments do not in themselves impose any obligations on compliance but only become mandatory when referenced in legislation.

53. The relationship between the government and its national standards body is an important element in supporting the use of international standards and standards in general in the context of domestic regulation. Formal agreements between governments and the standards system in the United States, the European Union and a number of EU member states are designed to promote standardization as an instrument of public policy. Many national standards bodies are either government departments or are recognized as having a public policy role. The role of the national standards body is to coordinate input of all stakeholders in the standards development process, including government officials and regulators. National standards bodies are expected to take account of government policies and views and comply with national laws.

54. The European Union policy is to encourage development of international standards in cooperation with European standards bodies and uniform transposition of such standards as the basis of European Community legislation. Some 30 percent of European Standards are based on international standards. Agreements between the European standards bodies and International Organization for Standardization (ISO) and International Electrotechnical Committee (IEC) have influenced the speed of adoption of international standards within the European Union. The EU also supports the United Nations Economic Committee for Europe (UNECE) *Working Party on Technical Harmonization and Standardization Policy* as a model which relies on standards-based approaches to regulatory harmonization. With respect to measures taken by member states some countries have introduced regulatory innovations to speed adoption of EU harmonized standards. For example, Hungary's "endorsement notice" practice allows for reliance on English language versions of EU harmonized standards before the translated version is available.²⁴

55. For the United States provisions for the use of voluntary standards and conformity assessment are contained in the *National Technology Transfer and Technology Act (NTTAA)*. The legislation requires that all federal agencies use technical standards developed by voluntary consensus bodies for public policy objectives unless such standards are inconsistent with applicable law or otherwise impractical. Federal agencies and departments are required to consult with voluntary, private sector consensus bodies and to consult with these bodies in the development of technical standards when in the public interest and when compatible with government objectives, priorities and government resources. When undertaking regulatory impact assessment, federal regulators are required to use voluntary standards if applicable and explain why such standards have not been used in accordance with the *NTTAA*.

56. While there is no formal government policy on standardization in Canada, documented procedures are in place for approval of standards which are designated as National Standards of Canada, many of which are subsequently adopted for regulatory approval. These include strict rules on consensus and transparency and the requirement for review and updating on a regular basis. Adopted standards are required to be consistent with international trade obligations including non-discrimination, national treatment and incorporate international standards where relevant. Similar procedures are used in the United States by the American National Standards Institute (ANSI) for approval of National Standards of the United States. Such standards are deemed to meet all the requirements of the *NTTAA*.

24. OECD, *Integrating Market Openness into the Regulatory Process; Emerging patterns in OECD Countries*, Paris 2003, p. 30.

57. A number of countries have also introduced systems or procedures to enhance adoption of international standards, including periodic reviews of the stock of adopted standards to ensure ongoing consistency with international requirements. Korea has established such a review while Mexico's Federal Law on Metrology and Standardization requires that all technical standards and regulations be reviewed every five years to ensure among other objectives that they are consistent with international standards.

58. In Australia, before international standards or other standards are adopted in regulation, they are subject to mandatory regulatory impact assessment.²⁵ Approximately one-third of Australian standards are referenced in regulation. Subjecting voluntary standards to impact assessment is a relatively new development which may be adopted elsewhere.

Guides to assist regulators in the adoption of standards

59. Promoting use voluntary standards for regulatory needs is an ongoing challenge for both governments and standards bodies. Regulators who have traditionally relied on command and control approaches to regulation are often sceptical of standards in general or have little understanding of how they may be incorporated in a manner that ensures regulatory protection is not compromised. To date there have been only modest efforts in developing promotional guides on the benefits of standardization and how-to type tools to assist regulators. In 1977 ISO/IEC Guide 15, *Code of Principles on Reference to Standards* was published as guidance on incorporating international standards in national legislation. However, the document has not been revised and it is unclear to what extent it is being used by governments. Recently the Technical Management Board of ISO embarked on developing another guide scheduled for publication in 2007 with the draft title: *Guide XX: Using ISO and IEC Standards for Technical Regulations*.

60. At the national level there are various tools to assist regulators in the adoption of standards. In Canada, the publication *Standards Systems: A Guide for Regulators* which is available on-line has for a number of years served as the principal vehicle to assist regulators.²⁶ Designed as an educational tool for policy makers, the guide describes various methods for incorporating standards into law; the role of the standards development process, standards-based conformity assessment, and relevant case studies. This was replaced in 2006 by a more detailed and practical reference entitled *Key Considerations in the Development and Use of Standards in Legislative Instruments*. This document which is part of the suite of documents which underpin the development of standards in Canada is a step-by-step guide for the drafting of regulations incorporating standards. New Zealand has published on line, *New Zealand's Standards and Conformity Assessment Infrastructure* which explains the relationship between standards, regulations and conformity assessment.²⁷ The document provides practical examples showing how regulatory outcomes can be achieved using standards as alternatives to regulation.

Databases of standards in regulations

61. A number of databases have been developed to assist regulators in tracking standards and related documents referenced in legislation. These are important tools to create awareness of how to use standards in regulation and to assist regulators in updating and modifying existing documents. They may also assist suppliers to become familiar with standards and technical requirements of export markets.

25. Australian Government Productivity Commission Draft Research Report, *Standard Setting and Laboratory Accreditation*, 2006, p. 68.

