Good Regulatory Practice Provisions in Regional Trade Agreements:

Examples and considerations for developing countries

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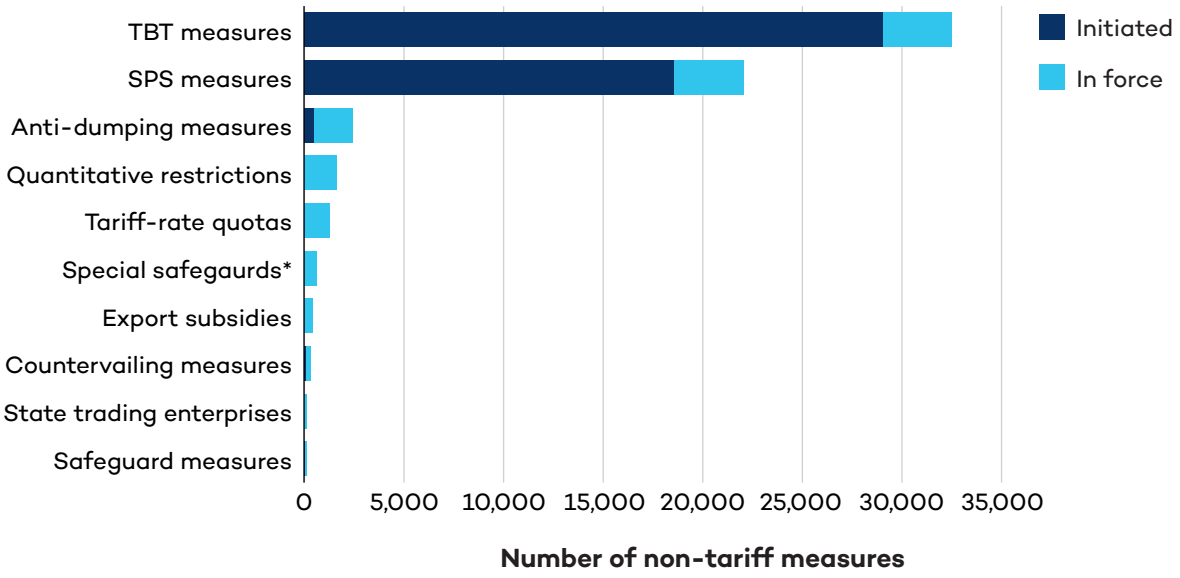
1.0 Introduction

Regulatory provisions are an increasingly prevalent feature in recent regional trade agreements (RTAs). While tariff-related trade costs have decreased over time to reach a relatively stable and low level, non-tariff measures (NTMs) have proportionately become a more relevant source of trade costs (Mattoo et al., 2020). Consequently, regulatory policy has become an important feature in trade negotiations and the trade policy agenda overall.

While there are various forms of NTMs, according to the World Trade Organization (WTO, 2021a) Integrated Trade Intelligence Portal, technical barriers to trade (TBT) and sanitary and phytosanitary (SPS) measures far surpass the other NTMs (see Figure 1). The prominence of such measures is unlikely to subside any time soon. According to the 2022 WTO TBT Committee report, a record number of TBT notifications were submitted in 2021, with 83 members submitting 3,966 notifications of new or changed TBT measures. The growth in notifications is driven by the strong participation of developing and least developed country members, which were responsible for 85% of the new notifications. COVID-19-related notifications were also significant, with 70 new notifications in 2021 (WTO, 2022a).

Figure 1. Non-tariff measures initiated and in force as of December 31, 2021



Note: *Agriculture
Source: WTO, 2021.

There is a need for these measures. After all, TBT and SPS measures, in the form of **technical regulations, standards, and conformity-assessment procedures,** are often introduced by countries to fulfill legitimate public policy needs at the domestic level. For instance, under the WTO's Agreement on Technical Barriers to Trade, these could include concerns, among others, relating to "national security requirements; the prevention of deceptive practices; protection of human health or safety, animal or plant life or health, or the environment" (WTO, 1995, art. 2.2).

However, the increasing use of non-tariff trade measures brings with it concerns about how some measures are developed and implemented, along with worries that these measures unnecessarily contribute to regulatory divergences among countries and increase trade costs, which, in turn, may inhibit trade. Specifically, regulatory divergences may result in three types of costs for firms that export. The first, often referred to as information-gathering costs, is the cost to gather, process, and analyze information on the different regulatory requirements of target markets. The second is specification costs, also known as product adaptation costs. This is the cost of adapting processes and products to meet the different regulatory requirements of target countries. The final cost is for a conformity assessment to prove that a firm's processes and products do indeed comply with the different regulatory requirements of target markets (Kauffmann & Malyshev, 2015). These different costs are regarded as especially burdensome for exporting small and medium-sized enterprises (SMEs). According to the International Trade Centre's (2016) *SME Competitiveness Outlook 2016*, a 10% increase in the frequency of regulatory burdens is likely to result in a decrease in export value of 3.2% for small companies, as compared to 2.6% for medium-sized companies and 1.6% for large companies.

In addition to trade cost concerns, some experts argue that regulatory divergences could also contribute to hampering the achievement of global sustainability objectives, such as tackling climate change. For example, in the absence of minimum harmonized standards, some countries seeking to boost economic development or competitiveness may be induced to implement less stringent environmental regulations for the purpose of attracting trade and investment—the "race to the bottom" argument. This regulatory divergence could be problematic, given how integrated globalized supply chains have become, as some companies, driven by a footloose investment model, could reorient their supply chains to trade from locations with weaker standards, resulting in concerns relating to carbon leakage and competitiveness (Bellmann & van der Ven, 2020).

To address such challenges, many trade agreements include provisions relating to regulatory policy matters. The measures integrated into such agreements can be categorized into two types—good regulatory practices (GRPs) and international regulatory cooperation (IRC) provisions. GRP provisions are *process-oriented* efforts that a country agrees to adhere to for the sake of improving the cost-effectiveness, performance, or quality of domestic regulation. IRC provisions focus on efforts among countries to exchange information or converge on the *substance* of regulatory norms (Hoekman & Mavroidis, 2015).

These provisions expand on regulatory obligations in the WTO agreements. For example, the WTO TBT and SPS agreements include obligations for members in relation to the "preparation, adoption and application of technical regulations, conformity-assessment procedures, standards and SPS measures, in order to facilitate the conduct of international trade in goods" (Organisation for Economic Co-operation and Development [OECD] & WTO, 2019). Several WTO agreements, particularly the TBT and SPS agreements, include provisions on regulatory transparency, for example. Furthermore, the TBT Committee has recognized the importance of GRPs and therefore often holds regular meetings to facilitate the exchange of best practices among members.

Given that RTAs are the nexus through which newer forms of regulatory provisions are being advanced, there is value in further examining such agreements to understand what types of

regulatory policy provisions are being included, why and how they are incorporated, and what the implications are for the party agreeing to such obligations.

Understanding these issues is particularly important for developing and least developed countries, which are likely to increasingly find themselves negotiating trade agreements incorporating newer types of regulatory policy provisions, especially when negotiating with developed country counterparts. The commitments they will be undertaking in relation to regulatory policies differ from the traditional market access commitments that have more often been negotiated up until recent years. Rather than liberalizing sectors, countries negotiating regulatory policy provisions may find themselves committing to the implementation of practices and processes that may reduce certain flexibilities in their ability to develop and implement domestic measures. Consequently, countries negotiating regulatory provisions within new trade agreements will have to consider the overall benefits of the new provisions and weigh these against not only the market access commitments they may undertake but also the costs of the regulatory practice rigours the provisions might require.

To contribute to this understanding, this paper undertakes an in-depth analysis of the United States–Mexico–Canada Agreement (USMCA), a regional trade agreement that came into force in July 2020. The agreement is regarded as having incorporated some of the most ambitious provisions relating to regulatory policy. Furthermore, the provisions are expected to be recurring features in future trade agreements involving the United States, an important global trading partner for many countries.

The paper focuses on GRP provisions, given that these types of provisions are becoming more prolific and are being integrated into a more diverse range of agreements involving both developed and developing countries. Although GRP provisions can be included in a variety of chapters, this paper will focus its analysis on the stand-alone chapter on regulatory policy. The paper also includes some analysis of the IRC provisions, given that such provisions are a feature of the USMCA regulatory chapter.

In addition to gleaning specific insights from the USMCA, the paper will also include a brief analysis of how the USMCA's regulatory policy chapter compares to the EU's approach through its own high-standard treaty—the EU-Canada Comprehensive and Economic Trade Agreement (CETA) (2017). When reviewing key regulatory provisions of these agreements, the paper will focus on analyzing their *de jure* characteristics. At present, trade agreements that include stand-alone chapters on regulatory policy are a relatively new phenomenon, and the USMCA and CETA are no exception, with the former having only come into force in July 2020 and the latter provisionally in force since September 2017. Given their recent implementation, there is very little information on the effect of such agreements (Kauffmann & Saffirio, 2021).

The paper is divided into four sections. The first section provides an overview of how different types of regulatory policy chapters have been included in recent trade agreements. The second section provides a high-level analysis of the USMCA's stand-alone chapter on GRPs. The section reviews a range of GRP provisions and select IRC provisions from that chapter and highlights what makes the USMCA distinctive from the approach of other RTAs to regulatory policy stand-alone chapters. The third section is a deep dive into the GRP provisions regarding

stakeholder engagement—a key interest of developing countries—in the stand-alone chapter and the TBT chapter of the USMCA. Finally, the fourth section concludes with key insights from the previous sections, highlighting the policy implications for developing and least developed countries and proposing some considerations for policy thinking.

