



An All-Star Approach to Regulatory Cooperation in the Area of Technical Barriers to Trade

Identifying the “best of the best” and how to promote sustainability

2022



Foreword

In this report the National Board of Trade Sweden examines regulatory cooperation initiatives from all over the world. The report aims to identify elements of regulatory cooperation that can be considered the best, or *All-Star*, to borrow a phrase from the world of sports.

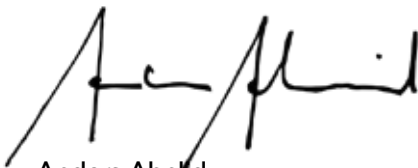
International regulatory cooperation is a flexible and effective tool when it comes to eliminating Technical Barriers to Trade. As the report shows, regulatory cooperation can support a broad spectrum of commitments.

Our conclusions offer an opportunity for trading partners to learn from each other. This report provides insights that are valuable to trade partners all over the world, regardless of the level of economic development.

This report also provides a fresh perspective on how regulatory cooperation on product regulation within the area of Technical Barriers to Trade can facilitate the green transition. Committing to regulatory cooperation on product regulation can introduce a range of possibilities to achieve effective reform. Cooperation on common measurements for carbon emissions, on definitions of recycled products, or simply sharing research on sector-specific actions to facilitate the green transition are all excellent examples of how regulatory cooperation can promote more sustainable trade.

This report was written by Linda Bodén, Sara Emanuelsson, Anders Karlsson, and Johanna Nyman. It was reviewed by Heidi Lund and Stina Olofsson.

Stockholm, September 2022

A handwritten signature in black ink, appearing to read 'Anders Ahnld', written over a horizontal line.

Anders Ahnld
Director-General, National Board of Trade Sweden

Executive summary

This report maps and analyses mechanisms for regulatory cooperation in order to identify and recommend types of mechanisms that could be included in future free trade agreements (FTAs) to more effectively promote regulatory cooperation and reduce technical barriers to trade (TBT). The analysis covers chapters on good regulatory practice and regulatory cooperation, TBT, transparency, as well as sectoral chapters and annexes in 14 agreements with a broad geographical scope. The report uses a theoretical analysis that reviews the provisions of the agreements. The review focuses on four specific areas, namely, obligations related to *notification of technical regulations*, *regulatory impact assessments*, *mutual recognition* and *harmonisation*. The analysis also specifically highlights how commitments on regulatory cooperation may promote objectives related to sustainability and supporting a green transition.

The report concludes that although similar mechanisms are often used in the agreements, different variations and more refined commitments create different levels of ambition and potentially affect the regulatory outcome. The report also identifies some a few agreements that are significantly more far-reaching regarding certain mechanisms and concludes that characteristic for these more far-reaching mechanisms is that the parties are also involved in extensive cooperation outside of the framework of the agreement in question.

The report also identifies a number of useful mechanisms that would be beneficial to include in a chapter on ambitious regulatory cooperation for each of the four areas studied, notification of technical regulations, regulatory impact assessments, mutual recognition and harmonisation. In addition, the report concludes that these mechanisms offer significant opportunities to promote sustainable development goals, but that such opportunities currently appear to be underutilised in FTAs. The report therefore recommends that sustainability is prioritised in regulatory cooperation chapters and is featured more in mechanisms for regulatory cooperation.

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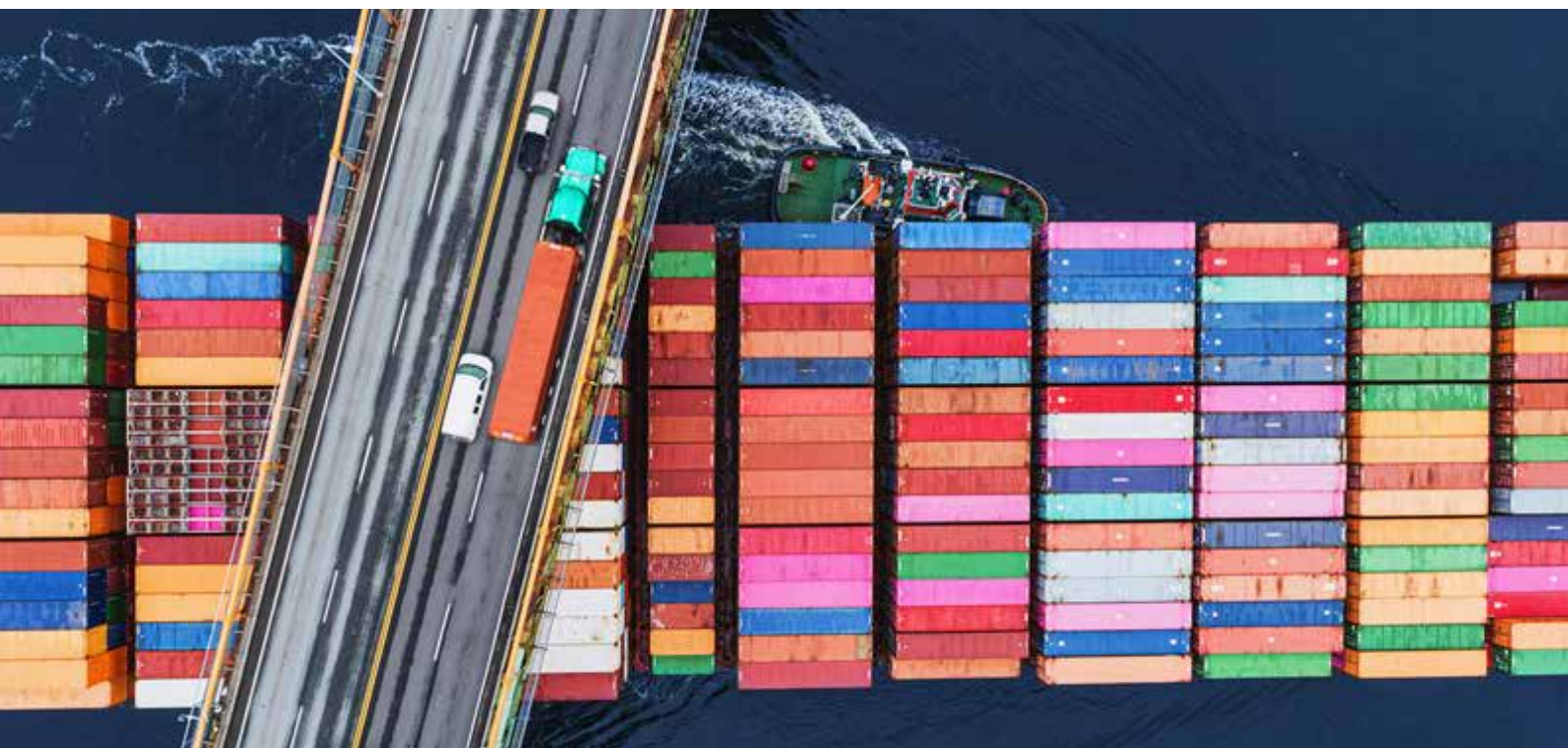
1 Introduction

As tariffs over the years have been lowered internationally, non-tariff measures (NTMs), such as import licenses, technical regulations, standards and requirements for testing and certification, have increased in significance and now influence trade to a greater extent than tariffs.¹ Non-tariff measures are, in many cases, necessary to protect important interests such as human health and the environment. Differences in regulations across countries and differences in how such regulations are implemented can create additional and unnecessary compliance costs.²

One way to effectively address NTMs that result from differences in regulatory systems is to apply Good Regulatory Practices (GRP). GRP include approaches to addressing NTMs, such as increased transparency through the use of Regulatory Impact Assessments and stakeholder consultation. International Regulatory Cooperation (IRC) is a GRP approach that has grown in importance in recent years. IRC is a term for commitments between trading partners to promote coordination on regulations. It entails a broad spectrum of commitments, ranging from exchanging information to developing joint regulations. IRC is relevant to all WTO countries, as commitment levels are set based on each country's context.

Technical regulations and standards are implemented to achieve legitimate policy objectives, such as the protection of human health and safety, or protection of the environment. Well-designed regulations can thus contribute directly to sustainability goals relating to environmental, economic and social sustainability.

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- 1 UNCTAD and the World Bank, [‘The Unseen Impact of Non-Tariff Measures: Insights from a New Database’](#) (UNCTAD/DITC/TAB/2018/2, 2018) p. 1 and p. 6.
 - 2 UNCTAD and the World Bank, [‘The Unseen Impact of Non-Tariff Measures: Insights from a New Database’](#) (UNCTAD/DITC/TAB/2018/2, 2018) p. 20.



When trading partners join forces on, for example, technical regulations and standards and commit to IRC, they can help avoid fragmentation and reduce barriers to trade in goods. IRC can be a valuable tool for increasing regulatory quality and supporting sustainable development objectives, and also help reduce technical barriers to trade.

Commitments on regulatory cooperation can be formalised in various ways. Common ways include through free trade agreements (FTAs), in annexes to FTAs and/or in separate guidance documents. Thus, the success of IRC commitments does not solely rely on an FTA format but instead offers a broad spectrum of alternatives. The COVID-19 pandemic is an excellent example of this with regards to trading partners choosing to rely on regulatory cooperation as a basis for easing procedures and expediting access to certain goods.³

Furthermore, the recent invasion of Ukraine has led to a rapid reassessment of strategies for trade, energy and environment in Europe and several other regions. The COVID-19 pandemic and the situation in Ukraine could influence how regulatory cooperation will be addressed in the future. For example, there might be greater focus on the green transition, as well as a shift in finding new cooperation partners. It is difficult to predict how events will unfold but we already see factors that could affect the context of regulatory cooperation in relation to environmental, economic and social sustainable development objectives.