26. <http://strategics.ic.gc.ca/stdsguide>

27. www.med.govt.nz/templates/MultipageDocumentPage_2327.aspx

62. *RegWatch* operated by the Standards Council of Canada contains a fully searchable data base specifically designed for those interested in tracking voluntary standards referenced in Canadian federal legislation. The database provides key information, including location of a standard referenced within a particular federal regulation, information about the standard, including whether there is a more current version than the one referenced in law and links to the full text of the regulation. A companion database, *Standards Alert!* is a dedicated e- mail service which allows subscribers to monitor a particular subject area of interest and receive automatic updates when changes are made to a particular Canadian or international standard. Standards Australia maintains a register of all voluntary standards called up in legislation. In addition, subscribers may register for *StandardsWatch* which provides through e- mail any changes in individual standards, subject areas and technical committees. In the United States, the *Standards Incorporated by Reference (SIBR) Database* operated by the National Institute of Science and Technology (NIST) contains a searchable list of all international standards and national adoptions of international standards, private standards and government- unique standards referenced in the *Code of Federal Regulations*.

Streamlining conformity assessment procedures

63. Conformity assessment gives assurance that products conform to their technical requirements, standards and other specifications. While conformity assessment provides benefits to manufacturers, consumers and regulators it may also act as a technical barrier to trade. Where independent conformity assessment is performed on products traded internationally, a high proportion of the products concerned require testing and certification in the import market. The trend of multiple conformity assessment and the related problem of failure to recognize tests across borders is major factor mitigating against market openness policies.

64. Attempts to streamline conformity assessment procedures to help limit duplication of requirements are country and situation specific. Among OECD countries only the European Union has implemented a formal policy on conformity assessment. The *Global Approach* sets out detailed procedures for establishing conformity with essential requirements, including criteria relating to the independence and quality of certification bodies, and the modalities for mutual recognition and accreditation. It offers flexibility by building in a range of alternative procedures that can be used, depending on the situation, including suppliers' declarations of conformity, verification by an independent third party, and full product quality assurance. Once it is found to be in conformity, a product carries the CE marking and can be freely marketed across the European Union.²⁸ Recognition of conformity assessment is an emerging area in free trade negotiations. In a number of recent bilateral agreements signed by the United States and its trading partners, when a party does not accept the results of conformity assessment conducted in the territory of the other party, it is required to explain on request, the reasons for its decision.²⁹

28. OECD, *Taking Stock of Regulatory Reform: A Multi-disciplinary synthesis*, Paris 2004, p. 27.

29. See for example, chapter eight of the Australia/ United States Free Trade Agreement. A similar undertaking is found in article eight of the *Trans- Pacific Economic Partnership Agreement* between Brunei, Chile, New Zealand and Singapore.

65. Many countries use a variety of approaches to conformity assessment depending on the circumstances and the products or sector. In the second triennial review of the TBT Agreement in 2000, the TBT Committee developed an indicative list of approaches to facilitate acceptance of conformity assessment results. These include: mutual recognition agreements for conformity assessment to specific regulations; co-operative arrangements between foreign and domestic conformity assessment bodies in the voluntary sector; the use of accreditation to qualify conformity assessment bodies; government designation; unilateral recognition of the results of conformity assessment; manufacturer's/ suppliers' declaration.³⁰

Mutual Recognition Agreements (MRAs)

66. Agreements for the mutual recognition of conformity assessment results are the best known of the various tools to facilitate trade in the area of conformity assessment. These agreements are designed to provide for the acceptance of testing and certification conducted in the export economy to the importing economy's mandatory requirements. No harmonization of technical regulations or standards is required. Some 40 government-to-government mutual recognition agreements have been notified to the WTO. These cover recognition of a wide range of conformity assessment results including tests, certificates of conformity, marks of conformity and registration of quality systems. The agreements cover a wide range of regulated products and sectors in both developed and developing countries. Perhaps the most widely known are the multi-sector bilateral agreements between the European Union and the United States, Canada, Australia, New Zealand, Switzerland and Japan.

67. The third triennial review of the TBT Agreement recognized that while important tools for trade facilitation, MRAs are difficult to negotiate and implement. Some of the agreements which were negotiated in the 1990s have still not been fully implemented. A number of considerations were identified to conclude effective MRAs. These include the following: a sound regulatory infrastructure; a sufficient volume of trade to justify the costs of negotiation and implementation; tangible economic benefits; interest of stakeholders; support from key players; underlying regulatory compatibility between the partners; sufficient resources for negotiation and implementation; step-by-step approach particularly where the technical competence of the parties is not equivalent.

68. There are few empirical studies on the impact of MRAs on trade. However, after a number of years of experience, including difficulties in implementing some of the agreements, it is generally recognized that MRAs have produced mixed results in supporting trade between the parties. At a recent WTO sponsored conference on conformity assessment, speakers from both Japan and the European Union expressed misgivings about the trade benefits of MRAs.³¹ Such agreements also potentially discriminate against third parties which are not signatories and provide for acceptance of conformity assessment results in only a limited number of fields of regulated activity. Nevertheless, MRAs continue to be seen as an important trade policy tool. In the ASEAN Free Trade Area, for example, a number of sectoral MRAs are in various stages of being implemented. It is generally recognized that future MRA negotiations will most likely succeed in situations where there is greater harmonization of standards and technical regulations.

30. G/TBT/9 13 November 2000, Annex 5.

31. The representative of Japan noted that the MRA with the European Union in the field of telecommunications equipment contributed to exports from the European Union but had no effect on exports from Japan while the MRA on electrical products had no discernible effect on trade from either side. A similar MRA with Singapore covering telecommunication equipment and electrical products has had no effect on trade to date. The European Union speaker noted that to date the MRAs have produced mixed results with little or no trade under some sectors.