2.0 Good Regulatory Practice and International Regulatory Cooperation in RTAs

GRP and IRC provisions are often integrated into RTAs in three main ways (Kauffmann & Saffirio, 2021). The first is to include them in the RTAs' TBT or SPS chapters. This can be done by reaffirming, deepening, or expanding beyond the commitments undertaken in the WTO's TBT or SPS agreements. The second approach is to include them in sector-specific annexes or chapters for the purpose of facilitating additional regulatory cooperation or coherence in specific sectors (most frequently, chemical products, medical devices, and pharmaceutical products) (Bellmann & van der Ven, 2020). Finally, GRP and IRC provisions can also be included through a separate stand-alone chapter that focuses specifically on regulatory policy matters, for which the provisions are applied on a horizontal basis, meaning the same standards are applied across all the border and behind-the-border measures and sectors that are covered by the RTA (Kauffmann & Saffirio, 2021).

See Table 1 for an overview of the various types of stand-alone horizontal chapters on regulatory policy that have been included in RTAs that have come into force over the last 4 years.

Table 1. Overview of regulatory policy chapters in recent regional trade agreements

FTA[a]	Entry into force[b]	Name of the stand-alone horizontal chapter(s)	Objective emphasized	
			Promotion of GRPs (including transparency) with select IRC provisions	Promotion of IRC with select GRP provisions
European Free Trade Association (EFTA)–Indonesia	Nov-21	None		
EFTA–Turkey	Oct-21	None		
India–Mauritius	Apr-21	None		
Ukraine–Israel	Jan-21	Transparency	✓	
China–Mauritius	Jan-21	Transparency	✓	
Pacific Agreement on Closer Economic Relations Plus (PACER Plus)	Dec-20	Transparency	✓	

FTA[a]	Entry into force[b]	Name of the stand-alone horizontal chapter(s)	Objective emphasized	
			Promotion of GRPs (including transparency) with select IRC provisions	Promotion of IRC with select GRP provisions
EFTA–Ecuador	Nov-20	None		
European Union (EU)–Vietnam	Aug-20	Transparency	✓	
Indonesia–Australia	Jul-20	Transparency	✓	
USMCA	Jul-20	Good Regulatory Practice	✓	
Peru–Australia	Feb-20	Regulatory Coherence	✓	
Hong Kong–Australia	Jan-20	Transparency	✓	
EU–Singapore	Nov-19	Transparency	✓	
Chile–Indonesia	Aug-19	None		
Hong Kong–Georgia	Feb-19	Transparency	✓	
EU–Japan	Feb-19	Two horizontal chapters: 1. Transparency 2. Good Regulatory Practice and Regulatory Cooperation	✓	✓
Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)	Dec-18	Two horizontal chapters: 1. Transparency and Anti-Corruption 2. Regulatory Coherence	✓	
EFTA–Philippines	Jun-18	None		
China–Georgia	Jan-18	Transparency	✓	
Hong Kong–Macao, China	Oct-17	None		

FTA[a]	Entry into force[b]	Name of the stand-alone horizontal chapter(s)	Objective emphasized	
			Promotion of GRPs (including transparency) with select IRC provisions	Promotion of IRC with select GRP provisions
Turkey–Singapore	Oct-17	Transparency	✓	
EU-Canada (CETA)	Sep-17	Two horizontal chapters: 1. Transparency 2. Regulatory Cooperation	✓	✓

[a] Recent United Kingdom agreements that have come into force are not included in the table.
[b] The list only includes the RTAs included in the WTO RTA database over the last 4 years.
Source: WTO, 2022b.

Some insights may be gleaned from Table 1. First, most agreements that have come into force in the last 4 years include a stand-alone chapter on regulatory policy issues. Second, many of these agreements, whether between developed and developing or between developing countries or developed countries, tend to integrate stand-alone chapters that focus on transparency. Broader regulatory coherence or GRP chapters appear in agreements among countries with diverse levels of development—like the CPTPP or the Peru–Australia agreement— and between developed economies, like EU–Japan. In such chapters, while GRPs are emphasized, select IRC provisions may also be included.

Finally, agreements with stand-alone chapters that emphasize deeper cooperation on IRC provisions are rarer. The few agreements that have integrated such chapters tend to be those agreed between developed countries. At least within the last 4 years, none of the South–South agreements have included stand-alone chapters emphasizing IRC. This may indicate alignment with Hoekman and Mavroidis's (2015) assessment that deeper forms of engagement on regulatory cooperation are mainly implemented among countries with common objectives, approaches, and a high degree of trust in institutional capacity.

The USMCA, an agreement among heterogeneous parties, is an example of an agreement that includes a stand-alone regulatory policy chapter.[1] The chapter, entitled Good Regulatory Practices, focuses on promoting such practices but also includes select regulatory cooperation provisions.

[1] The agreement can be characterized as including heterogeneous parties given that Mexico has designated itself as a developing country member at the WTO, while the United States and Canada have designated themselves as developed country members. There is no formal classification at the WTO of developed or developing countries, with each WTO member designating for itself which status applies and within the context of a given agreement or negotiation. Separately, "least developed countries" is a formal designation at the WTO that uses the UN classification. https://www.wto.org/english/thewto_e/whatis_e/tif_e/org7_e.htm

3.0 Novel Features of the USMCA GRP Chapter

Under the USMCA, parties state that they aim to support the development of compatible regulatory approaches and reduce the potential for burdensome, duplicative, or divergent regulatory requirements. The expectation is that the implementation of GRPs can build the basis needed for effective regulatory cooperation between the parties (USMCA, 2020, art. 28.2).

The USMCA is distinctive from many other agreements that include stand-alone regulatory coherence or GRP chapters. First, it is, at present, the only agreement that applies the implementation of many of its GRP provisions on a binding basis. This means that should a party to the USMCA fail to implement the relevant provisions on GRP *on a recurring basis*, the other parties have the option of bringing a claim against that party through the dispute settlement mechanism of the agreement (USMCA, 2020, art. 28.20). In addition, the standard remedy of suspension of benefits would appear to apply in cases of non-implementation of the final report of a panel in a dispute about the obligations under this chapter.

Typically, up until the USMCA, the agreements that had emphasized the promotion of GRPs through a stand-alone chapter did so on a best-endeavour basis. The CPTPP, another agreement among heterogeneous parties that is regarded as including newer GRP provisions, is an example of an agreement that only requires the implementation of such provisions on a best-endeavour basis.

A second notable feature of the chapter is the wide breadth (or scope) of measures where the GRP rules apply. The USMCA's GRP obligations apply to all central-level government agencies responsible for defining, implementing, or maintaining mandatory regulations. This means that the GRP obligations would cover virtually all regulations, even if those regulations are not necessarily significantly focused on trade, as long as they have an impact on trade in some way (Treat, 2018). For example, a mandatory regulation on investment, which would have an impact on trade, would be covered by the GRP obligations in the USMCA's stand-alone chapter. Applying such a wide scope is notable, given that the more common approach in trade agreements is for the horizontal chapter to be more explicitly trade focused or only applicable to the issues covered under the FTA. For example, under CETA, the regulatory provisions included in its stand-alone chapter on regulatory cooperation are expected to cover, among others, measures taken pursuant to the WTO's TBT agreement, the SPS agreement, the General Agreement on Trade in Services (GATS), General Agreement on Tariffs and Trade (GATT) 1994, and chapters 4 (Technical Barriers to Trade), 5 (Sanitary and Phytosanitary Measures), 9 (Cross-Border Trade in Services), 22 (Trade and Sustainable Development), 23 (Trade and Labour), and 24 (Trade and Environment) of CETA (art. 21.1) (Kauffmann & Saffirio, 2021).

Another distinctive feature of the USMCA is the wide range of "internationally recognized" GRPs it promotes through its GRP chapter. Select key intergovernmental and regional

organizations and forums, notably the OECD, Asia-Pacific Economic Cooperation, and the World Bank, have done a significant amount of work collecting best practices and defining the principles on which the GRP and regulatory coherence provisions are often based. When the practices are defined by such intergovernmental or regional organizations or forums, the recommendations are characterized under the USMCA as "internationally recognized" GRPs. In 2012, for example, the OECD released its *Recommendation of the Council on Regulatory Policy and Governance*, recommending 12 key principles of GRPs that can drive regulatory reform (see Box 1). The WTO also does work in this area. The WTO TBT Committee holds regular thematic sessions on the issue of GRP so that members can benefit from learning from each other's experiences with the implementation of such practices (OECD & WTO, 2019).

Box 1. OECD's 12 key principles of GRPs

1. Whole-of-government policy for regulatory quality
2. Transparency and participation in the regulatory process
3. Mechanisms and institutions to actively provide oversight of regulatory policy
4. Regulatory impact assessment (RIA) in the formulation of new regulatory proposals
5. Review of the stock of significant regulation
6. Reports on the performance of regulatory policy
7. Governance of regulators
8. Review of the legality and procedural fairness of regulations and of decisions
9. Risk-based approach
10. Regulatory coherence across supranational, national, and subnational levels of government
11. Regulatory policy at subnational levels of government
12. International regulatory cooperation

Source: OECD & WTO, 2019.

The USMCA's GRP chapter includes provisions that address all of the OECD principles except for three.[2] Relative to other agreements with stand-alone chapters, the USMCA has the most extensive coverage of such principles (Kauffmann & Saffirio, 2021). Table 2 sets out the OECD's comparative analysis of select RTAs and their uptake of the OECD's GRPs. For examples of provisions in the USMCA that fulfill the 12 OECD principles, please refer to Table A1 in the Appendix.

[2] The missing three OECD GRP principles are (7) governance of regulators, (8) administrative and judicial review, and (11) regulatory management capacity at the subnational level.