Objective

This report aims to map mechanisms used for regulatory cooperation in FTAs and to identify and recommend the most efficient mechanisms that could be included in future FTAs or used in other forms of IRC in order to more effectively promote regulatory cooperation and reduce technical barriers to trade (TBT). These mechanisms are compiled in an *All-star Regulatory Cooperation Chapter* to illustrate available best practices for regulatory cooperation, based on approaches in FTAs globally (see Methodology section below for selected FTAs).

Lastly, we aim to highlight how these mechanisms can promote sustainability objectives.

3 [Standards, Regulations and Covid-19 – What Actions Taken by WTO Members?](#) p. 5. standards_report_e.pdf (wto.org)

Methodology

Based on a brief review of FTAs that contain provisions on TBT in a WTO staff working paper,⁴ a number of agreements with provisions on regulatory cooperation were chosen to be studied in more detail. The selected agreements are bilateral or regional and have a broad geographical scope. The selected scope includes both FTAs to which the EU is not party, namely, ASEAN, AANZFTA, TTMRA, ECOWAS, AFCFTA, KORUS, USMCA, Pacific Alliance, CPTPP, EAC and SADC, as well as the most ambitious FTAs in terms of regulatory cooperation among the EU's agreements. These agreements are the EU's agreements with Canada, South Korea and Japan.

There were certain limitations to the selection of agreements to be analysed. For example, some agreements initially considered were excluded due to language constraints.

The review of the agreements focuses on chapters on Good Regulatory Practice and Regulatory Cooperation, TBT chapters, transparency chapters and sectoral chapters and annexes. The specifics are presented below. The TBT Agreement was used as a baseline in the analysis. The analysis is a theoretical analysis based on the texts of the agreements, not a study of the practical implementation of the agreements. As many of the agreements have only recently entered into force it was perceived as premature to evaluate their implementation. However, this is an important topic for future analysis as the implementation will determine the effects in practice of regulatory cooperation. Through the review, provisions on regulatory cooperation in the studied FTAs were identified and mapped. Thereafter, the different types of mechanisms were compared based on the level of ambition, with the aim of outlining ambitious mechanisms for regulatory cooperation.

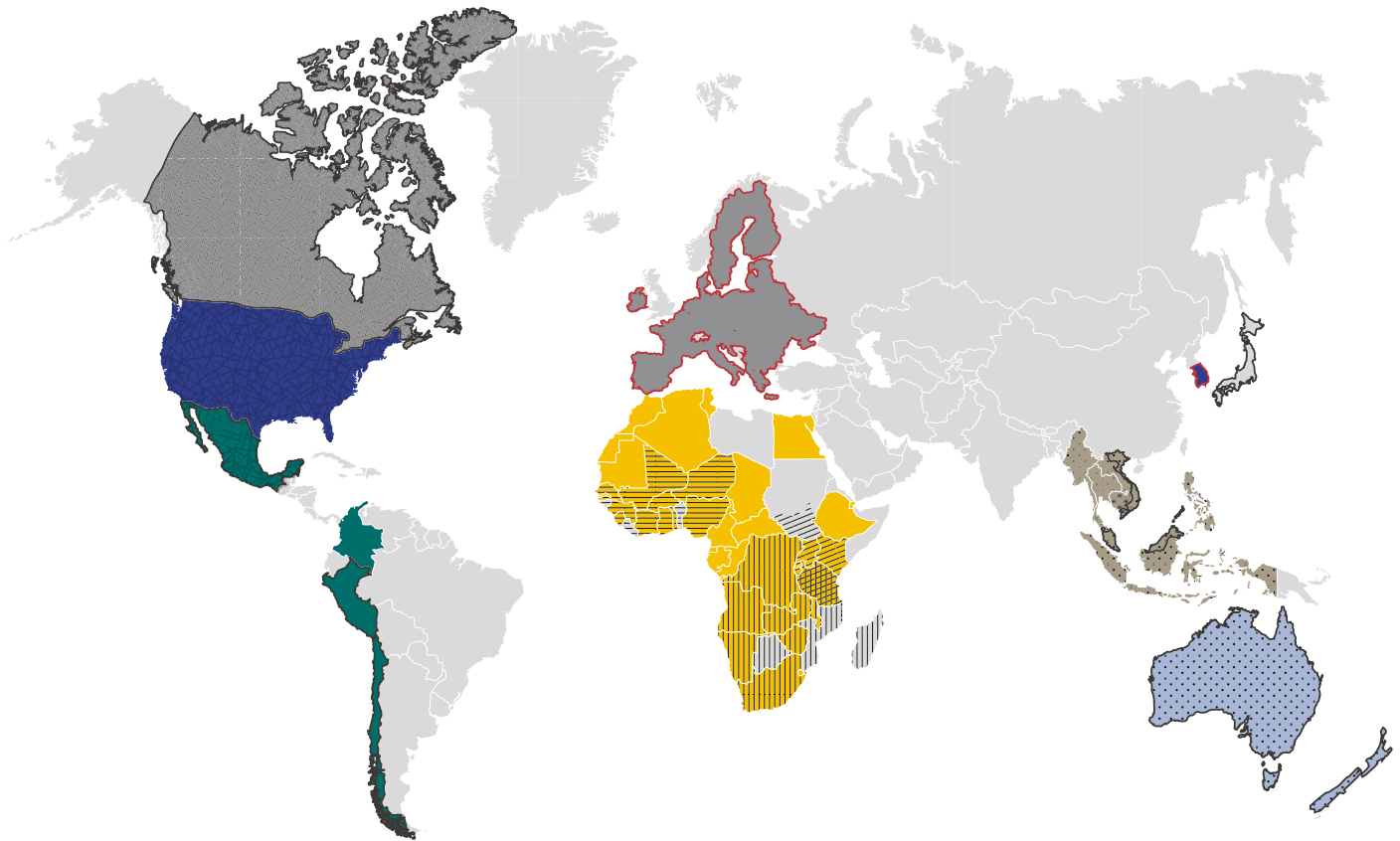
The analysis of mechanisms in different FTAs provides several examples. However, the report does not aim to provide an exhaustive account of the provisions in the specific FTAs, but rather provide some examples of common features of mechanisms.

Structure

The report is outlined as follows: The introductory chapter is followed by Chapter 2, which provides an introduction to regulatory cooperation. In Chapter 3 the different types of provisions on regulatory cooperation used in FTAs are mapped and discussed. In Chapter 4 the analysis highlights how regulatory cooperation in FTAs can promote sustainable development objectives. Finally, conclusions on mechanisms that would be useful to effectively promote regulatory cooperation and reduce technical barriers to trade are presented in Chapter 5.

4 The review was based on the list of FTAs included in a WTO staff working paper: Devin McDaniels, Ana Cristina Molina and Erik Wijkström, '[How does the regular work of the WTO influence regional trade agreements?](#)' (WTO Staff Working Paper ERSD-2018-06, 15 May 2018), Annex 2.

Map over analysed Free Trade Agreements



ASEAN
Association of Southeast Asian Nations

AANZFTA
ASEAN-Australia-New Zealand Free Trade Area

TTMRA
Trans-Tasman Mutual Recognition Agreement

ECOWAS
Economic Community of West African States

AfCFTA
African Continental Free Trade Area

KORUS
US – Korea FTA

Pacific Alliance

CPTPP
Comprehensive and Progressive Agreement for Trans-Pacific Partnership

EAC
East African Community

AfCFTA
African Continental Free Trade Area

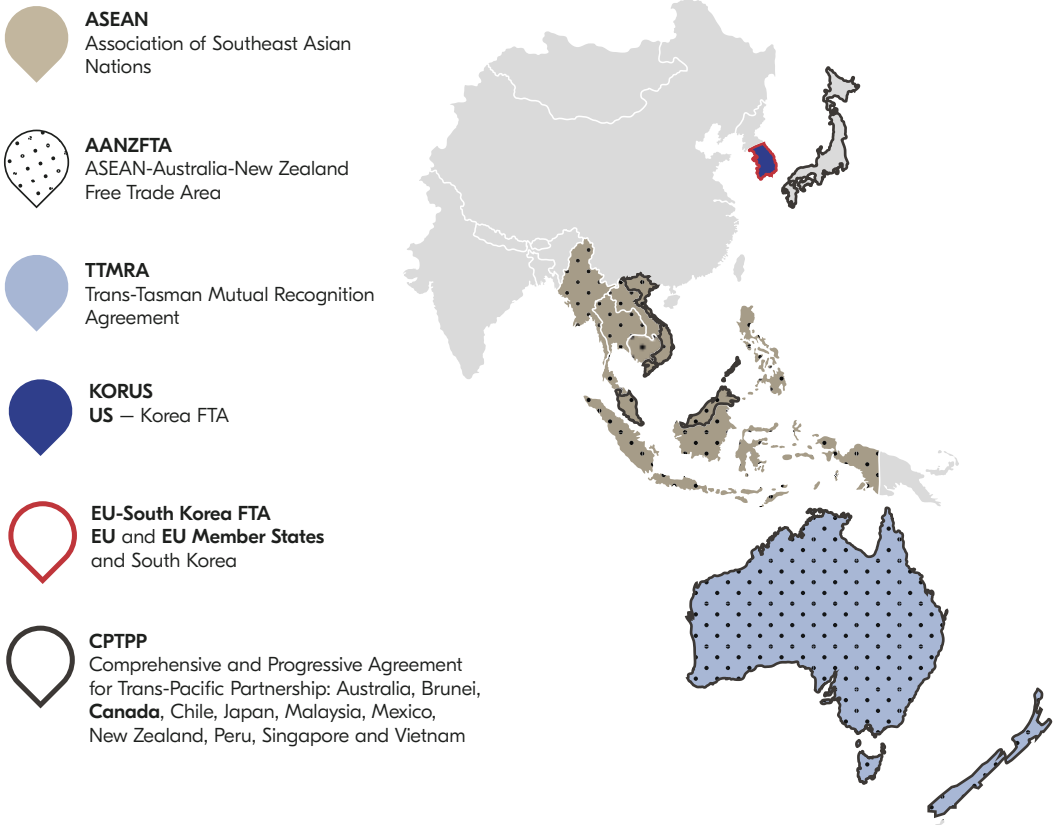
USMCA
USA, Canada and Mexico

CETA
Comprehensive Economic and Trade Agreement: EU and EU Member States and Canada