Co-operative arrangements between domestic and foreign conformity assessment bodies in the voluntary sector

69. Private conformity assessment bodies play a major role in providing conformity assessment services in support of regulatory requirements. Article 8 of the TBT Agreement recognizes the role of these non-government bodies. Certification bodies, inspection bodies and laboratories may enter into agreements with similar foreign based organizations to help facilitate trade transactions.

70. One of the best known applications is the *IEC System for Conformity Testing and Certification of Electrical Equipment (IECEE CB Scheme)* which functions as mutual recognition agreement between private certification bodies covering the safety of electrical and electronic components, equipment and products. Test reports and certificates of conformity issued by any member are accepted by all members of the Scheme and the results are recognized by regulatory authorities in many countries. Currently there are 44 countries participating in the Scheme which has helped eliminate multiple national certifications, resulting in reduced testing and certification costs and enhanced trade. The success of the *IECEE CB Scheme* which predates the development of government-to-government mutual recognition agreements demonstrates the significant contribution of private sector conformity assessment arrangements in overcoming trade barriers for regulated products. An interesting feature is the growing acceptance of test reports and certificates by countries that do not participate as members of the Scheme. These are primarily developing countries, such as Kenya which recently announced its recognition of the *IECEE CB Scheme*.

71. Other private arrangements include the sub-contracting between conformity assessment bodies of part of the conformity assessment activity or the sharing of test reports or other data. All regulated products placed for sale in the European Union require the CE mark. Authority for the granting of the CE mark rests with conformity assessment bodies called Notified Bodies which must be domiciled in a European Union member state. For practical purposes, Notified Bodies may sub- contract product testing, where required to foreign based laboratories in the country of export while still maintaining legal responsibility for issuing the CE mark. Sharing of conformity assessment data is also quite common. For example, two certification organizations, CSA International in Canada and United Laboratories in the United States have established an MOU which provides for the sharing of test/certification reports in certain fields. This allows for manufacturers of regulated products to obtain both UL and CSA certification marks based on a single test program carried out by either organization.³² Such arrangements reduce the unnecessary duplication of testing and ensure faster market delivery of products.

Use of accreditation to qualify conformity assessment bodies

72. Formal accreditation of conformity assessment bodies has become increasingly recognized as the most widely accepted means of verifying the competence and reliability of conformity assessment bodies to fulfill their mandate. Accreditation which is based on the application of harmonized international standards and guides helps underline market confidence and is increasingly required by regulators as a prerequisite for the recognition of results of mandatory conformity assessment. Accreditation is a domestic activity performed either by government bodies or non-governmental organizations recognized by public authorities. Domestic or foreign bodies wishing to perform conformity assessment activities in a particular country generally require accreditation by a body domiciled in that country. Consequently OECD countries and many emerging economies have invested extensively in building accreditation capacity and creating a variety of programs to service domestic industry, regulators and other clients.

32. www.csa-international.org/news/releases/Default.asp?articleID=8696

73. Accreditation bodies have developed their own mutual recognition agreements which permit them to recognize each other's programs and procedures as equivalent. This in turn facilitates acceptance of conformity assessment results produced by accredited conformity assessment bodies. The most important arrangements at the global level are under the auspices of International Laboratory Accreditation Cooperation (laboratory and calibration testing) and International Accreditation Forum (quality and environmental management systems certification, inspection and product certification). These arrangements have grown significantly in recent years and embrace an increasing number of accreditation bodies from both developed and developing countries. The ILAC Arrangement alone has over 50 signatories representing 46 countries.

74. While accreditation-based agreements have been successful in facilitating trade between private firms, they have achieved only limited recognition by governments. A reference to a study by Asia Pacific Laboratory Accreditation Cooperation (APLAC) suggests that New Zealand has the highest rate of acceptance of accredited test reports produced by APLAC MRA partners, with regulators in Australia, Canada, Hong Kong and Singapore showing high rates of acceptance.³³ With the decline in importance of government-to- government MRAs as tools to facilitate trade, increased attention may be placed on promoting greater recognition by regulators of accreditation- based agreements. This should also reduce the need for costly multiple accreditations.³⁴

75. An interesting development is occurring in Europe with respect to accreditation. In conjunction with a recently announced review of the *New Approach*, the European Commission is proposing changes in existing EU policy which would give public authorities responsibility for establishing and overseeing national accreditation bodies and systems. This is expected to involve formal juridical recognition of the accreditation function to ensure that accreditation bodies operate in the public interest. The proposals also involve designation of a single national accreditation body or system in each member state, effectively removing competition between accreditation bodies. These changes are expected to give greater prominence to the role of accreditation in the context of the European regulatory system and strengthen the relationship between regulators and accreditation authorities.³⁵

Government designation of conformity assessment bodies

76. Government designation or recognition of foreign conformity assessment bodies is perhaps the least widely used approach to acceptance of testing and certification. Article 6.1.2 of the TBT Agreement permits governments to limit acceptance of conformity assessment results to designated bodies in the exporting country. Designation may take place in the context of a mutual recognition agreement or through unilateral designation by the authority in the import market. Mutual recognition of specific bodies is less costly and easier to implement than a traditional MRA. Japan appears to be the only country that utilizes government designation as a policy tool and only in limited areas of regulation.

33. A Review of New Zealand's Standards and Conformity Assessment Infrastructure, page 34. In a revision to its TBT Article 15.4 statement in 2001, Australia indicated that regulators are increasingly accepting test reports issued by the MRA partners of NATA, the government recognized national accreditation body for testing.