Table 2. Comparison of GRPs embedded in special chapters against the 2012 OECD *Recommendation of the Council on Regulatory Policy and Governance*

GRP	USMCA	CPTPP	Brazil–Chile Trade Agreement	Chile–Uruguay Trade Agreement	Pacific Alliance	CETA[b]	EU-Japan Economic Partnership Agreement (EPA)	New Zealand–Singapore Closer Economic Partnership (CEP) Upgrade
1. Explicit policy on regulatory policy								
2. Communication, consultation, engagement								
3. Regulatory oversight								
4. Integrated regulatory impact assessment								
5. Ex-post regulatory evaluation								
6. Performance review of regulatory reform programs								
7. Organization of regulatory agencies								

GRP	USMCA	CPTPP	Brazil–Chile Trade Agreement	Chile–Uruguay Trade Agreement	Pacific Alliance	CETA[b]	EU-Japan Economic Partnership Agreement (EPA)	New Zealand–Singapore Closer Economic Partnership (CEP) Upgrade
8. Administrative and judicial review[a]								
9. Risk and regulation								
10. Regulatory coherence across levels of government								
11. Regulatory management capacity at the subnational level								
12. International regulatory cooperation								

[a] GRPs achieved through CETA's transparency chapter

[b] Kauffmann and Saffirio (2021) do not highlight the inclusion of stakeholder participation provisions in CETA, but it appears that stakeholder participation provisions are also included in the transparency chapter.

Source: Kauffmann & Saffirio, 2021

It is interesting to note that the significant overlap between the USMCA GRPs and the OECD principles may be due to the latter principles having a certain amount of their origin in United States domestic policy. An interesting study by Lin and Liu (2018) showcases how certain best practices could be traced back to the U.S. domestic system, many of which were taken up by international organizations and promoted as international best practices. To the extent that some OECD principles reflect U.S. domestic governance preferences, it is important to remember that such provisions had the benefit of evolving over decades within U.S. law. Countries that are newly considering the application of such GRPs will have to determine to what extent these practices are coherent with their own domestic governance preferences. Should countries want to adapt those practices, due consideration will have to be given to the compatibility, time, capacity, and assistance needed to transition their governance models to implement the GRPs.

Finally, not only is the USMCA extensive in the range of GRPs it includes, but it is also relatively prescriptive in terms of the steps a country should undertake to be regarded as having adequately implemented the GRPs. To use a comparative example: many of the provisions in the USMCA GRP chapter are based on provisions in the CPTPP's regulatory coherence chapter.[3] The CPTPP, however, tends to use broad language, which leaves it to the parties to determine the specific steps or processes they should undertake to fulfill a GRP principle. This is not the case with the USMCA, which often includes specific requirements and process steps that a party must undertake to establish compliance with a GRP. Note that there are instances in which the GRP included in the CPTPP is prescriptive as well, for example, in the case of the RIA of GRPs. In this case, the USMCA closely follows the provisions set out in the CPTPP. Table A2 in the Appendix showcases this difference in approaches between the USMCA and the CPTPP in relation to the prescriptive nature of GRPs.

There are implications relating to the four features highlighted above—the USMCA requirements on GRPs having a wide scope, covering a wide range of international principles, being prescriptive, and being subject to dispute settlement.

In terms of benefits, the wide ranging and prescriptive nature of the GRPs may provide valuable best-practice guidance, pointing to how parties to an agreement can be better aligned on regulatory reform and governance efforts. Furthermore, by making the provisions enforceable, the parties are held accountable to follow through with the reform efforts in practice. These efforts may be considered worthwhile if the parties regard them as the necessary steps needed to strengthen trust in the regulatory approaches and institutional capabilities among the parties to an agreement. As mentioned, this trust in the quality of the regulatory process is often a prerequisite for considering deeper forms of regulatory cooperation at a later stage.

[3] While the United States was a driving force of the Trans-Pacific Partnership (TPP) negotiations and signed that accord, Washington subsequently withdrew from the agreement in the early days of the Trump Administration, before the TPP could be submitted to Congress for ratification. The CPTPP was then agreed among the remaining TPP parties, which decided to retain most of the TPP's text, minus the suspension of a few select provisions. With the USMCA negotiations taking place soon thereafter, many of the provisions that were in the final CPTPP served as a source of inspiration for the USMCA.

In terms of challenges, however, the USMCA approach applied to countries with more diverse levels of development might involve the strain of having to comply with various prescriptive requirements applicable to a wide array of regulations, as well as the potential risk of dispute should a country fail to adequately comply with one such requirement on a recurring basis. Countries negotiating such provisions, especially should they be enforceable, will therefore have to consider and address risks relating to "regulatory chill." In addition, countries will have to consider their capacity to follow through with such reform efforts, whether they have the technical and administrative capacity to do so, and whether the reform efforts are compatible with domestic governance preferences.

3.1 USMCA's Approach to Regulatory Cooperation in its Stand-Alone Chapter

While the emphasis of the regulatory chapter in the USMCA is on promoting GRPs, the chapter also includes several provisions to promote regulatory cooperation among parties. Regulatory cooperation under the USMCA is defined as "efforts between two or more parties to prevent, reduce, or eliminate unnecessary regulatory differences to facilitate trade and promote economic growth, while maintaining or enhancing standards of public health and safety and environmental protection" (USMCA, 2020, art. 28.1). Unlike the wide scope of the GRP provisions, the scope of the provisions on regulatory cooperation are narrower in that the regulatory cooperation activities must focus on trade facilitation (Kauffmann & Saffirio, 2021) and are to be implemented on a best-endeavour basis (USMCA, 2020, art. 28.17).

To promote regulatory cooperation, the chapter encourages a range of activities, including dialogues among regulatory authorities for mutually beneficial regulatory cooperation activities (USMCA, 2020, art. 28.1.7.1). It also recognizes that there is a broad range of IRC mechanisms available, including those in the WTO agreements, which may be further leveraged. Among the various mechanisms that could possibly be used, examples include exchanging information on research agendas, data, technical and scientific information, compliance information, and information on planned or ongoing post-implementation reviews. By considering these varied mechanisms, the USMCA not only encourages an exchange of information to reduce regulatory divergences during the early phases of regulatory development (for example, by exchanging information on research agenda, data, technical, and scientific information), but it also encourages information exchange in the ex-post stages of regulatory development (for example, by exchanging information on ex-post reviews and on compliance information) (Kauffmann & Saffirio, 2021). The chapter also promotes the consideration of common approaches in areas such as displaying product/consumer information, format submissions for regulatory reviews, and the evaluation and mitigation of risks or hazards. Finally, the chapter fosters collaboration through participation in relevant international forums and through the improved use of international relevant international standards and guides (USMCA, 2020 art. 28.17.3). Such provisions that emphasize dialogue, the consideration of common approaches, and the exchange of information are categorized as a shallow form of regulatory cooperation and are regarded as more feasible to implement should the agreement be among heterogeneous actors.

3.2 Comparing the USMCA and CETA Stand-Alone Chapters on Regulatory Policy

As mentioned, agreements between two developed countries or country groups are more likely to include a horizontal chapter that emphasizes the objective of promoting regulatory cooperation provisions among the parties. CETA is an example of such an agreement. The chapter on regulatory cooperation aims to encourage regulators to exchange experiences and information, identify areas for deeper cooperation, and undertake certain joint activities during the regulatory development process. This cooperation is, however, to be undertaken on a voluntary basis, with both parties emphasizing that their regulators will retain their power to adopt legislation (CETA, 2017, ch. 21). The EU has yet to negotiate the inclusion of such a chapter with a developing country counterpart.

There are only a few GRP-focused provisions included in CETA. This may be because there is an assumption that the two parties are already using adequate regulatory processes as a basis. The emphasis is instead placed on regulatory cooperation activities in relation to those established GRPs in which the parties agree to exchange their experiences on regulatory governance and reform efforts, as well as to potentially undertake some of those governance activities together. For example, as highlighted by Kauffmann and Saffirio (2021), CETA does not include a substantive provision on RIA, but rather assumes the parties routinely conduct such assessments. The provision instead encourages the parties to exchange their experiences and even consider undertaking joint RIAs as a regulatory cooperation activity for the purpose of reducing unnecessary regulatory divergences (CETA, 2017, art. 21.4e). Other examples of GRP-related joint regulatory cooperation activities include carrying out risk assessments and post-implementation reviews together. Beyond cooperating on regulatory development processes, parties are also encouraged to identify opportunities for convergence and compatibility on the substance of the regulations (CETA, 2017, art. 21.5).

Beyond such provisions, one of the main features of CETA's regulatory cooperation chapter is the establishment of a Regulatory Cooperation Forum (RCF). The forum is a high-level and specialized body co-chaired by senior officials from the two parties with the objective of promoting regulatory cooperation activities between the two parties. Among its various activities, the RCF is expected to promote consultations between the two parties on regulatory issues, identify opportunities for regulatory cooperation and initiatives, and facilitate connections between regulators from each party to undertake more specific regulatory cooperation activities (CETA, 2017, art. 21.6). While other RTAs (including the USMCA) have also set up such regulatory cooperation bodies (e.g., the Regulatory Cooperation Council between the United States and Canada), CETA is one of the few trade agreements that mandates the establishment of a specialized body for the purpose of facilitating deeper regulatory cooperation.

In short, both the USMCA GRP chapter and CETA's regulatory cooperation chapter include regulatory cooperation provisions that are expected to be implemented on a best-endeavour basis. Some of the activities recommended even overlap. The CETA chapter, however, distinguishes itself from the USMCA in that parties are not only expected to exchange information and consider common approaches but are also encouraged to undertake joint

activities that could be carried out during the regulatory development process. There is also an emphasis on identifying deeper integration opportunities, as well as the establishment of a specialized body, the RCF, to identify and facilitate regulatory cooperation opportunities among regulators.