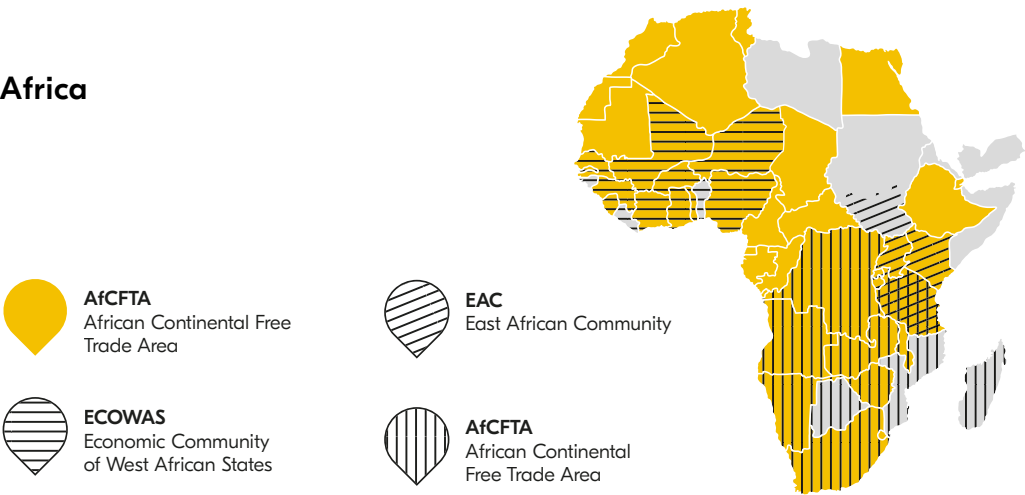
EU-South Korea FTA
EU and EU Member States and South Korea

Map over analysed Free Trade Agreements divided in continents

Asia/Australia



Africa



The Americas

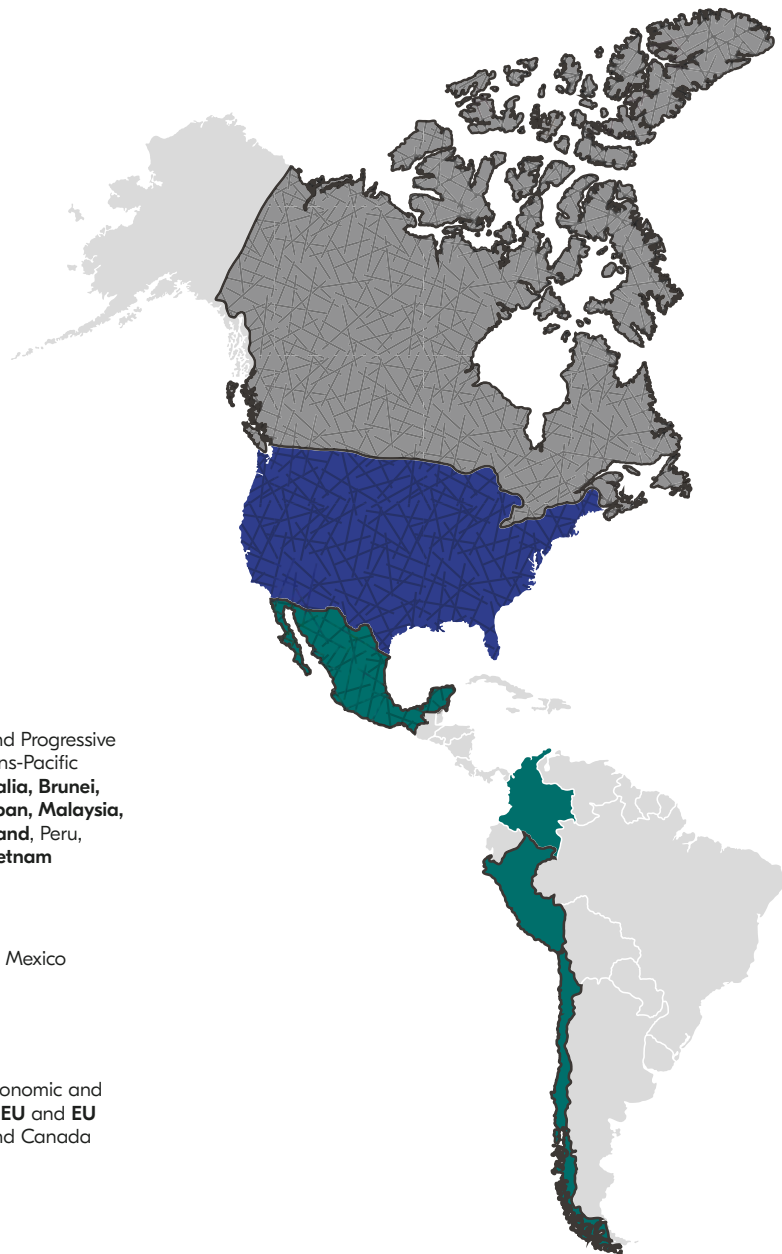
 **KORUS**
US - Korea FTA

 **Pacific Alliance**

 **CPTPP**
Comprehensive and Progressive
Agreement for Trans-Pacific
Partnership: **Australia, Brunei,**
Canada, Chile, **Japan, Malaysia,**
Mexico, **New Zealand,** Peru,
Singapore and **Vietnam**

 **USMCA**
USA, Canada and Mexico

 **CETA**
Comprehensive Economic and
Trade Agreement: **EU** and **EU**
Member States and Canada



Europe

 **CETA**
Comprehensive Economic and
Trade Agreement: EU and EU
Member States and **Canada**

 **EU-South Korea FTA**
EU and EU Member States and
South Korea



2 Regulatory cooperation

2.1 Introduction to regulatory cooperation

The WTO stated in its report *Facilitating trade through regulatory cooperation* that International Regulatory Cooperation (IRC) is an integral part of Good Regulatory Practices (GRP).⁵

The use of GRP is not required by the WTO TBT Agreement as such, but the TBT Committee has recognised that GRP can contribute to the improved and effective implementation of the substantive obligations under the TBT Agreement (see section 2.2).⁶

IRC is a GRP approach that has grown in importance in recent years. Members of the TBT committee have also underlined that regulatory cooperation is an effective means of disseminating GRP across borders.⁷

The benefits of regulatory cooperation are well-documented. Regulatory cooperation has the potential to increase regulatory quality, thereby promoting sustainability-related objectives and facilitating trade. As mentioned in the introduction, by promoting cooperation between regulatory agencies, regulatory cooperation can be a valuable tool in addressing both domestic and cross-border challenges. Such challenges include, for example, climate change.⁸

Regulatory cooperation can facilitate trade through less regulatory divergence and a reduction in TBT. This is supported, for example, by a study from UNCTAD which estimates that regulatory cooperation could bring greater benefits than liberalisation of tariffs.⁹

Regulatory cooperation is defined by the OECD as any step taken by countries formally or informally, unilaterally, bilaterally or multilaterally, in order to promote some form of coordination/coherence in the design, monitoring, enforcement or ex-post management of regulation.¹⁰ The OECD also has developed a typology for different types of regulatory cooperation. The typology includes unilateral measures such as the adoption of good regulatory practices, adoption of international instruments, as well as consultation of foreign stakeholders, bilateral or plurilateral measures such as Memoranda of Understanding, mutual recognition and regulatory provisions in trade agreements, as well as multilateral measures such as participation in international fora.¹¹

5 OECD and WTO, *Facilitating trade through regulatory cooperation – The case of the WTO's TBT/SPS Agreements and Committees* (WTO, Geneva/ OECD Publishing 2019), p. 6

6 OECD and WTO, *Facilitating trade through regulatory cooperation – The case of the WTO's TBT/SPS Agreements and Committees* (WTO, Geneva/ OECD Publishing 2019), p. 10