34. A recent OECD survey indicated that 23 percent of conformity assessment bodies required more than one accreditation.

35. The proposals can be viewed at http://ec.europa.eu/enterprise/newapproach/review_en.htm.

Supplier Declaration of Conformity (SDoC)

77. Supplier declaration of conformity is used primarily with respect to products where there is deemed to be a relatively low to medium risk to health, safety or the environment. As an alternative to independent, third- party conformity assessment, it is deemed to be the most trade friendly means of demonstrating compliance. However since it is the supplier rather than the regulatory authority who is legally responsible for ensuring that products comply with mandatory technical regulations, SDoC depends on efficient post market surveillance and a legal system which encompasses liability legislation and/or laws which provide for appropriate penalties for non- compliance. The use of SDoC for regulatory purposes has grown extensively although it still remains only of secondary importance in comparison with third- party certification. The development of a new ISO standard, ISO/IEC 1750:2004, *Conformity Assessment – Suppliers declaration of conformity – Part I: General Requirements*, is an important development for improving the value and application of SDoC.

78. Reliance on use of SDoC depends on the regulatory culture and history of the country. However, there is no comparative data available on how SDoC is applied on a country basis. Few countries have adopted SDoC as an overarching policy for acceptance of conformity assessment. The European Union has a formal policy which promotes application of SDoC to all but the highest risk products. Under the New Approach almost all technical products, including information technology products, electrical products, machinery and certain medical devices, are deemed to comply with essential requirements solely on the basis of a declaration by the manufacturer. The United States regulatory philosophy relies heavily on SDoC. However, federal agencies may use different approaches to achieve the appropriate level of assurance of compliance, including third- party certification. Some countries, such as Brazil have a policy of implementing SDoC on a gradual, product- by-product basis in sectors where risk is considered low. In a number of other countries SDoC is used for a relatively limited number of specific products in both high and low risk categories.³⁶

79. The experience of New Zealand which introduced SDoC in a number of low risk areas highlights the complexities of implementing a broad program of SDoC. Three pre-conditions were specified: (1) a well known internationally aligned standard for the product in question; (2) regulatory control over the product in the parallel market that used the same standard, including the manufacturing economy; (3) a good relationship between the manufacturer and supplier; and (4) when functional MRAs existed with other regulators and when SDoC regimes had harmonized provisions.³⁷ New Zealand is currently working with Australia in developing a common mandatory SDoC regime for all products, supplemented by a pre-market approval of high risk products.

Acceptance of foreign measures as equivalent to domestic measures

80. The TBT Agreement requires members to give positive consideration to accepting as equivalent other countries technical regulations, even if different so long they adequately fulfill the objectives of their own requirements. TBT members are also required to accept, whenever possible, conformity assessment procedures of other members which are equivalent to their own procedures. The SPS Agreement requires acceptance of equivalency of measures when an appropriate level of protection can be demonstrated.

36. TBT members have provided information on disposable lighters, vehicles and vehicle parts, electrical products, electromagnetic compatibility, medical devices, personal computers and peripherals, recreational craft, personal protection equipment, telecommunications equipment, toys and personal protective equipment.

37. *New Zealand's Experience with Regard to Electrical Equipment*, TBT Workshop on Supplier's Declaration of Conformity, March 2005.

81. The subject of equivalence has received considerable attention in the SPS Committee and the international standardizing bodies referred to in the SPS Agreement have each developed principles with respect to assessment of equivalency. The issue of equivalence has also been the subject of ongoing discussion in the TBT Committee since the first triennial review in 1997. However, beyond general discussion of the beneficial trade effects stemming from recognition of equivalent technical requirements, there has been little attempt to examine the concept more closely and to identify principles, criteria or good practice for assessing equivalency.³⁸ This perhaps helps explain why the concept is not much applied in practice. Nevertheless the TBT Agreement recognizes the potential of equivalency as a key element in support of good regulatory practice.

82. Some TBT members have adopted requirements in their regulatory policy which support acceptance of equivalency on a unilateral basis. For example, Canadian regulators are required to recognize equivalency for both foreign regulations and conformity assessment procedures when related to trade, if they achieve the intended regulatory objective and offer an equivalent level of assurance of conformity with domestic regulations and standards. Switzerland has established a policy of autonomous recognition of conformity assessment procedures based on the following elements: (1) the test or conformity assessment procedure followed must meet Swiss requirements (2) the foreign organization has standards equivalent to those required in Switzerland.³⁹ Other countries assess the equivalence of foreign measures on an ad hoc basis. In the United States, for example determination of equivalence with other countries' regulatory measures rest with the relevant regulatory authority.⁴⁰ Some countries, including Hong Kong China (toys) and Canada (several products) have informed the TBT committee of examples where equivalent requirements have been accepted.

83. Regional and bilateral agreements also offer avenues for recognition of equivalency. The *New Zealand/Singapore Closer Economic Partnership Agreement* requires the parties to accept the equivalency of each other's technical, sanitary and phytosanitary regulations and standards as the basis of mutual recognition, unilateral recognition and harmonization. Similarly, in certain free trade agreements between the United States and a number of other countries, the parties are required to give positive consideration to accepting as equivalent the technical regulations of the other party, transposing the language of TBT Article 2.7.⁴¹ There is an additional requirement that, when a party does not accept a technical regulation of the other party as equivalent, it must explain its reasons, if requested by the other party. A similar clause is found in the *New Zealand/Thailand Closer Economic Partnership Agreement*. Such requirements create disciplines which exceed obligations in the TBT Agreement. Members of the Andean Community have launched a process of standardization at the regional level which will make it possible to achieve equivalence of certain voluntary standards with the goal that these would be used as a starting point when initiating technical regulations in the Andean Community. Experience on implementation of equivalency in regional and bilateral agreements can help inform future discussions on the issue of equivalency, leading to more effective implementation at the multilateral level.

38. Colombia is the only TBT Committee member to recommend that the Committee design a procedure to facilitate equivalence of regulations between WTO members.