3.3 Policy Considerations for Developing Countries Negotiating a GRP Chapter

Developing countries considering high-ambition GRPs provisions will likely have to evaluate the following questions:

- What breadth of GRPs might they agree to, and should those practice obligations be applicable to a wide scope of regulations?
- How prescriptive do they want the obligations to be?
- Do they want the provisions to be subject to dispute settlement?

Governments will need to weigh the advantages of moving toward more transparent regulatory systems against the potential costs of doing so. In terms of benefits, countries may find that aligning on GRP measures through trade agreements can be a useful way to build trust with trading partners, which in turn can be used as the basis to explore deeper forms of regulatory cooperation. In addition, the implementation of such measures can serve as a useful signal to showcase a party's commitment and efforts in developing higher-quality regulations. More generally, governments following GRPs are likely to see improvements in the quality of—and buy-in for—their regulation.

Such benefits will have to be weighed against potential costs. Having determined whether GRP best-practice measures are compatible with domestic governance preferences, governments will also have to determine whether they have the regulatory capacity to implement the provisions. If there is a lack of capacity, consideration will have to be given to requesting the time, capacity building, and assistance needed to undertake governance reform efforts.

Beyond GRP, the parties may also be able to explore collaboration on a voluntary basis through a broad range of IRC mechanisms for the purpose of facilitating regulatory cooperation. The considerations will be different depending on the negotiating partner.

Developing countries that choose softer regulatory coherence provisions may instead choose to focus on the subset of transparency considerations.

4.0 USMCA's Approach to Promoting the GRP Principle of Stakeholder Engagement in the Development and Review of Regulations

One of the most common GRP provisions often included in today's RTAs are those aiming to improve the participation of non-governmental stakeholders in domestic regulatory processes (see Table 2). Not only are such provisions increasingly commonplace in RTAs in a variety of chapters, but they are also gaining prominence in plurilateral agreements discussed among groups of WTO members. The potential agreement on Investment Facilitation for Development includes several transparency provisions that focus on improving stakeholder participation in the investment regulatory development process.

Given the increasingly important role these provisions are playing in different types of agreements, there is value in further delving into the USMCA to understand the variety of provisions that could be used and what their implications would be.

According to the OECD's GRP principle of open government, including transparency and participation, it is important to increase stakeholder participation in the regulatory development process to ensure that the resulting domestic measure would be one that is informed by the legitimate needs of those interested in and affected by the regulation and that the result is one that better serves the public's interests (OECD, 2012).

The USMCA expands the participation of interested persons in the regulatory development process. First, it does this through the expansion of transparency disciplines, notably in relation to publication obligations under the USMCA's TBT chapter. The expectation is that by facilitating improved access to relevant information and by exempting these stakeholders from having to go through government counterparts to access said information, interested persons can better engage in key phases of regulatory development processes.

Specifically, the chapter requires that the draft texts of a technical regulation or conformity-assessment procedure be published while it is still under development.[4] This information is to be made freely accessible, preferably through a single website (USMCA, 2020, art. 11.7.10). Such requirements are not included in the WTO TBT agreement, where members are only required to notify the WTO Secretariat of the draft regulation or procedure and, in that notification, to potentially include the link to draft texts of the proposed regulation (WTO, 1995, art. 2.9.3, 2.9.4, 5.6.2, 5.6.3). There is no requirement to publish the proposed measure for a wider public during the development phase.

Another example of additional publication requirements in the USMCA TBT chapter is to ensure that all written comments submitted during the regulatory development phase

[4] USMCA, 2020, art. 11.7.2a, unless the regulation and conformity-assessment procedure needs to be adopted in response to an urgent situation.

are published, including those submitted by interested persons of other parties (USMCA, 2020, art. 11.7.2). Efforts are to be made to promptly publish these comments (unless there are confidentiality impediments), either through a single website or through the regulatory authority's website (USMCA, 2020, art. 11.7.3). Other examples of requirements include publishing information on the methods for assessing conformity-assessment procedure fees (USMCA, 2020, art. 11.6.9d.) and publishing the central government standardizing work program on standards, through either the standards body website, a separate website, or an official gazette (USMCA, 2020, art. 11.7.6).

The publication disciplines are expanded through both the TBT chapter and the GRP chapter and thereby apply to a wider range of regulations. Importantly, the GRP chapter requires the publication of additional information relating to other GRP principles at the same time as the text of the draft regulation is published. This additional information includes publishing the RIA (if any); information on the rationale and objectives of the measure, as well as alternatives that were considered; explanations on the data, information, and analysis that were relied upon; and the contact information of a regulatory authority official who could be contacted for additional questions. The party is also expected to publish any publicly available data, other information, and scientific and technical analyses it relied upon for the development of the regulation, including for the risk assessment (USMCA, 2020, art. 28.9.1). The emphasis on publishing additional information, notably relating to regulatory impact assessments and risk assessments, is consistent with the importance that USMCA places on such GRPs. All this information is expected to be published in a timely manner so that it can be referred to by interested persons wanting to submit comments. It is also encouraged that the information be published in a format that can be read and digitally processed through word searches and data mining (USMCA, 2020, art. 28.9.10).

In addition, the USMCA GRP chapter also requires parties to publish an annual plan of the list of regulations it intends to propose or adopt. The list must be accompanied by a description of the planned regulations, timetables for subsequent timelines (such as when public comments will be feasible), the point of contact of a knowledgeable individual associated with the planned regulation, and an indication as to which sectors are likely to be affected, in terms of a significant effect on international trade or investment, in light of the regulation (USMCA, 2020, art. 28.6). This provides further visibility to interested persons on the regulations that they can expect to be proposed for the coming year, which in turn enables them to better engage in the development phase once it has been set in motion.

A second important means by which the USMCA facilitates the improved participation of interested persons is by enhancing their ability to directly comment during the regulatory development phase. The USMCA TBT chapter first establishes that interested persons from other parties should be allowed to participate in the regulatory development process under the same terms as domestic interested parties (USMCA Article 11.7.1). It also requires that these interested persons be allowed to submit their comments during a public consultation period under the same terms as local commentators (USMCA, 2020, art. 11.7.2). To ensure that interested persons have sufficient time to provide comments, the USMCA requires that parties allow 60 days for the commenting period, with the possibility of extending this time period (for example, to 90 days) should there be reasonable requests, even from interested persons, to do so (USMCA, 2020, art. 11.7.14). The process for directly submitting comments is different

from what is required in the WTO TBT agreement. There, the right to submit comments rests with WTO members with no reference made to interested persons (WTO, 1995, art. 2.9.4 and 5.6.4). Therefore, under the TBT agreement, should interested persons want to submit their comments and should they be allowed to do so, they will have to do so through that WTO member's government counterparts, who will decide whether to advance the comment for formal submission at the WTO.

The provisions in the USMCA's GRP chapter also reiterate requirements that in the case of regulations with a significant impact on trade, parties ensure that interested persons from other parties be allowed to provide their comments under the same terms as local interested persons and that the commenting period lasts at least 60 days, with consideration for more time (USMCA, 2020, art. 28.9.4). The GRP chapter also, notably, includes a provision requiring that parties, on a best-endeavour basis, allow for a commenting period to be applied to draft regulations that do not have a significant impact on trade and that this commenting period is no less than four weeks, with consideration made for an extended time period (USMCA, 2020, art. 28.9.5). Such a provision, it seems, may enable interested persons to not only comment on domestic regulations that have a significant effect on trade but also on those that may not.

The third way the USMCA facilitates stakeholder engagement is by leveraging expert groups and working groups. The GRP chapter recognizes that regulatory authorities may seek to establish expert advisory groups or bodies for the purpose of receiving advice and recommendations on the preparation and implementation of regulations. The expert groups/bodies would be comprised of non-governmental persons (for example, private sector representatives, civil society, or academia) and should reflect diverse views and interests. Though not a requirement, information should be provided on the names and affiliations of the expert groups and the outcomes of their meetings (USMCA, 2020, art. 28.10). The TBT chapter also recognizes that the TBT Committee set up under the agreement may establish working groups, which could include non-governmental persons for the purpose of undertaking its functions relating to regulatory cooperation and coherence (USMCA, 2020, art. 11.11.5).

A final approach through which the USMCA facilitates increased stakeholder engagement in the regulatory development processes is by expanding the participation of interested persons in relevant regulatory or standard development processes that are not directly managed by the central authorities. For example, should a national standard-making body be mandated to develop a standard that could be used as a technical regulation or conformity-assessment procedure, then that body must also allow interested persons from the other parties to participate on no less favourable terms in the development of the standard (USMCA, 2020, art. 11.7.8). While not a requirement, the agreement also expects the parties to undertake reasonable measures to publish proposed or final technical regulations and conformity-assessment procedures developed and implemented by regional levels of the government (USMCA, 2020, art. 11.7.9).

Beyond facilitating the increased participation of stakeholders in the development of a domestic measure, the USMCA also requires the improved participation of interested persons for the review of regulations that are already in place. By facilitating enhanced participation in

ex-post regulatory review processes, the expectation is that the universe of regulations remains effective in terms of achieving their objectives (OECD, 2012). However, concerns have arisen in relation to such provisions, with the main worry being that they increase the possibility that industry will leverage the mechanisms to lobby for increased deregulation at the expense of the public interest.

The objective of ex-post reviews is consistent with the WTO TBT agreement's requirement that technical regulations shall not be maintained should the circumstances or objectives under which they were produced no longer exist, or the matter could be addressed in a less trade-restrictive manner (WTO, 1995, art, 2.3). The agreement, however, does not specify how to identify and review these existing regulations.

The USMCA includes provisions to facilitate the identification and review of such regulations and leverages external stakeholders to do so. A key mechanism included in the USMCA's TBT chapter is the requirement to maintain a process whereby interested persons from all parties can directly petition regulatory authorities to consider the review of existing technical regulations or conformity-assessment procedures. This petition can be put forward if circumstances change that are relevant to developing the content of a technical regulation or should a less trade-restrictive method be identified to fulfill the technical regulation's objective (USMCA, 2020, art. 11.5.2.b).