7 WTO Twenty-Seventh Annual Review of the Implementation and Operation of the TBT Agreement (WTO, Geneva 2021) p.7.

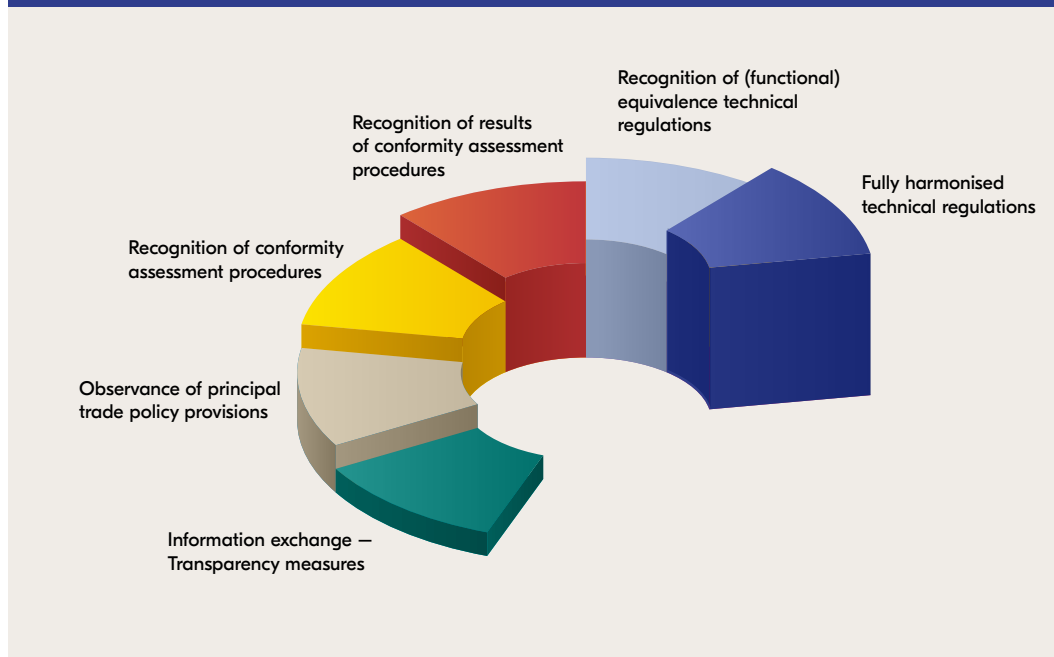
8 OECD, *International Regulatory Cooperation* (OECD Policy Brief, 2020, OECD Regulatory Policy Division)

9 UNCTAD and the World Bank, *The Unseen Impact of Non-Tariff Measures: Insights from a New Database* (2019) p. 20.

10 OECD *International Regulatory Cooperation and trade* (OECD Publishing 2013) p.32

11 OECD, *International Regulatory Cooperation* (OECD Publishing 2020) p. 5-6.

Different levels of regulatory cooperation



However, with regulatory cooperation in FTAs as the focus of the analysis, such a definition may not be entirely suitable. For instance, it is not easy to organise the mechanisms into clear-cut categories as different types of mechanisms for regulatory cooperation can be used at the same time and certain mechanisms may comprise a mix of several features in the respective categories.¹² The NBT has previously illustrated different levels of ambition for regulatory cooperation,¹³ which is more aligned with the framework of this analysis.

IRC implies a broad spectrum of commitments, ranging from exchanging information to developing joint regulations and IRC is therefore relevant to all WTO countries, as commitment levels are set based on each country's context and the level of trust between partners. Commitments on regulatory cooperation need to be adapted to the setting and not all tools are suited to every situation. As the overall objective of regulations is to protect different legitimate interests, it is important to ensure continued high levels of protection. However, regulatory cooperation can provide the means to improve regulatory quality and bring trading partners closer to each other.

It is important to keep in mind that IRC commitments can be formalised in other ways than FTAs. Although it is common to commit to IRC through FTAs, there are also other ways to commit – the recently established Trade and Technology Council¹⁴ between the EU and the US being one example of this. The two parties have a long history of trading with each other. However, the systems for technical regulations and standards, for example, are very different and make trading difficult. Softer commitments also offer great potential to address and prevent trade barriers.¹⁵

¹² OECD, *International Regulatory Co-operation: Addressing Global Challenges* (OECD Publishing 2013) p. 43.

¹³ National Board of Trade Sweden, *How TTIP Can Address Technical Barriers to Trade – an Introduction* (National Board of Trade Sweden 2015), p. 6.

¹⁴ https://ec.europa.eu/commission/presscorner/detail/en/ip_21_2990

¹⁵ European Commission, 'EU-US launch Trade and Technology Council' <[EU-US relations: EU-US Trade and Technology Council](https://ec.europa.eu/eu-us-relationships/en/eu-us-trade-and-technology-council) ([europa.eu](https://ec.europa.eu))> accessed 14 June 2022

2.2 The WTO TBT agreement as a tool to promote regulatory cooperation

The TBT agreement aims to ensure that technical regulations, standards and conformity assessment procedures do not create unnecessary barriers to trade and do not discriminate between WTO Members, while also ensuring WTO Members' right to regulate in order to achieve their legitimate objectives.

Many of the provisions contained in the TBT Agreement promote regulatory cooperation between WTO Members. For example, notification obligations provide information about new regulatory initiatives and regulatory approaches by other WTO Members. The TBT agreement also promotes harmonisation by encouraging the use of international standards and the mutual recognition of both technical regulations and conformity assessment procedures.

Through the WTO TBT Committee's work, WTO Members have the opportunity to exchange experiences on various regulatory issues. For example, the TBT Committee is mandated to review the operation and implementation of the TBT Agreement on a triennial basis. In the last review in 2021, Members agreed to discuss, for example, regulatory cooperation in the areas of climate change, plastic regulation, digital products, cybersecurity and Micro, Small and Medium, MSMEs.¹⁶

Thus, the TBT Agreement and TBT Committee also provide a basis for regulatory cooperation between WTO Members to mitigate climate change and support a green transition.

¹⁶ World Trade Organization *Twenty-seventh Annual Review of the Implementation and Operation of the TBT Agreement* (2nd March 2022) p. 4.



3 Mapping of provisions on regulatory cooperation in FTAs

This section maps different types of mechanisms for regulatory cooperation that can be found in FTAs. The mapping covers 14 agreements with a broad geographical scope, listed above. The objective is to identify types of mechanisms on a more overarching level and provide examples by referring to specific agreements, rather than describing the provisions in detail.

The comparison of mechanisms focuses on four areas in which states often focus their efforts on regulatory cooperation in FTAs, namely, notification obligations, transparency obligations relating to regulatory impact assessments, mutual recognition and harmonisation.

The commitments in the WTO TBT Agreement are used as a baseline for regulatory cooperation in order to identify more far-reaching types of mechanisms.

3.1 Notification obligations

An important mechanism for regulatory cooperation in FTAs is the obligation to notify draft technical regulations and conformity assessment procedures. By notifying trading partners of new or amended measures, broader GRP goals are also met as notification obligations ensure transparency by alerting partners about new measures. It also creates an opportunity for dialogue between partners. In these ways, notification obligations can contribute to a predictable trading environment.

The WTO TBT Agreement establishes notification obligations for draft technical regulations and conformity assessment procedures.¹⁷ Technical regulations and conformity assessment procedures must be notified when they are not in accordance with a relevant international standard, or a relevant guidelines or recommendation issued by an international standardisation body, and when the technical regulation may have a significant effect on the trade of other members.¹⁸ The notifications must be made in one of the official languages of the WTO and are published by the WTO. The notification summary is translated into all the official languages of the WTO, although not the draft legislation.

Several of the FTAs analysed in this report refer to the notification obligations in the TBT agreement without developing these obligations further.¹⁹ However, FTAs such as the Pacific Alliance, CPTPP and KORUS include complementary requirements on transparency and obligations to notify the other parties of proposals for new and amended technical regulations. The agreements specify that the notification of new technical regulations should follow the procedure laid down in the TBT Agreement. However, the parties are also required to submit the notification and proposal electronically to the other parties directly.²⁰ Furthermore, these agreements require that technical regulations and conformity assessment procedures that are in accordance with international standards are notified.²¹

17 WTO TBT Agreement, articles 2.9.2 and 5.6.2.

18 WTO TBT Agreement, articles 2.9.2 and 5.6.2.

19 AANZFTA, EAC, COMESA, and AfCFTA.

20 CPTPP, article 8.7 and Protocolo Adicional al Acuerdo Marco de la Alianza del Pacífico, article 7.8(1) and KORUS, article 9.6(b).

21 Protocolo Adicional al Acuerdo Marco de la Alianza del Pacífico, article 7.8(2) and CPTPP, article 8.7(9).

The CPTPP and KORUS specifies obligations relating to the content of the notification, namely, that the objective and how the proposal will achieve the objective must be described.²² The free trade agreements between EU and Japan, EU and South Korea and EU and Canada include similar obligations, namely, that information regarding the objectives and rationale for a technical regulation must be provided if requested by the other party.²³ Even if the TBT agreement states that the objective and rationale of the technical regulation should be included in the notification, it does not require members to explain how the proposal will achieve the stated objective.