39. A detailed elaboration on the Swiss policy is found in Switzerland G/TBT/W/79, 3 September 1998.

40. OECD, *Integrating Market Openness into the Regulatory Process: Emerging Patterns in OECD Countries*, Paris 2003, p. 31.

41. Australia, Singapore, Morocco, CAFTA/DR (Dominican Republic, Costa Rica, Guatemala, Honduras, El Salvador).

Policies related to foreign investment, including recognition of equivalency

84. Foreign Investment is considered to play an important role in economic development, the stimulation of growth, creation of employment and supporting technology exchange. Consequently policies designed to attract foreign direct investment (FDI) are considered to be important components in supporting an open and market-oriented economy.

85. At the multilateral level since its inception OECD has been the forum for co-operation among member and partner countries in the area of international investment. While OECD countries still maintain certain restrictions on foreign investment in such sectors as transport and public utilities, considerable progress has been made in promoting policies which support a favourable climate for foreign investment.⁴² OECD members subscribe to a number of instruments which support market openness policies. The *OECD Code of Liberalisation of Capital Movements* which provides *inter alia* for the non-discriminatory right of establishment of non-resident investors is legally binding on members with stated derogations. The 30 members and 9 non-members have also adhered to the *OECD Declaration on International Investment and Multinational Enterprise*. The Declaration includes the *OECD National Treatment Instrument* which sets out an adhering country's commitment to accord no less favourable treatment to established foreign-controlled enterprises than is accorded to domestic enterprises in similar situations, and the *OECD Guidelines for Multilateral Enterprises* which provide voluntary principles and standards for responsible business conduct in all major areas. OECD publishes the lists of country reservations to the OECD Code and of country exceptions to the National Treatment Instrument, and has produced implementation guidance.⁴³ Most recently, OECD and non-member partners developed the *Policy Framework for Investment*, a new tool for governments to assess the impact on private investment of policies in ten key areas, including trade, competition and tax, and decide on reform.⁴⁴

86. At the multilateral level APEC has also been active in developing investment-friendly principles. In 1994 member economies endorsed the *APEC Non-Binding Investment Principles* which focus on transparency, property protection and non-discrimination as policies that support a sound investment environment.⁴⁵ The principles have strong support from the APEC business community and have been cited by some member economies in the development of their domestic policies with respect to investment.⁴⁶ Recently, APEC members such as Vietnam have undertaken to use the *Policy Framework for Investment* in complement to the APEC Principles.

87. Much of the recent development in investment liberalization is centred on bilateral agreements. An increasing number of trade agreements now incorporate chapters on investment. Also many countries have signed separate bilateral investment treaties (BIT) or investment protection agreements (IPPA/FIPA). The different forms of bilateral agreements are designed to protect foreign investment through a transparent rules- base system while balancing the right of the parties to regulate in the public interest. Typically such agreements set out specific rights and obligations of the parties, provide for exceptions and cover areas including MFN and national treatment, guidelines with respect to appropriation and naturalization and free transfer of revenues.

42. The number of exceptions to national treatment of foreign investors has been reduced by 17 per cent over the last 10 years (OECD, *National Treatment for Foreign-Controlled Enterprises*, 2005 Edition). See also OECD, *Integrating Market Openness into the Regulatory Process*, Paris 2003, p. 21.

43. OECD (2003), *OECD Codes of Liberalisation of Capital Movements and of Current Invisible Operations, User's Guide*, and OECD, *National Treatment for Foreign-Controlled Enterprises*, 2005 Edition.

44. www.oecd.org/daf/investment/pfi

45. www.acds.net/Appendix4.html

46. See for example, Indonesia at www.indonesia-ottawa.org/economy/Investment/investment-policy.html.

88. A recent study refers to the existence of no less than 1240 bilateral investment treaties and 36 trade agreements with investment clauses covering some 140 non-OECD countries.⁴⁷ Among the leaders in the negotiation of BITs are France with 44 treaties in force and 13 signed but not yet in force and United States with 40 agreements followed by Japan with 10. The United States is also a strong proponent of incorporating investment provisions in bilateral trade agreements. With respect to IPPAs, the United Kingdom is the leader with no less than 106 agreements of which 94 are in force. For its part Canada has signed some 22 FIPAs, with three more currently under negotiation. Bilateral investment agreements have played an important role in building closer economic relationships between the countries of the Americas.⁴⁸ In the interests of transparency, some countries provide links to the various agreements and with updates on the status of ongoing negotiations.

89. One feature of investment policy is the use of model agreements by some countries. These are often accessible on government websites, promoting transparency and predictability. Canada's earliest FIPAs were based on the OECD model investment agreement. The more recent ones mirror the investment chapter of the North American Free Trade Agreement (NAFTA) and follow increasing experience with implementation of this chapter. The FIPA model was updated in 2003. The principal objectives of the update were to enhance clarity in the substantive obligations; to maximize openness and transparency in the dispute settlement process and to discipline and improve efficiency in the dispute settlement procedures.⁴⁹ Australia negotiates its IPPAs on the basis of a cabinet-approved model IPPA text. Elements include a standard of fair and equitable treatment for investors, national treatment and MFN commitments. The model IPPA also provides undertakings about expropriation and nationalization (including the nature of compensation for such acts) and establishes mechanisms for resolving disputes over investment matters. The United States model BIT which was updated in 2004 offers similar provisions. The model captures many of the elements found in the investment chapters of free trade agreements between the United States and its trading partners.