The GRP chapter also requires the establishment of certain processes for the purpose of facilitating ex-post evaluations. Parties must provide interested persons with the opportunity to submit written suggestions to any regulatory authority of any party for the issuance, modification, or repeal of a regulation. Stakeholders are allowed to provide these "suggestions for improvements" should they think that the regulation has become ineffective in protecting health, welfare, or safety; that it is now based on outdated information or circumstances; or that it should be regarded as more burdensome than necessary to fulfill the policy objective (USMCA, 2020, art. 28.14). These suggestions are intended to trigger consideration by the parties of a possible modification or the repeal of an existing regulation. Parties are required to maintain a retrospective review process or mechanism through which formal reviews may be initiated as a response to a suggestion submitted through the process described above (USMCA, 2020, art. 28.13).

Not only does the USMCA require the establishment of select processes to facilitate stakeholder engagement for ex-post reviews, but it also requires the publication of relevant procedures and outcomes to facilitate such reviews. Under the WTO TBT agreement, once the finalized regulation or mandatory conformity-assessment procedure has been adopted, parties are required to publish the final texts of such measures (WTO, 1995, art. 2.11 and 5.8). The USMCA TBT chapter requires that certain additional information be included when publishing these final texts. This process includes providing an explanation of how the adopted measure achieves the stated policy objective; a description of the alternative approaches that were considered; information on any impact assessments that were undertaken; and an explanation of the key evidence and data considered when finalizing the regulation (USMCA, 2020, art. 11.7.22). Other requirements include publishing, along with the final texts, written explanations of how substantive issues raised through comments were addressed (USMCA, 2020, art. 11.7.4), as well as justifications for why a proposed

international standard was rejected (USMCA, 2020, art. 11.5.3.). It should be noted that the inclusion of such detailed information could be of value at a later date in ex-post reviews evaluating whether such regulations remain relevant.

The USMCA's GRP chapter also reiterates the above requirement by including a provision to ensure select additional information is included when publishing the final texts (USMCA, 2020, art. 28.12).[5] Furthermore, the chapter requires that when the final texts are published, plain language should be used to ensure that the regulations are clear, concise, and easy for the public to understand (USMCA, 2020, art. 28.8).[6]

A comparison of provisions for facilitating participant engagement in relation to CETA reveals certain similarities. Overall, however, the USMCA includes more disciplines to expand stakeholder engagement in comparison to CETA. In terms of similarities relating to the publication disciplines, CETA's Transparency chapter also requires the parties to publish, to the extent possible, their proposed laws, regulations, procedures, and administrative rulings of general application (CETA, 2017, art. 27.10). As for processes to further facilitate stakeholder engagement during the regulatory development process, through both its TBT and Transparency chapters, CETA requires that interested persons from both parties be allowed to directly submit comments during the regulatory development processes at an early enough stage when amendments can still be made (CETA, 2017, art. 4.6.1 and 27.1.2). Beyond these similarities, the USMCA is more extensive and prescriptive in its requirements. Another notable difference is that CETA does not require the participation of interested persons in ex-post regulatory review processes.

4.1 Policy Considerations for Developing Countries on Stakeholder Engagement Provisions

Developing countries negotiating provisions to improve stakeholder participation during the regulatory development phase will have to consider the pros and cons of WTO TBT-plus provisions, such as the expansion of publication disciplines, the setup of processes to facilitate the direct submission of comments by interested persons, and improved access to texts and participation in processes that are not directly managed by central bodies of authority.

Beyond the regulatory development phase, they might also consider the costs and benefits of provisions that expand publication disciplines and put in place new processes and mechanisms that facilitate the ex-post review of domestic measures already in place. Broadly, this will mean weighing the potential increase in administrative costs, scrutiny, and pressure that a more participatory regulatory process involves against improvements in public participation and the breadth of the input that can be provided. The outcome would then be reflected in regulatory decisions and consequent improvement in the legitimacy and buy-in of those decisions.

Beyond the above trade-offs, countries will also need to consider the politics of implementing such participatory-focused measures. Given the integrated nature of globalized supply chains, the stakeholders that are affected by regulatory measures increasingly include suppliers

[5] If not published, the explanation must be provided directly to the interested person.

[6] This requirement also applies when the drafts texts are published.

or affiliates from other countries. By agreeing to the improved stakeholder participation provisions of trade agreements, a country is giving equal consideration to the needs and interests of non-domestic actors. Concerns have been raised that by opening domestic rule-making processes to all interested persons, including foreign interests, a government may come under pressure to de-prioritize national-level social preferences when regulating legitimate policy objectives if stakeholders from other jurisdictions use the engagement provisions heavily.

Another concern relates to the disproportionate consideration of private sector interests (domestic and foreign) over those of other stakeholders (both domestic and foreign) in these processes. Although these stakeholder provisions aim to facilitate the engagement of any interested persons,[7] which can include both private sector actors and civil society representatives, research shows that it is the private sector actors who tend to disproportionately participate in these processes, given that more resources are available to them. The research also shows that even if both private and civil society actors participate, the lobbying efforts conducted by the former are more effective in influencing regulatory change than the latter's efforts (PowerShift & Canadian Centre for Policy Alternatives, 2016; Trew, 2019a, 2019b). In light of the increased influence of private sector needs, there are concerns that such processes might result in lobbying efforts that influence governments into foregoing or stalling the development of new regulations.

There have already been cases in which foreign business groups have cited the regulatory provisions of the USMCA in a bid to mitigate or prevent the implementation of environmental and social policies. For example, in September 2020, a coalition of U.S. associations representing the chemicals, fossil fuels, food packaging, and transportation industries wrote a letter to Canada's trade minister Mary Ng, arguing that Canada's proposed measure to ban single-use plastics may potentially violate regulatory obligations under the USMCA (Treat & Trew, 2020). While Canada is continuing in its efforts to pursue the policy, such an example illustrates the potential for regulatory chill and the suppression of national social preferences as a result of lobbying by interest groups using an agreement's transparency and accountability processes and procedures.

While such provisions can trigger political challenges, on the other hand, they can also deliver valuable benefits. As previously mentioned, enhancing stakeholder engagement can help ensure that the regulations that are developed are informed by the legitimate needs of those who are affected by those regulations. It is important to keep in mind that those who are affected, however, are not only business stakeholders but the communities at large. In an ideal scenario, stakeholder engagement in regulation can push forward environmental or social priorities when groups representing these objectives are sufficiently well funded to be effective.

In sum, as rules on stakeholder involvement in regulation become a feature of trade agreements, developing countries will be faced with diverse stakeholder provisions. The example of the USMCA points to one way that regulatory cooperation provisions can be included in RTAs, which may be picked up in other agreements. Provisions that focus

[7] The USMCA defines a person as "a natural person or an enterprise." This means that any person or enterprise that shows interest in participating in the regulatory process, as outlined by the USMCA, can do so.

on improving stakeholder participation are not only an increasingly important feature of agreements involving the United States—notably, the EU is also integrating certain provisions to promote stakeholder engagement in the regulatory development process. When considering and implementing such provisions, the parties will have to be aware of and address specific political challenges that may emerge at the domestic level.

5.0 Conclusions and Policy Considerations

The expansion of regulatory policy, in the form of GRPs and regulatory cooperation provisions, is an increasingly important feature of new trade agreements. Such provisions are being included in RTAs either through TBT or SPS chapters, sectoral annexes or chapters, or through a stand-alone chapter focused on regulatory policy provisions applicable on a horizontal basis.

This paper delves into the example of the USMCA—and to a lesser extent, CETA—to explain the nature of such provisions. The paper highlights the distinctive features of the USMCA's stand-alone chapter on GRPs, notably that the GRP provisions are subject to dispute settlement and are wider ranging and prescriptive than in other agreements. The paper then examines the USMCA's choice of specific principles of GRPs of transparency and stakeholder participation in the regulatory process. The paper shows how publication disciplines are expanded, together with the implementation of new processes and mechanisms, for the purpose of facilitating stakeholder engagement during both the regulatory development phase and in the review of existing regulations.

Such provisions may be ambitious for some developing countries considering their current level of administrative capacity. Should governments want to include provisions along these lines in trade agreements in order to reap their benefits, there is a need to acknowledge potential challenges and include solutions that tackle these challenges directly when negotiating new trade agreements. Below we identify select key challenges that have emerged from the analyses and some possible considerations for the way forward.

The first challenge is addressing the issue of administrative strain. The analysis in this paper showcases that the GRP measures in the USMCA's stand-alone chapter, which are subject to dispute settlement, tend to be wide ranging and more prescriptive than the regulatory coherence provisions included in other recent trade agreements. The prescriptive and varied nature of these provisions may be integrated with the purpose of providing additional clarity and details to facilitate the implementation of best-practice principles. After all, these improvements could help to build a basis of trust among regulators from different parties so that they might eventually consider additional, deeper forms of regulatory cooperation, facilitating trade opportunities. However, it is important to recognize that such features also increase the administrative strain on a government. The increased burden is especially problematic for developing and least developed countries that often lack the capacity and resources for undertaking best-practice governance efforts.

Should countries want to take on wider, more enforceable, or otherwise more ambitious provisions, there is a need to provide sufficient time, capacity, and assistance to facilitate the transition. Aspects to consider include negotiating a phased-in approach and using targeted and effective technical support. Given that many of these provisions require the establishment of automated processes and mechanisms, more financial support could perhaps be provided for practical features such as technical infrastructure and data management. Also, given the pervasiveness of new regulatory policy measures in recent trade agreements, more could be done to provide targeted technical assistance on such matters through the WTO-led Aid-for-Trade initiative.