Some of the FTAs analysed include specific requirements related to comments on proposed regulations. The CPTPP, EU-Japan, EU-South Korea and EU-Canada allow at least 60 days from the date of notification for the other party to provide written comments on the proposal.²⁴ KORUS, Pacific Alliance and CPTPP also specify that a party must give favourable consideration to requests from the other party for extending the comment period.²⁵ In addition, the FTAs specify that comments received must be replied to in writing no later than the date of publication of the final technical regulation²⁶ or within a specific time frame.²⁷ The CPTPP includes an obligation to consider comments and explain any significant modifications made to the proposed regulation due to comments left by the other party.²⁸

The TBT Agreement specifies that members must be allowed reasonable time to comment on the notified documents.²⁹ However, the agreement does not oblige the members to reply to comments in writing within a specific time frame. Neither does it explicitly require members to explain changes made to the proposal.

22 CPTPP, article 8.7(13) and KORUS, article 21.3.

23 EU-Japan FTA, article 79.3, CETA, article 4.6.6 and EU-South Korea FTA, article 4.4.1 c.

24 EU-Japan FTA, article 7.9 and CETA, article 4.6.

25 KORUS, article 9.6 (3), Protocolo Adicional al Acuerdo Marco de la Alianza del Pacífico, article 7.8(6) and CPTPP, article 8.7(14).

26 EU-Japan FTA, article 7.9 and CETA, article 4.6.

27 Protocolo Adicional al Acuerdo Marco de la Alianza del Pacífico, article 7.8(3).

28 CPTPP, article 26.2.

29 WTO TBT Agreement, articles 2.9.4 and 5.6.4. The TBT Committee recommends a comment period of 90 days, see G/TBT/1/Rev. 8, para. 17 and G/TBT/9, para. 22.



Pacific Alliance, CPTPP, EU-Japan, EU-Canada and KORUS include provisions that oblige the parties to ensure that laws, regulations and procedures are published or made available to interested parties to comment on.³⁰ These obligations aim to ensure increased transparency and input from relevant stakeholders. Notifications under the TBT agreement are available for stakeholders through the ePing database³¹ but the agreement does not specify that proposals should be made available to interested parties.

The USMCA also includes a provision that encourages the parties to share translations of the notified drafts of other WTO Members notified with each other.³²

Overview of notification obligations:

- TBT agreement: notification of draft technical regulations, standards or conformity assessment procedures, obligations relating to the content of the notification, allow a reasonable time frame (30–90 days) for the other party to provide written comments: comments received must be replied to within a reasonable time frame.
- FTAs with an obligation to include information on content of the notification, namely, the objective of the proposal and how the proposal will achieve that objective.
- FTAs with an obligation to notify technical regulations and conformity assessment procedure that are in accordance with international standards.
- FTAs that specify the time frame for comments and that comments received must be replied to in writing.
- FTAs with an obligation to consider comments and explain any changes made due to comments left by the other party.
- FTAs with provisions that oblige the parties to ensure that regulations are published or made available for any interested parties to comment on.

30 EU-Japan FTA, article 7.9.

31 [Home - ePing SPS&TBT platform \(epingalert.org\)](https://www.epingalert.org/).

32 USMCA, article 11.7(20).



3.2 Good regulatory practices and the use of regulatory impact assessments

Another important type of mechanism for regulatory cooperation is the promotion of good regulatory practices when states are developing new technical regulations and conformity assessment procedures.³³ As discussed above, good regulatory practices can comprise a number of different tools, regulatory impact assessments being one of them. Together with notifications, i.e. notifying a trading partners of a proposed or amended measure and sharing a regulatory impact assessment with them, a transparent trading environment for both governments and businesses is created.

Many ambitious FTAs contain provisions related to regulatory impact assessment as a tool to promote good regulatory practices and prevent technical barriers to trade. This section therefore focuses on different approaches taken in FTAs to make use of regulatory impact assessments.

The WTO TBT Agreement provides a baseline regarding the promotion of good regulatory practices among WTO Members, including the use of regulatory impact assessments. The TBT Agreement does not contain any explicit obligations relating to regulatory impact assessments. However, some obligations relate to the information normally contained in impact assessments. For example, the TBT Agreement mandates that WTO Members explain the justification for a technical regulation if another member requests it.³⁴ The notification obligations also oblige WTO Members to share certain information regarding, for example, the objective of a technical regulation or a conformity assessment procedure and the products concerned.³⁵ The TBT Committee also promotes good regulatory practices as a tool to prevent technical barriers to trade through, for example, thematic sessions organised in connection with TBT Committee meetings.³⁶

Provisions related to regulatory impact assessments in FTAs add to the obligations that already exist in the TBT Agreement to varying degrees.

First, it can be noted that not all reviewed agreements include obligations related to regulatory impact assessments or obligations that require the parties to include information that is normally contained in impact assessments.

In some cases, there are no explicit references to impact assessments. Instead, the agreements contain obligations to provide information that would normally be included in impact assessments and that go beyond the information requirements in the TBT Agreement. This can be seen, for example, in the TBT chapters in CPTPP and KORUS and in the SADC TBT Annex. Such commitments can include obligations for the parties to provide additional information when a final technical regulation or conformity assessment procedure is published or upon request from the other party. The information that should be made available can *inter alia* be information on the nature of the problem to be addressed by the regulation, information on how the technical regulation or conformity assessment procedure fulfils the objective, a description of alternative approaches that the party considered, including socioeconomic benefits, costs and risks, as well as the merits of the approach that the party selected.³⁷

33 OECD, '[International Regulatory Cooperation](#)' (OECD Policy Brief, April 2020) p. 6.

34 TBT Agreement, article 2.5.

35 TBT Agreement, article 2.9 and article 5.6.

36 OECD and WTO, *Facilitating trade through regulatory cooperation – The case of the WTO's TBT/SPS Agreements and Committees* (WTO, Geneva/ OECD Publishing, Paris, 2019) p. 53.

37 See for example CPTPP, article 8.7(18) and SADC Protocol on Trade, TBT Annex, article 6. Another example is KORUS, which includes obligations related to information on the objective (KORUS, article 9.6(3)(a)).

Among the more ambitious provisions on regulatory impact assessment, for example, as seen in the Pacific Alliance, CPTPP and the EU-Japan FTA, are obligations for the parties to encourage regulatory authorities to conduct impact assessments that need to include a number of specific elements.³⁸ Such elements could include a description of the problem, an assessment of the need for regulation, and an examination of alternative measures and the costs and benefits associated with these options. Some cases, for example, the Pacific Alliance and the EU-Japan FTA, also have explicit requirements for impact assessments to describe the effects on Small and Medium-sized Enterprises (SMEs)³⁹ and the effects on trade.⁴⁰ Such obligations do not necessarily make it mandatory to carry out impact assessments, but only require the parties to encourage regulatory authorities to conduct impact assessments. Nevertheless, some agreements, such as the Pacific Alliance, include provisions that require the parties to report on progress concerning the work on regulatory impact assessments.⁴¹ A limitation on the obligation to carry out impact assessments is that sometimes the provisions only apply to certain measures determined by the parties.⁴²

The USMCA, also has requirements to make certain additional data publicly available, including scientific and technical analyses and any risk assessment that has been used in the development of a regulation.⁴³

Some agreements, including the EU-Japan FTA and the USMCA, also include requirements to review already existing regulations and to ensure that plans for the reviews and the results are publicly available.⁴⁴ The USMCA goes further and also lists factors that should be considered in such ex-post reviews. This includes the effectiveness of the regulation in achieving its objectives and new opportunities to eliminate unnecessary regulatory burdens. The parties must also consider the effects on small enterprises.

38 See, for example, Protocolo Adicional al Acuerdo Marco de la Alianza del Pacífico, article 15bis5, CPTPP, article 25.5, USMCA, article 28.11 and EU-Japan FTA, article 18(8).

39 See, for example, Protocolo Adicional al Acuerdo Marco de la Alianza del Pacífico, article 15bis5 and EU-Japan FTA, article 18.8.2(c).

40 EU-Japan FTA, article 18.8.2(c).

41 Protocolo Adicional al Acuerdo Marco de la Alianza del Pacífico, article 15bis9.

42 See, for example, Protocolo Adicional al Acuerdo Marco de la Alianza del Pacífico, article 15bis.3 and CPTPP, article 25.3.

43 USMCA, article 28.9.

44 EU-Japan FTA, article 18.9 and USMCA, article 28.13.

Overview of RIA obligations:

- TBT agreement: provisions that require members to provide certain information about a proposed technical regulation in the notification, for example, the objective of the regulation and the products being regulated, and to explain why a new technical regulation is being proposed at the request of another member.
- FTAs with obligations that require the parties to provide certain information in addition to the information required by the TBT Agreement that is normally included in regulatory impact assessments. Such information could concern a description of the problem that the regulation is supposed to address, information on how the objective will be achieved, descriptions of alternative policy options and the effects of such options, as well as an explanation as to why the chosen approach was selected.
- FTAs with obligations that require ‘the parties to encourage regulatory authorities to develop regulatory impact assessments that should include certain elements, for example, a description of the problem, alternative policy options and a description of their effects, sometimes specifically including the effects on SMEs and the effects on trade.

3.3 Mutual recognition

Mutual recognition means that a trading party accepts the technical rules of another party as being equivalent. This provides a mechanism to reduce technical barriers to trade and to enhance market access for industrial goods between markets in situations in which the parties lack identical regulations but have similar objectives and level of protection, and in which full harmonisation of technical regulations is not an option.⁴⁵ Consequently, mutual recognition does not lead to changes in material rules but instead, recognition is accorded to each other’s rules as being equivalent and therefore mutually acceptable.