90. At the domestic level efforts have been made by many countries to actively promote inward investment. For example, In 2003 Japan announced the *Program for the Promotion of Foreign Direct Investment into Japan* which includes 74 measures to reduce impediments to inward direct FDI. Such efforts often include establishment of single contact point with complete responsibility for investment promotion which acts a clearing house for information. Typically this includes a website with a wide variety of information including, for example economic conditions, labour force attributes, business registration requirements and investment policies.

Policies related to qualification and licensing requirements for services

91. Services account for the largest component of the economies of most OECD countries. However, services are highly regulated in most countries and create significant market access barriers. International rule making governing trade in services has been limited and consequently remains one of the more challenging areas for trade negotiators. With few exceptions, including financial and telecommunication services, commitments under the GATS have been confined to confirming existing conditions in a relatively limited number of sectors. However, efforts are geared towards progressively reducing restrictions on market access for trade in services and providing for MFN treatment and national treatment. In some cases regulatory inconsistencies have restricted members from making new commitments in their service schedules. Bilateral regulatory cooperation initiatives may offer the best hope for progress in this area.

47. OECD, Novel Features in OECD countries Recent Investment Agreements: An Overview, Paris 2005, p. 2.

48. An analysis of the key elements of 58 investment agreements in the Americas is available at: www.sicw.oas.org.

49. www.international.gc.ca/tna-nac/fipa-en.asp

92. With respect to policies related to qualification and licensing requirements, there appears to be little in the way of global initiatives. Work on qualification requirements and procedures, technical standards and licensing requirements for service providers has been underway since the inception of the GATS in 1995. By 1998, agreement was reached in the accountancy sector. However, since then there has been little progress at the multilateral level and efforts appear to have shifted to the bilateral arena. Even at the bilateral level efforts have been relatively modest in achieving recognition of occupations. The Services Chapter of the *Australia/United States Free Trade Agreement* requires that qualification requirements and procedures, technical standards and licensing requirements must be designed in such a way as not to constitute unnecessary barriers to trade. In addition, there is no requirement for the parties to maintain a local presence for service providers. The agreement also incorporates provisions granting national treatment to the signatories as well as MFN treatment to service suppliers of a non-party. These commitments are considered to be more liberal than similar commitments under the GATS. *The Trans Tasman Mutual Recognition Arrangement* between Australia and New Zealand goes beyond endorsing general principles and provides for the mutual recognition of registered occupations. Under the arrangement, a person who is registered to practice an occupation in one country is entitled to practice an equivalent occupation in the other country after notifying the local registration authority. The MRA covers all occupations for which some form of legislation-based certification; licensing or other form of approval is required.⁵⁰ The availability of international standards may also help facilitate the recognition process. In 2004 ISO published ISO/IEC 17024, *General requirements for bodies operating certification of persons*. This represents a global benchmark for certification schemes to ensure that they operate in a consistent, comparable and reliable manner worldwide, thus supporting an environment for the mutual recognition of schemes and facilitating the global mobility of personnel.⁵¹

93. The APEC Architect Project represents a unique sectoral arrangement between service providers in the Asia/Pacific region. The project which was launched in 2000 is designed to reduce current restrictions on the practice of architects and engineers in APEC member economies with the overall goal of mutual recognition. A set of principles and an operational framework has been agreed by all participants. Member economies are encouraged to register their architects and engineers. Registration provides evidence of achievement of professional standards that may meet or satisfy some or all of the requirements in order to be recognized by the host economy. To date 12 of the 21 APEC member economies have joined the scheme.⁵²

50. See www.coag.gov.au/mra/mutual_recognition_users%27_Guide.pdf.

51. www.iso.org/iso/en/commcentre/pressreleases/archives/2003/Ref847.html

52. For more information on the APEC Architect Project see www.apecarchitect.org/foreword.php.

REGULATORY MECHANISMS WITHIN CENTRAL GOVERNMENTS AND BETWEEN CENTRAL AND SUB-CENTRAL GOVERNMENTS

94. Ensuring cooperation, consultation and coordination among all the players at the domestic level including those involved in regulatory policy and drafting of regulations is considered to be an essential component of good regulatory practice. In the second triennial review the TBT Agreement the Committee noted the importance of cooperation and coordination between policy makers and the need for increased awareness of the TBT requirements at the national level. The Committee has also stressed the importance of effective coordination between trade policy officials, standards bodies and regulators. It was also pointed out that there is no single bureaucratic or administrative model that all countries should follow in implementing the obligations of the Agreement.⁵³

Interdepartmental/interagency regulatory coordination

95. A number of countries have established inter-departmental committees or statutory bodies to review regulatory policies and initiatives and oversee implementation of the WTO Agreements, notably the TBT and SPS Agreements. These committees may provide oversight function or simply act as an advisory or consultation mechanism. An example of the former is Chile which in 1997 established the *National Commission on Technical Barriers to Trade*. The committee is not sanctioned by law but is seen to be an effective tool for engaging all regulators in implementing TBT obligations. A recent output of this body was the development of a decree which established the requirements for the elaboration, adoption and application of domestic technical regulations and conformity assessment procedures which was subsequently adopted as national law.⁵⁴

96. Brazil recently announced establishment of the *Brazilian Committee on Good Regulatory Practice*. The stated goal of the committee is to develop the *Brazilian Guide on Good Regulatory Practice*. It is anticipated that the guide will incorporate regulatory impact assessment which is seen as an important tool to improve technical regulations and help avoid unnecessary barriers to trade.⁵⁵

97. Canada has taken a less formal approach to interdepartmental coordination with the establishment of its *Trade and Regulatory Interdepartmental Committee*. The committee which is chaired by the head of the delegation to the TBT Committee brings together representatives of regulatory departments and agencies, the office responsible for regulatory oversight and the Standards Council of Canada. The committee meets prior to each TBT Committee meeting and provides ongoing policy advice on regulatory and trade issues.