Another challenge to address is the risk of regulatory chill. The increased administrative strain, the need to manage increased domestic and foreign stakeholder needs, and the risk of disputes if provisions are enforceable could all discourage countries from developing new regulations, even when they are needed for advancing legitimate public policy objectives. The U.S. chemicals industry's response to Canada's proposed plastic ban measure (the case described previously) shows that the risk is real. While Canada is going ahead with the policy, having assessed that it has a strong legal basis to do so, developing or least developed countries with inadequate legal capacities may be dissuaded from pursuing legitimate policy objectives when faced with industry threats, particularly when obligations can be enforced through binding dispute settlement. Therefore, while regulatory measures relating to transparency and good governance are important, governments have a range of options for shaping these obligations in a treaty. They could consider whether they want to design and implement GRP and IRC obligations using best-endeavour efforts in the form of cooperation and support, through binding disciplines, or through a mix of both. As some developing and least developed countries grow their administrative and legal capacities and determine their regulatory governance preferences, they may choose to mitigate both the risk of disputes and the potential for that risk to be used as a threat by actors seeking to stymie legitimate regulation. They can start with best-endeavour efforts and then progress to other modes over time.

A final challenge to consider is the risk of the disproportionate influence of private sector stakeholders over others in the regulatory development and review processes. Section 3 of this report highlights the range of measures the USMCA adopts for the purpose of promoting transparency and participation in the regulatory process. While such provisions are important for promoting the engagement of the stakeholders most affected by the measures, there are also important risks to be managed.

To ensure that stakeholder participation processes minimize risks relating to regulatory capture, concerted efforts are needed to facilitate the participation of under-represented groups. More emphasis can be placed on packaging objective information of value for targeted communities. For example, information can be provided on how regulations can affect micro, small, and medium-sized enterprises and relate to a broader set of sustainability impacts of value at the community level. Providing targeted information may reduce the information processing costs for certain under-resourced stakeholders, which, in turn, can help with their participation in such processes.

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Appendix

Table A1. Examples of United States–Mexico–Canada Agreement (USMCA) provisions adhering to the Organisation for Economic Co-operation and Development's (OECD's) 12 key principles of good regulatory practices (GRPs)

Good regulatory practice	OECD Principle[8]	Example of USMCA provision[9]
1. Whole of government policy for regulatory quality	Commit at the highest political level to an explicit whole-of-government policy for regulatory quality. The policy should have clear objectives and frameworks for implementation to ensure that if regulation is used, the economic, social, and environmental benefits justify the costs, distributional effects are considered, and the net benefits are maximized.	Article 28.5: Information Quality: 1. Each Party recognizes the need for regulations to be based upon information that is reliable and of high quality. To that end, each Party should adopt or maintain publicly available guidance or mechanisms that encourage its regulatory authorities when developing a regulation to: (a) seek the best, reasonably obtainable information, including scientific, technical, economic, or other information relevant to the regulation it is developing; (b) rely on information that is appropriate for the context in which it is used; and (c) identify sources of information in a transparent manner, as well as any significant assumptions and limitations. 2. If a regulatory authority systematically collects information from members of the public through identical questions in a survey for use in developing a regulation, each Party shall provide that the authority should: (a) use sound statistical methodologies before drawing generalized conclusions concerning the impact of the regulation on the population affected by the regulation; and (b) avoid unnecessary duplication and otherwise minimize unnecessary burdens on those being surveyed.

[8] Text in this column is quoted directly from Organisation for Economic Co-operation and Development, 2012.

[9] Text in this column is quoted directly from Article 28 of the USMCA, 2020.

Good regulatory practice	OECD Principle[8]	Example of USMCA provision[9]
2. Transparency and participation in the regulatory process	Adhere to principles of open government, including transparency and participation in the regulatory process to ensure that regulation serves the public interest and is informed by the legitimate needs of those interested in and affected by regulation. This includes providing meaningful opportunities (including online) for the public to contribute to the process of preparing draft regulatory proposals and to the quality of the supporting analysis. Governments should ensure that regulations are comprehensible and clear and that parties can easily understand their rights and obligations.	**Article 28.9: Transparent Development of Regulations** 1. During the period described in paragraph 2, when a regulatory authority is developing a regulation, the Party shall, under normal circumstances, publish: (a) the text of the regulation along with its regulatory impact assessment, if any; (b) an explanation of the regulation, including its objectives, how the regulation achieves those objectives, the rationale for the material features of the regulation, and any major alternatives being considered; (c) an explanation of the data, other information, and analyses the regulatory authority relied upon to support the regulation; and (d) the name and contact information of an individual official from the regulatory authority who may be contacted concerning questions regarding the regulation. At the same time the Party publishes the information listed in subparagraphs (a) through (d), the Party shall also make publicly available data, other information, and scientific and technical analyses it relied upon in support of the regulation, including any risk assessment. 2. With respect to the items required to be published under paragraph 1, each Party shall publish them before the regulatory authority finalizes its work on the regulation and at a time that will enable the regulatory authority to take into account the comments received and, as appropriate, make revisions to the text of the regulation published under subparagraph 1(a). 3. After the items identified in paragraph 1 have been published, the Party shall ensure that any interested person, regardless of domicile, has an opportunity, on terms no less favorable than those afforded to a person of the Party, to submit written comments on the items identified in paragraph 1 for consideration by the relevant regulatory authority of the Party. Each Party shall allow interested persons to submit any comments and other inputs electronically and may also allow written submissions by mail to a published address or through another technology.

Good regulatory practice	OECD Principle[8]	Example of USMCA provision[9]
		4. If a Party expects a draft regulation to have a significant impact on trade, the Party should normally provide a time period to submit written comments and other input on the items published in accordance with paragraph 1 that is: (a) not less than 60 days from the date the items identified in paragraph 1 are published; or (b) a longer time period as is appropriate due to the nature and complexity of the regulation, in order to provide interested persons adequate opportunity to understand how the regulation may affect their interests and to develop informed responses. 5. With respect to draft regulations not covered under paragraph 4, a Party shall endeavor, under normal circumstances, to provide a time period to submit written comments and other input on the information published in accordance with paragraph 1 that is not less than four weeks from the date the items identified in paragraph 1 are published. 6. In addition, the Party shall consider reasonable requests to extend the comment time period under paragraph 4 or 5 to submit written comments or other input on a draft regulation. 7. Each Party shall endeavor to promptly make publicly available any written comments it receives, except to the extent necessary to protect confidential information or withhold personal identifying information or inappropriate content. If it is impracticable to publish all the comments on the website provided for in Article 28.7 (Dedicated Website), the regulatory authority of a Party shall endeavor to publish those comments on its own website. 8. Before finalizing its work on a regulation, a regulatory authority of a Party shall evaluate any information provided in written comments received during the comment period. 9. When a regulatory authority of a Party finalizes its work on a regulation, the Party shall promptly publish the text of the regulation, any final impact assessment, and other items as set out in Article 28.12 (Final Publication). 10. The Parties are encouraged to publish government-generated items identified in this Article in a format that can be read and digitally processed through word searches and data mining by a computer or other technology.

Good regulatory practice	OECD Principle[8]	Example of USMCA provision[9]
		Additional Examples of Articles: **Article 28.6: Early Planning** Each Party shall publish annually a list of regulations that it reasonably expects within the following 12 months to adopt or propose to adopt… Entries in the list should also include, to the extent available, time tables for subsequent actions, including those providing opportunities for public comment under Article 28.9. **Article 28.7: Dedicated Website** 1. Each Party shall maintain a single, free, publicly available website that, to the extent practicable, contains all information that it is required to publish pursuant to Article 28.9; 2. A Party may comply with paragraph 1 by making publicly available information on, and providing for the submission of comments through, more than one website, provided the information can be accessed, and submissions can be made, from a single web portal that links to other websites. **Article 28.8: Use of Plain Language** Each Party should provide that proposed and final regulations are written using plain language to ensure that those regulations are clear, concise, and easy for the public to understand, recognizing that some regulations address technical issues and that relevant expertise may be required to understand or apply them. **Article 28.10: Expert Advisory Groups** 1. The Parties recognize that their respective regulatory authorities may seek expert advice and recommendations with respect to the preparation or implementation of regulations from groups or bodies that include non-governmental persons. The Parties also recognize that obtaining those advice and recommendations should be a complement to, rather than a substitute for, the procedures for seeking public comment pursuant to Article 28.9.3.

Good regulatory practice	OECD Principle[8]	Example of USMCA provision[9]
		Article 28.12: Final Publication 1. When a regulatory authority of a Party finalizes its work on a regulation, the Party shall promptly publish, in a final regulatory impact assessment or other document: (a) the date by which compliance is required; (b) an explanation of how the regulation achieves the Party's objectives, the rationale for the material features of the regulation (to the extent different than the explanation provided for in Article 28.9 (Transparent Development of Regulations)), and the nature of and reasons for any significant revisions made since making the regulation available for public comment; (c) the regulatory authority's views on any substantive issues raised in timely submitted comments; (d) major alternatives, if any, that the regulatory authority considered in developing the regulation and reasons supporting the alternative that it selected; and (e) the relationship between the regulation and the key evidence, data, and other information the regulatory authority considered in finalizing its work on the regulation. 2. Each Party shall ensure that all regulations in effect are published on a free, publicly available website. **Article 28.14: Suggestions for Improvement** Each Party shall provide the opportunity for any interested person to submit to any regulatory authority of the Party written suggestions for the issuance, modification, or repeal of a regulation. The basis for those suggestions may include, for example, that, in the view of the interested person, the regulation has become ineffective at protecting health, welfare, or safety, has become more burdensome than necessary to achieve its objective (for example with respect to its impact on trade), fails to take into account changed circumstances (such as fundamental changes in technology, or relevant scientific and technical developments), or relies on incorrect or outdated information.