Mutual recognition requires a significant amount of trust between trading partners and is seldom implemented without additional requirements and conditions. Thus, the mutual recognition between two or more parties is often preceded by a negotiation or some form of “regulatory screening”⁴⁶ by the parties, which provide for the final structure and the formalisation of mutual recognition. Aspects of GRP, such as the need for transparency, are thus important elements to discuss in order to create trust and facilitate reaching consensus on mutual recognition.

The TBT Agreement contains certain provisions relating to mutual recognition. For instance, the agreement encourages WTO Members to consider accepting certain technical regulations of other members as being equivalent to their own⁴⁷ and to accept the results of conformity assessment procedures of their trading partners whenever possible.⁴⁸ Naturally, other provisions in the agreement, such as the obligation to base

45 Within the EU internal market, the principle of mutual recognition is a specific mechanism to enhance the free movement of goods between the Member States in non-harmonised areas. This is followed by specific procedures, for example, notification obligations, to address situations in which the market access of a product is denied by the regulatory authorities in the Member States. These procedures should not be regarded as being comparable to the provisions of mutual recognition in FTAs.

46 Some agreements include such elements in themselves to follow up trade barriers, see, for example, article 13 Non-Tariff Barriers Elimination Matrices in AfCFTA.

47 WTO TBT Agreement, article 2.7.

48 WTO TBT Agreement, article 6.1.

technical regulations and conformity assessment procedures on international standards, also promote mutual recognition.⁴⁹ In addition, the TBT Agreement encourages members to negotiate **Mutual Recognition Agreements (MRAs)**.⁵⁰ In relation to MRAs, it can be noted that they can be challenging to use as it requires a significant amount of trust and preparatory work.

Mutual Recognition Agreements (MRA)

Mutual Recognition Agreements (MRA) are bilateral agreements that are negotiated between states to facilitate trade between two markets through the mutual recognition of testing and certification without the need for harmonisation of regulations.

Mechanisms used for mutual recognition in FTAs may concern the recognition of technical regulations and the recognition of **conformity assessment**. It is important to note that the two mechanisms are interrelated and should not be regarded as two separate mechanisms. Further, it should be highlighted that the conditions for mutual recognition vary depending on, for example, the existing mandatory requirements and national approach to conformity assessment and the conformity assessment bodies in each country.

Conformity Assessment

Conformity assessment involves a process showing that specified requirements have been met. Such requirements may concern safety and quality and apply to a product, service, process or system. The requirements may be set by a state, company or a standardisation body. To assess whether the requirements have been met, various procedures are used, including testing, inspection and certification.

3.1.1 Mutual recognition of technical regulations

As mentioned, mutual recognition may imply that trading partners agree to accept each other's technical regulations as being equivalent, meaning that the regulations are deemed to offer a similar level of protection. Mutual recognition of technical regulations in an FTA can either mean that all technical regulations for a specific product are accepted, or that only specific technical regulations are accepted as being equivalent. It is important to highlight that the mutual recognition of a specific technical regulation is not the same as recognising a whole product as being compliant. On a general level, mutual recognition of products without links to specific regulations is unusual.⁵¹ Thus, when whole products are recognised, the recognition covers a broad range of requirements relating to production, composition, quality or performance, packaging, labelling, inspection and possibly third-party conformity assessment.⁵²

A first step towards mutual recognition of technical regulations is a common understanding between two or more trading partners. This can be achieved by exchanging information relating to technical regulations and increasing the alignment of technical regulations with international standards. For instance, in the EU-Japan FTA and CETA the parties have agreed to provide each other with information and documents when the other party has an interest in developing a similar technical regulation.⁵³

49 WTO TBT Agreement, article 2.4 and 5.4.

50 WTO TBT Agreement, article 6.3.

51 However, such settings for mutual recognition do exist. See, for example, the TTMRA.

52 See, for example, articles 34 and 35 in the Treaty of the Functioning of the European Union, and Part IV of the Arrangement between the Australian Parties and New Zealand Relating to Trans-Tasman Mutual Recognition.

53 EU-Japan FTA, article 7.3 and CETA, article 4.4(2).

Many of the analysed agreements contain provisions that require the parties to justify why a technical regulation is not accepted as being equivalent, if the party is requested to do so, slightly increasing the level of regulatory ambition. This is the case, for example, in the CPTPP, the EU-Japan FTA, CETA and Pacific Alliance agreements.⁵⁴ This does not lead to the automatic acceptance of equivalence but may in the long term promote mutual recognition.

Another example is SADC, which requests the member states accept the technical regulations of other members as being equivalent if they fulfil the same objectives.⁵⁵ This could be a far-reaching commitment. However, more information on the practical implementation is needed.

The most far-reaching approach of the agreements studied can be found in the TTMRA. Under this agreement, any product legally sold in the jurisdiction of one party may be legally sold in the jurisdiction of the other party. The agreement covers almost all products, although there are certain exemptions.⁵⁶

3.1.2 Mutual recognition of conformity assessment

When trading partners agree to include provisions on mutual recognition of conformity assessment procedures in an FTA, the objective is to avoid trade barriers that are linked to the re-testing of products in the export country. The mutual recognition of conformity assessment in the FTA does not mean that the parties accept each other's products directly. Instead, they recognise the other trading partner's ability to evaluate the competence of **conformity assessment bodies (CABs)** and the testing and certification carried out by the other party.

Conformity Assessment Body (CAB)

A conformity assessment body (public or private) is a laboratory, certification body, inspection body or testing laboratories that has the competence to carry out specific tests, calibrations or certifications according to international standards.

The various agreements studied for the analysis provide an overview of the most common elements in enhancing mutual recognition of conformity assessment in FTAs.

The mechanisms are often supported by requirements to qualify and formalise the CABs that operate under the agreements. Commitments on mutual recognition in FTAs can vary from simply relying on the provisions of the TBT Agreement (i.e. encouraging acceptance of CABs in other WTO Members on terms that are no less favourable to the terms in their own territory)⁵⁷ or provisions that require justification of a decisions not to recognise a CAB of the other party,⁵⁸ the acceptance of CABs that operate under international accreditation schemes (such as the IAF and ILAC),⁵⁹ only accepting accredited bodies in general or a specific commitment to accept conformity assessment in specific sectors, or a combination of these. The existing international and regional arrangements, i.e. agreements that promote acceptance of conformity assessment results,

54 CPTPP, article 8.9(6), EU-Japan FTA, article 7.5(2), Protocol on the mutual acceptance of the results of conformity assessment to CETA, article 4.4(1) and Protocolo Adicional al Acuerdo Marco de la Alianza del Pacífico, article 7.6.

55 SADC Protocol on Trade, article 17.4.

56 TTMRA, 8.1 and Schedule 2.

57 See article 6.4 in the WTO TBT Agreement and CPTPP article 8.6(1), KORUS, article 9.5(4), and Protocolo Adicional al Acuerdo Marco de la Alianza del Pacífico) article 7.7(6).

58 Protocolo Adicional al Acuerdo Marco de la Alianza del Pacífico, article 7.7(4), CPTPP, article 8.6(12) and (13), KORUS, article 9.5.2.

59 See Protocol on the mutual acceptance of the results of conformity assessment to CETA, article 12(1) and Annex 6 on Technical Barriers to Trade to AfCFTA, article 8 e).

are particularly useful in FTA contexts as they usually lead to a more consistent regime.⁶⁰ Examples of such arrangements are the international IAF and ILAC cooperation and regional cooperation in Africa – the African Accreditation Cooperation (AFRAC).

Qualification of the competence of CABs to carry out conformity assessment is often linked to a **designation process** that point to the designating party, i.e. a party that also has the authority to withdraw the CABs that operate under the provisions in an agreement.⁶¹ The contents and form of designation may vary from one agreement to another.

Designation of conformity assessment bodies

An act whereby one of the parties to the agreement informs the other party that a body that fulfils the relevant requirements has been designated to carry out a conformity assessment according to the other party's requirements.

The national authority responsible for setting up and carrying out the necessary procedures for the assessment and designation of conformity assessment bodies under an agreement is called the **Designating Authority**.

Examples of various mechanisms

The level of ambition of the commitments on mutual recognition of conformity assessment in an FTA may vary from one provision to the next, encouraging trading partners to recognise each other's mechanisms for binding commitments with more comprehensive arrangements, involving both horizontal and sector-specific provisions.

Many FTAs, such as the CPTPP, Pacific Alliance, KORUS, EU-Japan and EU-Korea, provide an overview of mechanisms to promote the acceptance of conformity assessment results for the parties to consider.⁶²

A slightly more far-reaching type of provision can be found in CPTPP, KORUS and the Pacific Alliance, in which the parties must justify their decisions not to accept conformity assessment results from bodies in the other parties.⁶³

Another approach can be found in the EAC in which conformity assessment results must be accepted by members where there is a compulsory EAC standard.⁶⁴

In several cases, trading partners may make use of already existing mechanisms and thus facilitate mutual recognition by, for example, referring to a relevant MRA, one example being the MRAs within the framework of the APEC.⁶⁵ The APEC constitutes a broad-ranging economic cooperation and the implementation of the MRAs in APEC remains voluntary. The APEC MRAs cover telecommunications equipment, rules related to electromagnetic compatibility (EMC) and electrical safety regulations, the former leading to the mutual recognition of conformity assessment results and the latter to the recognition of regulations.

60 Protocol on the mutual acceptance of the results of conformity assessment to CETA, article 12(l), Annex 6 on Technical Barriers to Trade to AfCFTA, article 8 e).