98. A similar inter-agency coordination model is used in the United States. The United States also operates a separate policy advisory group representing standards and conformity assessment bodies, called the *Industry Trade Advisory Committee on Standards and Technical Barriers to Trade*. Similar committees have been established for customs and services which also includes industry representation.

53. G/TBT/9 13 November 2000, p. 2.

54. Chile G/TBT/W/28 12 June 2006.

55. Brazil G/TBT/W/267 8 June 2006.

Cooperation and coordination between national and sub- national jurisdictions

99. This is one area that is not well understood and for which there appears to be little data. In a number of countries, notably federally constituted states, such as Canada and the United States, regulatory authority is often divided between federal and province or state jurisdictions. In the United States, municipalities may also exercise regulatory authority.⁵⁶

100. What little evidence is available suggests that countries resort to different mechanisms to ensure consultation, coordination and cooperation between regulatory authorities at different levels of government. These may involve formal committees which are designed to address common policy issues through consultation and information exchange. For example, in 2005 Canada established the *Federal/Provincial/Territorial Working Group on Regulatory Governance* to provide a forum to lay the foundation for common principles on managing regulation. The focus of the group is to establish common regulatory principles, institute a common approach to regulatory impact assessment and share best practices.

101. Other mechanisms include formal agreements for harmonization of regulatory requirements. Canada has implemented the *Agreement on Internal Trade* which, in addition to enhancing trade between provinces and territories, also promotes harmonization of regulatory practices in a number of areas. These include streamlining and harmonization of standards and technical regulations. A similar approach is found in Australia with the establishment of an MRA between the Commonwealth, States and Territories in 1993.

56. A report by the European Commission indicates that there are more than 2700 State and municipal authorities in the United States that require particular safety certifications for products sold or installed within their jurisdictions.

CONCLUSIONS

Regulatory processes and tools for assessing market openness effects

102. A wide range of regulatory policies, processes and tools have been implemented by governments in both OECD and non- OECD countries at different levels that promote and facilitate trade and investment. However, while trade and market openness measures create positive effects, such mechanisms have often developed in isolation from and subsidiary to the imperatives of the domestic regulatory agenda. With the impact of globalization, emphasis is now on developing efficient regulation which meets public policy objectives, promotes business competition and minimizes trade barriers. As a result there is a need for greater alignment and harmonization between domestic regulatory policy and trade policy.

103. At the policy level OECD governments have adopted a range of general regulatory tools and approaches in support of market openness. Among these are regulatory impact assessment, transparency and consultation, performance-based requirements and regulatory cooperation initiatives. Regulatory impact assessment is the best known and most widely implemented tool among OECD governments. However, based on the available information, only two countries appear to require explicit consideration of the impact on international trade in the conduct of impact assessment. Most countries use the more indirect and less rigorous approach of assessing the effect of a potential regulation on competition and business, at least for major regulations. *Efforts are required to ensure that guidance documents and other tools designed to assist regulators in undertaking regulatory impact assessment incorporate reference to the impact on international trade and specifically to international trade obligations related to the WTO.* Regulatory impact assessment is still a relatively new concept in developing countries. The experience of Costa Rica in assessing trade impacts in the review of technical regulations provides insight into how impact assessment is handled. *Focussed capacity building efforts are required to transfer regulatory best practices to developing countries.*

104. With respect to transparency and consultation most WTO members have a mixed record in meeting the comment period for notification of draft technical regulations. While most countries have established policies for prior consultation and openness to comments by foreign based regulators, including public disclosure of regulatory impact proposals, *more needs to be done to establish websites and other tools to help ensure that comments are shared among all interested parties. Codes of practice and guidance documents on the consultation process which have been implemented by some countries are important tools which others may emulate in the way of best practices.*

105. The simplification of administrative burdens particularly on small and medium sized enterprise is a key element of regulatory reform. However, apart from the ongoing European Union initiative to simplify and reduce the number of regulations, there is little evidence of other national policies or programs.

106. Establishment of performance- based requirements as an alternative to prescriptive measures is considered one of the principal elements of good regulatory practice. However, the research showed that only in a few regulatory impact assessment models are regulators required to consider performance or non-prescriptive outcomes in designing regulation. There is also little evidence of the application of such measures. Some countries provide examples of alternatives to prescriptive measures and how they can be implemented. These commonly include voluntary measures, including standards. *More research is needed on the range of tools and instruments including sectoral applications which can be used as alternative to prescriptive regulation and how to ensure that such measures are considered in impact assessment.*

107. Bilateral regulatory cooperation initiatives represent the newest element in regulatory activity at the international level. A number of bilateral initiatives have been launched, primarily among G7 members. While largely informal exercises focussed on information sharing on national regulatory regimes and best practices, these initiatives offer the promise of increased regulatory harmonization and compatibility, leading to the reduction of regulatory- based trade barriers.

Other strategies for ensuring a Market Openness friendly regulatory environment

108. Formal procedures at the domestic level to implement international trade obligations represent the primary commitment of governments to observance of trade rules. A key tool for the formal recognition of such commitments is the statement on implementation of the TBT Agreement. These statements provide the opportunity to reference national laws, procedures and other trade and regulatory policies with respect to implementation of TBT obligations and principles. While a number of countries have still to formally submit an Article 15.2 statement, a systematic analysis of the more than 100 submissions to date would demonstrate the range of domestic laws, procedures and policies in place to implement international trade obligations.