Good regulatory practice	OECD Principle[8]	Example of USMCA provision[9]
		Article 28.15: Information About Regulatory Processes 1. Each Party shall publish online a description of the processes and mechanisms employed by its regulatory authorities to prepare, evaluate, or review regulations. The description shall identify the applicable guidelines, rules, or procedures, including those regarding opportunities for the public to provide input. 2. Each Party shall also publish online: (a) a description of the functions and organization of each of its regulatory authorities, including the appropriate offices through which persons can obtain information, make submissions or requests, or obtain decisions; (b) any procedural requirements or forms promulgated or utilized by any of its regulatory authorities; (c) the legal authority for verification, inspection, and compliance activities by its regulatory authorities; (d) information concerning the judicial or administrative procedures available to challenge regulations; and (e) any fees charged by a regulatory authority to a person of a Party for services rendered in connection with the implementation of a regulation, including for licensing, inspections, audits, and other administrative actions required under the Party's law to import, export, sell, market, or use a good.

Good regulatory practice	OECD Principle[8]	Example of USMCA provision[9]
3. Mechanisms and institutions to actively provide oversight of regulatory policy	Establish mechanisms and institutions to actively provide oversight of regulatory policy procedures and goals, support and implement regulatory policy, and thereby foster regulatory quality.	**Article 28.3: Central Regulatory Coordinating Body** Recognizing that institutional arrangements are particular to each Party's system of governance, the Parties note the important role of their respective central regulatory coordinating bodies in promoting good regulatory practices; performing key advisory, coordination, and review functions to improve the quality of regulations; and developing improvements to their regulatory system. The Parties intend to maintain their respective central regulatory coordinating bodies, within their respective mandates and consistent with their law.

Good regulatory practice	OECD Principle[8]	Example of USMCA provision[9]
4. Regulatory impact assessment (RIA) in the formulation of new regulatory proposals	Integrate RIA into the early stages of the policy process for the formulation of new regulatory proposals. Clearly identify policy goals, and evaluate if regulation is necessary and how it can be most effective and efficient in achieving those goals. Consider means other than regulation and identify the tradeoffs of the different approaches analysed to identify the best approach.	**Article 28.11: Regulatory Impact Assessment** 1. The Parties recognize that regulatory impact assessment is a tool to assist regulatory authorities in assessing the need for and potential impacts of regulations they are preparing. Each Party should encourage the use of regulatory impact assessments in appropriate circumstances when developing proposed regulations that have anticipated costs or impacts exceeding certain thresholds established by the Party. 2. Each Party shall maintain procedures that promote the consideration of the following when conducting a regulatory impact assessment: (a) the need for a proposed regulation, including a description of the nature and significance of the problem the regulation is intended to address; (b) feasible and appropriate regulatory and non-regulatory alternatives that would address the need identified in subparagraph (a), including the alternative of not regulating; (c) benefits and costs of the selected and other feasible alternatives, including the relevant impacts (such as economic, social, environmental, public health, and safety effects) as well as risks and distributional effects over time, recognizing that some costs and benefits are difficult to quantify or monetize; and (d) the grounds for concluding that the selected alternative is preferable. 3. Each Party should consider whether a proposed regulation may have significant adverse economic effects on a substantial number of small enterprises. If so, the Party should consider potential steps to minimize those adverse economic impacts, while allowing the Party to fulfill its objectives.

Good regulatory practice	OECD Principle[8]	Example of USMCA provision[9]
5. Review of the stock of significant regulation	Conduct systematic programme reviews of the stock of significant regulation against clearly defined policy goals, including consideration of costs and benefits, to ensure that regulations remain up to date, cost-justified, cost-effective and consistent and delivers the intended policy objectives.	**Article 28.13: Retrospective Review** 1. Each Party shall adopt or maintain procedures or mechanisms to conduct retrospective reviews of its regulations in order to determine whether modification or repeal is appropriate. Retrospective reviews may be initiated, for example, pursuant to a Party's law, on a regulatory authority's own initiative, or in response to a suggestion submitted pursuant to Article 28.14 (Suggestions for Improvement). 2. When conducting a retrospective review, each Party should consider, as appropriate: (a) the effectiveness of the regulation in meeting its initial stated objectives, for example by examining its actual social or economic impacts; (b) any circumstances that have changed since the development of the regulation, including availability of new information; (c) new opportunities to eliminate unnecessary regulatory burdens; (d) ways to address unnecessary regulatory differences that may adversely affect trade among the Parties, including through the activities listed in Article 28.17.3 (Encouragement of Regulatory Compatibility and Cooperation); and (e) any relevant views expressed by members of the public. 3. Each Party shall include among the procedures or mechanisms adopted pursuant to paragraph 1 provisions addressing impacts on small enterprises. 4. Each Party is encouraged to publish, to the extent available, any official plans and results of retrospective reviews.

Good regulatory practice	OECD Principle[8]	Example of USMCA provision[9]
6. Reports on the performance of regulatory policy	Regularly publish reports on the performance of regulatory policy and reform programmes and the public authorities applying the regulations. Such reports should also include information on how regulatory tools such as Regulatory Impact Assessment (RIA), public consultation practices and reviews of existing regulations are functioning in practice.	**Article 28.13: Retrospective Review** When conducting a retrospective review, each Party should consider, as appropriate: (a) the effectiveness of the regulation in meeting its initial stated objectives, for example by examining its actual social or economic impacts.
7. Governance of regulators	Develop a consistent policy covering the role and functions of regulatory agencies in order to provide greater confidence that regulatory decisions are made on an objective, impartial and consistent basis, without conflict of interest, bias or improper influence.	

Good regulatory practice	OECD Principle[8]	Example of USMCA provision[9]
8. Review of the legality and procedural fairness of regulations and of decisions	Ensure the effectiveness of systems for the review of the legality and procedural fairness of regulations, and of decisions made by bodies empowered to issue regulatory sanctions. Ensure that citizens and businesses have access to these systems of review at reasonable cost and receive decisions in a timely manner.	
9. Risk-based approach	As appropriate apply risk assessment, risk management, and risk communication strategies to the design and implementation of regulations to ensure that regulation is targeted and effective. Regulators should assess how regulations will be given effect and should design responsive implementation and enforcement strategies.	**Article 28.9: Transparent Development of Regulations** At the same time the Party publishes the information listed in subparagraphs 1 (a) through (d), the Party shall also make publicly available data, other information, and scientific and technical analyses it relied upon in support of the regulation, including any risk assessment. **Article 28.11.2c: Regulatory Impact Assessment** Benefits and costs of the selected and other feasible alternatives, including the relevant impacts (such as economic, social, environmental, public health, and safety effects) as well as risks and distributional effects over time, recognizing that some costs and benefits are difficult to quantify or monetize; **Article 28.17.b: Encouragement of Regulatory Compatibility and Review** ...exploring possible common approaches to the evaluation and mitigation of risks or hazards, including those potentially posed by the use of emerging technologies

Good regulatory practice	OECD Principle[8]	Example of USMCA provision[9]
10. Regulatory coherence across supranational, national, and subnational levels of government	Where appropriate promote regulatory coherence through co-ordination mechanisms between the supra national, the national and sub-national levels of government. Identify cross cutting regulatory issues at all levels of government, to promote coherence between regulatory approaches and avoid duplication or conflict of regulations.	**Article 28.4: Internal Consultation, Coordination, and Review** 1. The Parties recognize that internal processes or mechanisms providing for consultation, coordination, and review among domestic authorities in the development of regulations can increase regulatory compatibility among the Parties and facilitate trade. Accordingly, each Party shall adopt or maintain those processes or mechanisms to pursue, among others, the following objectives: (a) promoting government-wide adherence to good regulatory practices, including those set forth in this Chapter; (b) identifying and developing improvements to government-wide regulatory processes; (c) identifying potential overlap or duplication between proposed and existing regulations, and preventing the creation of inconsistent requirements across domestic authorities; (d) supporting compliance with international trade and investment obligations, including, as appropriate, the consideration of international standards, guides, and recommendations; (e) promoting consideration of regulatory impacts, including burdens on small enterprises of information collection and implementation; and (f) encouraging regulatory approaches that avoid unnecessary restrictions on competition in the marketplace. 2. Each Party shall make publicly available a description of the processes or mechanisms referred to in paragraph 1.
11. Regulatory policy at subnational levels of government	Foster the development of regulatory management capacity and performance at sub national levels of government.	

Good regulatory practice	OECD Principle[8]	Example of USMCA provision[9]
12. International regulatory cooperation	In developing regulatory measures, give consideration to all relevant international standards and frameworks for co-operation in the same field and, where appropriate, their likely effects on parties outside the jurisdiction.	**Article 28.17: Encouragement of Regulatory Compatibility and Cooperation** 1. The Parties recognize the important contribution of dialogues between their respective regulatory authorities in promoting regulatory compatibility and regulatory cooperation when appropriate, and in order to facilitate trade and investment and to achieve regulatory objectives. Accordingly, each Party should encourage its regulatory authorities to engage in mutually beneficial regulatory cooperation activities with relevant counterparts of one or more of the other Parties in appropriate circumstances to achieve these objectives. 2. The Parties recognize the valuable work of bilateral and trilateral cooperation fora, and intend to continue to work together to further regulatory compatibility on a mutually beneficial basis in such fora or under this Agreement. The Parties also recognize that effective regulatory cooperation requires the participation of regulatory authorities that possess the authority and technical expertise to develop, adopt, and implement regulations. Each Party should encourage input from members of the public to identify promising avenues for cooperation activities.