61 This is needed to address a situation in which, for example, a conformity assessment body operating under an agreement does not anymore fulfil the requirements set in the agreement.

62 See, for example, CPTPP, article 8.9, Protocolo Adicional al Acuerdo Marco de la Alianza del Pacífico, article 7.7 and KORUS, article 9.5.

63 Protocolo Adicional al Acuerdo Marco de la Alianza del Pacífico, article 7.7(4), CPTPP, Article 8.6(12) and (13) and KORUS, article 9.5.2.

64 East African Community Standardisation, Quality Assurance, Metrology and Testing Act, article 21(8).

65 See, for example, APEC Mutual Recognition Arrangement for Conformity Assessment of Telecommunications Equipment (MRA-TEL) and the APEC Mutual Recognition Arrangement for Equivalence of Technical Requirements (MRA-ETR).

In some FTAs, in which the parties are also members of the APEC, reference is made to the APEC MRAs. This applies to the CPTPP, in which the parties are encouraged to implement the APEC MRAs.⁶⁶ Similarly in KORUS, the parties agree to take measures to implement the APEC Mutual Recognition Arrangement for Conformity Assessment of Telecommunications Equipment.⁶⁷ In this way, the parties appear to confirm the value of the APEC MRAs in the telecommunications sector. No standards or technical regulations are mutually accepted under the MRA, but where one CAB holds accreditation for one country's regulations and standards, it can apply for designation for another country provided that the regulations and standards are sufficiently similar.⁶⁸

A similar approach for closer cooperation on conformity assessment in particular sectors can be found within the framework of ASEAN. ASEAN member states have concluded sectoral MRAs, for example, for electrical and electronic equipment.⁶⁹ In ASEAN this is part of an overarching framework whereby the members have agreed to develop and implement such sectoral MRAs.⁷⁰

The parties may also agree to accept a self-declaration from manufacturers, often with regards to low-risk products. This is most commonly known as **Supplier's Declaration of Conformity (SDoC)**. The mutual recognition of SDoCs as part of an FTA further simplifies the process for manufacturers as it limits the need for duplication of documents, as manufacturers are able to use the same SDoC in the export market.

For example, the EU often promotes the use of SDoCs in FTAs. Such provisions can be found in the EU-South Korea FTA,⁷¹ in which the parties have agreed to accept some products⁷² based on an SDoC with or without testing by a laboratory that is qualified by notified bodies from the other party. The use of SDoCs facilitates the process of placing a product on the market while ensuring product safety, which is why it is widely used in the EU for low-risk products. SDoCs are also used outside the EU. For example, the APEC MRAs also make provision for the use of suppliers' declarations in certain cases.⁷³

Supplier's Declaration of Conformity (SDoC)

A supplier's Declaration of Conformity (often referred to as *self-declaration*) is a document from a manufacturer or their representative which states that a product meets the requirements of the legislation governing the product in question. An SDoC is normally supported by technical documentation. The manufacturer may also need to conduct tests, obtain the necessary laboratory test reports and certificates and use them as a basis for drawing up the SDoC.

66 CPTPP, Annex 8-B, Section C.

67 Phase II of the APEC Mutual Recognition Arrangement for Conformity Assessment of Telecommunications Equipment. See KORUS, article 9.5.5.

68 KORUS, article 9.5.5.

69 ASEAN Sectoral Mutual Recognition Arrangement for Electrical and Electronic Equipment, article 5.

70 ASEAN Trade in Goods Agreement, article 73(2), (b) and (c).

71 See for example the EU-South Korea FTA, Annex 2-B.

72 The covered aspects are electromagnetic compatibility and safety of electrical equipment.

73 APEC Telecommunications and Information Working Group, 'A Guide for Industry to the APEC TEL Mutual Recognition Arrangement' (APEC Secretariat, 3rd Edition, 2015) < <https://www.apec.org/docs/default-source/groups/tel/a-guide-for-industry-to-apec-tel-mutual-recognition-agreement-mra.pdf> >, p. 7.

Overview of obligations on mutual recognition of technical regulations:

- TBT agreement: using international standards as a basis for technical regulations and conformity assessment procedures when appropriate.
- FTAs with obligations to exchange information on technical regulations.
- FTAs that require the parties to explain why the other party's technical regulations have not been recognised as equivalent.
- FTAs that include obligations to accept products legally sold in one market to be sold in another market.

Overview of obligations on recognition of conformity assessment procedures:

- FTAs that include provisions encouraging the use of different types of mechanisms to facilitate the acceptance of conformity assessment results.
- FTAs that require the parties to explain why the other party's conformity assessment procedures have not been recognised as equivalent.
- FTAs that make use of existing MRAs in certain sectors.
- FTAs that include provisions on acceptance of a supplier's declaration of conformity.

3.4 Harmonisation

Harmonisation refers to the adaptation of regulations so that they become similar or even identical to the regulations in other markets. There are various levels of harmonisation, from the harmonisation of certain aspects of legislation to the introduction of fully harmonised legislation with identical requirements.⁷⁴

The analysis of provisions on regulatory cooperation in FTAs shows that the parties to FTAs take various approaches in their efforts to achieve harmonisation, even in cases in which full harmonisation is not pursued.

The TBT Agreement contains provisions that support the harmonisation of technical regulations and conformity assessment procedures based on international standards. According to the TBT Agreement, WTO Members are obliged to use relevant international standards as a basis for their technical regulations, except when such standards would be an ineffective or inappropriate means for fulfilment of the legitimate objectives being pursued.⁷⁵ There is a similar provision with regards to conformity assessment procedures. Members are obliged to use guidelines or recommendations issued by an international standardisation body, except where the use of such guides and recommendations would be inappropriate.⁷⁶

The TBT Agreement also states that members shall fully contribute, within the limits of their resources, in the preparation by appropriate international standardisation bodies of international standards for products for which they have adopted or are considering adopting technical regulations and guidelines or recommendations for conformity

⁷⁴ See for example WTO, *The WTO Agreements Series, Technical Barriers to Trade* (WTO 2014), p. 32.

⁷⁵ TBT Agreement, article 2.4.

⁷⁶ TBT Agreement, article 5.4.

assessment procedures.⁷⁷ This provision also encourages harmonisation. There are similar provisions relating to harmonisation with regards to standards in the TBT Agreement.⁷⁸

In FTAs, the parties often agree on provisions that build on and go beyond the provisions of the TBT Agreement to varying degrees.

The TBT Agreement does not specify which organisations are considered to be organisations in the process of developing international standards. This means that although the TBT Agreement encourages the use of international standards, it does not specify what those standards are, thereby leaving room for interpretation. In some FTAs, the parties go beyond the TBT Agreement and list organisations that are considered to be in the process of developing international standards or specify that cooperation on harmonisation will be carried out within the framework of a specific organisation. Examples of this approach can be found in KORUS and in the EU-South Korea FTA, in which the parties have agreed to cooperate on automotive harmonisation through participation in UNECE WP.29 in the case of KORUS⁷⁹ and to acknowledge UNECE WP.29 as the appropriate international standard setting body with regards to harmonisation of regulations for vehicles in the case of EU-South Korea FTA. Furthermore, in the EU-South Korea FTA, the parties have agreed to harmonise certain technical regulations with UNECE regulations.⁸⁰ The EU-Japan FTA, for its part, lists a number of international organisations whose standards under certain conditions shall be considered international standards.⁸¹

An alternative approach to the harmonisation of legislation with international standards that is sometimes used in FTAs is that the parties voluntarily harmonise their legislation with the legislation of third countries. One example of this approach can be found in the Pacific Alliance annex on cosmetics, which *inter alia* requires the parties to take measures to harmonise the definition of cosmetics based on EU legislation.⁸² Moreover, concerning ingredients in cosmetic products, the annex states that the parties will take into account ingredients listed in the EU and the USA.⁸³ In a similar but less specific manner, the Pacific Alliance chapter on Regulatory Improvement (*Mejora Regulatoria*) also obliges the parties to encourage their regulatory authorities to consider regulations from other parties, as well as regulations developed in other relevant international fora.⁸⁴ This type of approach essentially means that countries voluntarily adopt the rules and regulations of other countries. Such legislation may then become de facto global standards. There are studies showing that this has been the case with some types of EU legislation. For instance, studies have shown that the EU REACH legislation⁸⁵ has provided inspiration to other countries outside of the EU when they have developed national legislation on chemicals.⁸⁶

In some FTAs, the parties have not agreed to harmonise rules in a certain area, but have instead given the parties the opportunity to request cooperation in certain sectors and

77 TBT Agreement, article 2.6.

78 TBT Agreement, Annex 3, provisions F and G.

79 KORUS, article 9.7(I).

80 EU-South Korea FTA, Annex 2-C, article 2 and article 3(a)(iii).

81 EU-Japan FTA, article 7.6.

82 Protocolo Adicional al Acuerdo Marco de Alianza del Pacífico, Anexo 7.11 Cosméticos, paragraph 1.

83 Protocolo Adicional al Acuerdo Marco de Alianza del Pacífico, Anexo 7.11 Cosméticos, paragraph 4.

84 Protocolo Adicional al Acuerdo Marco de la Alianza del Pacífico, article 15bis5.

85 Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) [2006] OJ L 396/1.