109. The adoption of international standards is both the principal tool for regulatory harmonization and a key component of trade facilitation. However, outside the WTO SPS Agreement there are no mechanisms to monitor the domestic adoption of international standards, guides and recommendations. The lack of comparative data on national adoptions of international standards makes it difficult to assess the relevance and impact of international standardization on domestic regulatory policy.

110. A related issue is the lack of evidence of any distinct policies with respect to incorporation of international standards into national legislation. No distinction is made in the adoption process between international and national standards. In many countries standards are recognized as having a public policy role which is reinforced through formal agreements between national standards bodies and governments. For some countries periodic mandatory review of international standards helps to ensure ongoing relevance for domestic stakeholders. *A major constraint to the wider adoption of standardization by regulators is the shortage of promotional tools and guides to assist regulators. This requires greater cooperation between governments, national standards bodies and international standards bodies in order to develop the appropriate tools.* National data bases of both standards and standards referenced in regulation are also important factors in the adoption of standards by facilitating regular revision and update and increasing knowledge of foreign market requirements.

111. Much attention has focussed on the streamlining of conformity assessment procedures in the context of market openness policies. Reliance on domestic testing and certification for mandatory conformity assessment is the norm with only limited acceptance of foreign- based results. While there has been considerable discussion on the trade restrictive effects of conformity assessment in the TBT Committee, progress has been limited to identifying a list of different approaches to facilitate acceptance of conformity assessment. Among the most widely used approaches are government-to-government mutual recognition agreements (MRAs), accreditation, private arrangements between conformity assessment bodies and supplier declaration of conformity (SDoC).

112. Although a large number of MRAs have been implemented in recent years, primarily among OECD countries, they have proven to be complex to negotiate and difficult and costly to implement and are now seen to have limited value as trade facilitation tools. Accreditation programs undertaken by both government and private bodies continue to expand. While growth in accreditation-based mutual recognition agreements has a significant effect on trade, there has been only limited recognition of these schemes by regulators. However, with the decline in the relative importance of government-to-government MRAs such agreements may benefit from greater regulatory acceptance. Private arrangements between

conformity assessment bodies, such as the IECEE CB Scheme provide the potential for regulatory recognition without direct government participation. Adoption of supplier declaration of conformity has largely been limited to products of relatively low risk with few countries adopting SDoC as the basis of national policy on conformity assessment. While SDoC is viewed as the most trade friendly approach to conformity assessment, its systematic expansion will depend on implementation of effective post-market surveillance and legal remedies with appropriate penalties for non-compliance. Arrangements between private conformity assessments bodies are expected to continue to play an increased role in trade and regulatory acceptance.

113. The acceptance of the equivalency of foreign measures to satisfy domestic regulatory requirements is referenced in both the TBT and SPS agreements and is considered to be a principal element of good regulatory practice. However, despite considerable attention on the issue there has been little progress in applying the concept of equivalency in domestic regulatory regimes. A focus on identifying criteria and principles of good practice could lead to a better understanding of how equivalency can be applied in practice. In the meantime, some countries have adopted policies on the recognition of equivalency. *At the same time equivalency is being addressed in the context of bilateral and regional trade agreements which may offer guidance on practical implementation at the multilateral level.*

114. Domestic policies designed to attract foreign investment help underpin an open and market oriented economy. The OECD has been the principal force in promoting best practices related to foreign investment by developing overarching guidelines and principles which have been adopted by both members and non-members. APEC has also been active in developing principles in support of a sound investment environment. At the national level the growing number of bilateral investment agreements and trade agreements incorporating investment-related elements is testimony to a strong commitment to a rules-based approach with respect to foreign investors and their assets. The use of model investor agreements by various countries is one dimension which promotes transparency and predictability.

115. Increasing liberalization of services which account for the largest component of the economy of OECD countries represents an important element of trade policy. However, rule making at the multilateral level has been limited and there are significant market access barriers for services. In the area addressed in this paper, qualification and licensing requirements of foreign service providers, there is agreement in the GATS only in the accounting sector. The *APEC Architect Project* is an example of the limited number of arrangements between service providers which have been established at the multilateral level. Some bilateral free trade agreements provide commitments to facilitate recognition of service providers. However, it is too early to assess their impact.

Regulatory Mechanisms within Central Governments and Between Central and Sub-central Governments

116. Effective coordination and cooperation between officials at the national and sub-national level is a well established principle of good regulatory practice. At the national level a number of countries have established interdepartmental or interagency committees. Depending on the jurisdiction, some committees play a more formal role, including, for example, coordination of regulatory initiatives and domestic implementation of WTO obligations. Other committees have a less formal mandate providing a forum for information sharing and policy coordination. While the information on different mechanisms within central governments is quite limited, as it is often not in the public domain, a single model for all situations does not appear to exist.

117. Regulatory coordination between central and sub-central levels of governments is important particularly in countries where sub-central governments have independent regulatory jurisdiction. However, with the exception of internal trade agreements within certain federal states which promote regulatory harmonization there is little available information on coordination mechanisms between different levels of government.

Areas calling for further attention

118. The overview of regulatory processes, tools and policies to support market openness and improve trade and investment opportunities shows that, while a number of promising approaches do come out, several issues relating to the elaboration of a market openness assessment toolkit warrant further attention and work:

- How to incorporate in RIAs more explicit references to international trade?
- How to enhance the capacity of developing countries to adopt best practices on regulatory impact assessment and on consultation processes?
- What market openness friendly tools and instruments can be used as alternatives to prescriptive regulation?
- How to develop appropriate tools and guides to assist regulators in promoting wider adoption of standardisation?
- What lessons can be learned from bilateral and regional trade agreements on the practical implementation of equivalency at the multilateral level?

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