Good regulatory practice	OECD Principle[8]	Example of USMCA provision[9]
		3. The Parties recognize that a broad range of mechanisms including those set forth in the WTO Agreement, exists to help minimize unnecessary regulatory differences and to facilitate trade or investment, while contributing to each Party's ability to meet its public policy objectives. These mechanisms may include, as appropriate to the particular circumstances: (a) early stage formal or informal exchange of technical or scientific information or data, including coordinating research agendas, to reduce duplicative research; (b) exploring possible common approaches to the evaluation and mitigation of risks or hazards, including those potentially posed by the use of emerging technologies; (c) whenever appropriate, regulating by specifying performance requirements rather than design characteristics, to promote innovation and facilitate trade; (d) seeking to collaborate in relevant international fora; 28-11 (e) exchanging information, such as of a technical or practical nature, on regulations that each Party is developing to maximize the opportunity for common approaches; (f) co-funding of research in support of regulations and implementation tools of joint interest; (g) facilitating the greater use of relevant international standards, guides, and recommendations as the basis for regulations, testing, and approval procedures; (h) when developing or implementing regulations, considering relevant scientific or technical guidance documents developed through international collaborative initiatives; (i) considering common approaches to the display of product or consumer information; (j) considering the development of compatible platforms or formats for industry submission of product information for regulatory review; (k) coordinating in the implementation of regulations and sharing compliance information, including, as appropriate by entering into confidentiality agreements; and (l) periodically exchanging information, as appropriate, concerning any planned or ongoing post-implementation review or evaluation of regulations in effect affecting trade or investment.

Table A2. Differences in levels of details of select GRP provisions in the USMCA vs. the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)

GRP	USMCA[10]	CPTPP[11]
Transparency and participation in the regulatory process	After the items identified in paragraph 1 have been published, the Party shall ensure that any interested person, regardless of domicile, has an opportunity, on terms no less favorable than those afforded to a person of the Party, to submit written comments on the items identified in paragraph 1 for consideration by the relevant regulatory authority of the Party. Each Party shall allow interested persons to submit any comments and other inputs electronically and may also allow written submissions by mail to a published address or through another technology. (Article 28.9) Each Party shall provide the opportunity for any interested person to submit to any regulatory authority of the Party written suggestions for the issuance, modification, or repeal of a regulation. The basis for those suggestions may include, for example, that, in the view of the interested person, the regulation has become ineffective at protecting health, welfare, or safety, has become more burdensome than necessary to achieve its objective (for example with respect to its impact on trade), fails to take into account changed circumstances (such as fundamental changes in technology, or relevant scientific and technical developments), or relies on incorrect or outdated information. (Article 28.14)	The Committee shall establish appropriate mechanisms to provide continuing opportunities for interested persons of the Parties to provide input on matters relevant to enhancing regulatory coherence. (Article 28.5)

10 Text in this column is quoted directly from the GRP chapter of the USMCA, 2020.

11 Text in this column is quote directly from the Regulatory Coherence chapter in the CPTPP, 2018.

GRP	USMCA[10]	CPTPP[11]
	Unless the Parties decide otherwise, the GRP Committee shall meet at least once a year. The Parties shall endeavor to schedule meetings to permit participation of government representatives engaged in the work of other relevant chapters in this Agreement. The GRP Committee may also invite interested persons to contribute to its work. (Article 28.18)	
Review of the stock of significant regulation	1. Each Party shall adopt or maintain procedures or mechanisms to conduct retrospective reviews of its regulations in order to determine whether modification or repeal is appropriate. Retrospective reviews may be initiated, for example, pursuant to a Party's law, on a regulatory authority's own initiative, or in response to a suggestion submitted pursuant to Article 28.14 (Suggestions for Improvement). 2. When conducting a retrospective review, each Party should consider, as appropriate: (a) the effectiveness of the regulation in meeting its initial stated objectives, for example by examining its actual social or economic impacts; (b) any circumstances that have changed since the development of the regulation, including availability of new information; (c) new opportunities to eliminate unnecessary regulatory burdens; (d) ways to address unnecessary regulatory differences that may adversely affect trade among the Parties, including through the activities listed in Article 28.17.3 (Encouragement of Regulatory Compatibility and Cooperation); and (e) any relevant views expressed by members of the public. 3. Each Party shall include among the procedures or mechanisms adopted pursuant to paragraph 1 provisions addressing impacts on small enterprises. 4. Each Party is encouraged to publish, to the extent available, any official plans and results of retrospective reviews.	Each Party should review, at intervals it deems appropriate, its covered regulatory measures to determine whether specific regulatory measures it has implemented should be modified, streamlined, expanded or repealed so as to make the Party's regulatory regime more effective in achieving the Party's policy objectives.

GRP	USMCA[10]	CPTPP[11]
International regulatory cooperation	1. The Parties recognize the important contribution of dialogues between their respective regulatory authorities in promoting regulatory compatibility and regulatory cooperation when appropriate, and in order to facilitate trade and investment and to achieve regulatory objectives. Accordingly, each Party should encourage its regulatory authorities to engage in mutually beneficial regulatory cooperation activities with relevant counterparts of one or more of the other Parties in appropriate circumstances to achieve these objectives. 2. The Parties recognize the valuable work of bilateral and trilateral cooperation fora, and intend to continue to work together to further regulatory compatibility on a mutually beneficial basis in such fora or under this Agreement. The Parties also recognize that effective regulatory cooperation requires the participation of regulatory authorities that possess the authority and technical expertise to develop, adopt, and implement regulations. Each Party should encourage input from members of the public to identify promising avenues for cooperation activities.	1. The Parties shall cooperate in order to facilitate the implementation of this Chapter and to maximise the benefits arising from it. Cooperation activities shall take into consideration each Party's needs, and may include: (a) information exchanges, dialogues or meetings with other Parties; (b) information exchanges, dialogues or meetings with interested persons, including with SMEs, of other Parties; (c) training programmes, seminars and other relevant assistance; (d) strengthening cooperation and other relevant activities between regulatory agencies; and (e) other activities that Parties may agree.

GRP	USMCA[10]	CPTPP[11]
	3. The Parties recognize that a broad range of mechanisms including those set forth in the WTO Agreement, exists to help minimize unnecessary regulatory differences and to facilitate trade or investment, while contributing to each Party's ability to meet its public policy objectives. These mechanisms may include, as appropriate to the particular circumstances: (a) early stage formal or informal exchange of technical or scientific information or data, including coordinating research agendas, to reduce duplicative research; (b) exploring possible common approaches to the evaluation and mitigation of risks or hazards, including those potentially posed by the use of emerging technologies; (c) whenever appropriate, regulating by specifying performance requirements rather than design characteristics, to promote innovation and facilitate trade; (d) seeking to collaborate in relevant international fora; (e) exchanging information, such as of a technical or practical nature, on regulations that each Party is developing to maximize the opportunity for common approaches; (f) co-funding of research in support of regulations and implementation tools of joint interest; (g) facilitating the greater use of relevant international standards, guides, and recommendations as the basis for regulations, testing, and approval procedures; (h) when developing or implementing regulations, considering relevant scientific or technical guidance documents developed through international collaborative initiatives; (i) considering common approaches to the display of product or consumer information; (j) considering the development of compatible platforms or formats for industry submission of product information for regulatory review; (k) coordinating in the implementation of regulations and sharing compliance information, including, as appropriate by entering into confidentiality agreements; and (l) periodically exchanging information, as appropriate, concerning any planned or ongoing post-implementation review or evaluation of regulations in effect affecting trade or investment. (Article 28.17)	2. The Parties further recognise that cooperation between Parties on regulatory matters can be enhanced through, among other things, ensuring that each Party's regulatory measures are centrally available. (Article 25.7)

GRP	USMCA[10]	CPTPP[11]
Regulatory impact assessment (RIA) in the formulation of new regulatory proposals	1. The Parties recognize that regulatory impact assessment is a tool to assist regulatory authorities in assessing the need for and potential impacts of regulations they are preparing. Each Party should encourage the use of regulatory impact assessments in appropriate circumstances when developing proposed regulations that have anticipated costs or impacts exceeding certain thresholds established by the Party. 2. Each Party shall maintain procedures that promote the consideration of the following when conducting a regulatory impact assessment: (a) the need for a proposed regulation, including a description of the nature and significance of the problem the regulation is intended to address; (b) feasible and appropriate regulatory and non-regulatory alternatives that would address the need identified in subparagraph (a), including the alternative of not regulating; (c) benefits and costs of the selected and other feasible alternatives, including the relevant impacts (such as economic, social, environmental, public health, and safety effects) as well as risks and distributional effects over time, recognizing that some costs and benefits are difficult to quantify or monetize; and (d) the grounds for concluding that the selected alternative is preferable. 3. Each Party should consider whether a proposed regulation may have significant adverse economic effects on a substantial number of small enterprises. If so, the Party should consider potential steps to minimize those adverse economic impacts, while allowing the Party to fulfill its objectives. (Article 28.11)	1. To assist in designing a measure to best achieve the Party's objective, each Party should generally encourage relevant regulatory agencies, consistent with its laws and regulations, to conduct regulatory impact assessments when developing proposed covered regulatory measures that exceed a threshold of economic impact, or other regulatory impact, where appropriate, as established by the Party. Regulatory impact assessments may encompass a range of procedures to determine possible impacts.

GRP	USMCA[10]	CPTPP[11]
		2. Recognising that differences in the Parties' institutional, social, cultural, legal and developmental circumstances may result in specific regulatory approaches, regulatory impact assessments conducted by a Party should, among other things: (a) assess the need for a regulatory proposal, including a description of the nature and significance of the problem; (b) examine feasible alternatives, including, to the extent feasible and consistent with laws and regulations, their costs and benefits, such as risks involved as well as distributive 3. When conducting regulatory impact assessments, a Party may take into consideration the potential impact of the proposed regulation on SMEs. (Article 25.5)

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