86 Elizabeth Golberg '[Regulatory Cooperation – A Reality Check](#)' (Harvard Kennedy School, Mossavar-Rahmani Center for Business and Government, M-RCBG Associate Working Paper Series no. 115, 2019), p. 23.

introduced an obligation, on request, to give favourable consideration to sector-specific proposals for cooperation.⁸⁷

The most ambitious approach is the full harmonisation of regulations, whereby the parties to an FTA essentially adopt the same rules. One example of this approach is COMESA, in which the treaty includes provisions that provide for the adoption of common legislation such as regulations, directives, decisions and recommendations.⁸⁸ The COMESA Treaty also includes several regulatory cooperation chapters in different fields, for example, with regards to road transport.⁸⁹

In several FTAs, for example, EAC, SADC and ECOWAS, member states develop harmonised standards and also have procedures in place to ensure that member states adopt the standard as a national standard and withdraw any national standard with similar scope and purpose.⁹⁰ Certain FTAs go further and also require the adoption of mandatory technical regulations based on jointly developed standards. For example, in the EAC the Council can declare an East African Standard or a provision in an East African Standard to be a compulsory standard which member states are obliged to implement nationally.⁹¹

Overview of obligations on harmonisation:

- TBT Agreement: obligation to base technical regulations and conformity assessment procedures on international standards and participate in the work of international standardisation organisations.
- FTAs that provide an opportunity to propose areas for cooperation on the development of rules.
- FTAs that encourage regulators to take into account legislation in third countries in the development of new rules.
- FTAs that encourage harmonisation with legislation in third countries.
- FTAs that specify which organisations are considered to be developing international standards.
- FTAs with commitments to harmonise technical regulations with international standards from a certain organisation.
- Full harmonisation.

⁸⁷ See, for example, KORUS, article 9.4(l).

⁸⁸ COMESA Treaty, article 10.1.

⁸⁹ COMESA Treaty, article 85.

⁹⁰ East African Community Standardisation, Quality Assurance, Metrology and Testing Act, 2006, article 13 and 15, SADC Protocol on Trade, TBT Annex, article 7, and ECOWAS article 5.4.2(o) Regulation C/REG.14/12/12 adopting ECOWAS Standard Harmonisation Procedures.

⁹¹ East African Community Standardisation, Quality Assurance, Metrology and Testing Act, 2006, article 18.

4 Promoting sustainable development through regulatory cooperation

International trade is an important tool for the achievement of the 2030 Agenda and the 17 Sustainable Development Goals (SDGs), as international trade can support inclusive economic growth and poverty reduction, as well as promote sustainable development in other ways. Trade is explicitly mentioned in Goal 17 of Agenda 2030 (Partnerships for the Goals),⁹² but is also relevant to several additional SDGs such as SDG 12 (Responsible Consumption and Production) and SDG13 (Climate Action), to mention a few. It is therefore important that as far as possible, trade policy, including provisions in FTAs, helps to address sustainability challenges and promote sustainability objectives.

As mentioned earlier, technical regulations, standards and conformity assessment procedures are often used by states to promote policy objectives related to, for example, health, safety and the protection of the environment with the potential to contribute to sustainability goals. This can include rules on energy efficiency and circular economy,⁹³ as well as rules on product safety.

Regulatory cooperation in FTAs can provide additional benefits which can further promote sustainability objectives. Firstly, regulatory cooperation in itself reduces trade barriers, thereby decreasing the costs of trade. With the right focus on sustainability goals, this increases the potential for sustainable economic growth resulting from trade.

Furthermore, increased cooperation in the development of regulations covering sustainability issues can also lead to regulations that more effectively address sustainability challenges. Through increased cooperation, more perspectives from stakeholders can be considered when assessing and balancing conflicts of interests.

Regarding the specific mechanisms discussed in this report, for example, the obligation to notify regulations, it could lead to increased transparency and information on both

92 United Nations General Assembly, 'Transforming our World: the 2030 Agenda for Sustainable Development' (A/RES/70/1, 2015), p. 27.

93 OECD, '[Greening Regional Trade Agreements on Non-Tariff Measures through Technical Barriers to Trade, and Regulatory Cooperation](#)' (OECD Trade and Environment Working Papers 2020/04) p. 7.



proposed and existing environmental regulations, as well as the use of standardisation and certification systems for sustainability purposes. In this way, a notification obligation could, for example, provide a basis for dialogue on national levels of protection for the environment. It could also ensure that relevant stakeholders are involved in discussions,⁹⁴ as well as facilitate dialogue between regulators in different countries.

The notification procedure is an important mechanism for identifying technical barriers to trade that affect climate-relevant goods. Identifying potential barriers at an early stage is crucial for facilitating trade in climate-relevant goods such as energy-saving technologies. Notifications can also facilitate dialogue between regulators on what measures could be taken to reduce barriers in these areas, thereby highlighting areas or sectors for possible regulatory cooperation efforts.

Obligations on the use of GRP in FTAs can contribute to sustainable development by encouraging science-based, cost-effective and socially and environmentally responsible regulations.⁹⁵ A particularly important tool in this respect is the encouragement to use regulatory impact assessments when developing domestic regulations. Requirements to develop an impact assessment that highlights economic, environmental and social effects will encourage regulators to reflect on the impact of the proposed regulation on aspects of sustainability and provide an opportunity to address potential conflicts of interest and the negative effects on sustainability. By clearly stating that factors such as social, economic and environmental effects and the effects on gender equality should be taken into account, provisions in trade agreements could contribute to an increased focus on sustainability in regulation and increased transparency. Communicating an RIA to stakeholders could give an indication as to whether there were other effects on sustainability to be taken into account, as well as strengthen support for a regulatory proposal.

Mutual recognition can contribute to sustainable development in that it helps to ensure that sustainability-related product requirements are fulfilled. By mutually recognising the results of conformity assessment procedures, products will still be tested in accordance with the same requirements, but the testing will be facilitated by allowing it to take place in the country of production. This means that the level of protection from a sustainability perspective is maintained. To the extent that mutual recognition of the results of conformity assessment cover goods that are particularly important for sustainability, for example, materials and components for the production of renewable energy, it could facilitate trade in environmental goods, thereby further contributing to sustainability.⁹⁶

The harmonisation of regulations can also contribute to facilitating trade in goods that are particularly relevant to the environment, such as energy efficient products, products for the generation of renewable energy, as well as recycled products. One way this can be achieved is by encouraging harmonisation with international standards that are particularly relevant to environmental goods by identifying such standards in FTAs, as is the case in the EU-Japan FTA.⁹⁷ Regulations based on international standards may also serve to define, for example, waste, recyclable products, refurbished products, remanufactured products and second-hand goods.⁹⁸ Harmonised standards for eco-

94 OECD, '[Greening Regional Trade Agreements on Non-Tariff Measures through Technical Barriers to Trade, and Regulatory Cooperation](#)' (OECD Trade and Environment Working Papers 2020/04) p. 8.

95 OECD, '[Greening Regional Trade Agreements on Non-Tariff Measures through Technical Barriers to Trade, and Regulatory Cooperation](#)' (OECD Trade and Environment Working Papers 2020/04) p. 8.

96 See, for example, Mahesh Sugathan, '[Mutual Recognition Agreement on Conformity Assessment – A Deliverable on Non-Tariff Measures for the EGA?](#)' (ICTSD Environment Issue Paper no 21, 2016).

97 OECD, '[Greening Regional Trade Agreements on Non-Tariff Measures through Technical Barriers to Trade and Regulatory Cooperation](#)' (OECD Trade and Environment Working Papers 2020/04) p. 22.

98 OECD, '[International Trade and the Circular Economy – Policy alignment](#)' (OECD Trade and Environment Working Paper 2021/02) p. 59.



design, eco-labelling and quality in second-hand and remanufactured goods are examples of such standards.

This could promote trade in and more efficient use of such goods, thereby promoting environmental sustainability. International standards can also contribute to other dimensions of sustainability. When considering standards for climate-friendly products, there are challenges to take into account. Lack of consistent measurement is one example of this. Consistent measurement methods can enable a lifecycle and product perspective so that technology-neutral standards can be developed. Comparable accounting methods will be critical in this process so that emissions are measured and accounted for on a consistent basis.⁹⁹

In the context of regulatory cooperation and sustainable development, the importance of ensuring that regulatory cooperation does not lead to reduced levels of protection related to sustainability has been emphasised. For instance, it is important to ensure that harmonisation leads to better outcomes from a sustainability perspective and that increased opportunities for stakeholders to be involved in the regulatory process does not lead to special interests hindering the development of regulations that promote sustainability. It has been suggested that FTAs could clearly outline the goals of regulatory cooperation and the need to not lower standards.¹⁰⁰ This was suggested in the framework of environmental protection. However, for other aspects of sustainability, too, such as social sustainability, clear goals for regulatory cooperation could be beneficial in order to ensure that regulatory cooperation strengthens sustainable development.

⁹⁹ National Board of Trade 'Supporting the Green Transition through Regulatory Cooperation within the Trade and Technology Council' (National Board of Trade Sweden 2022)

¹⁰⁰ OECD, '[Greening Regional Trade Agreements on Non-Tariff Measures through Technical Barriers to Trade, and Regulatory Cooperation](#)' (OECD Trade and Environment Working Papers 2020/04) p. 8. It can be noted that, for example, the Joint Interpretative Instrument of CETA states that CETA will not lower standards and regulations in the EU and Canada related to food safety, product safety, consumer protection, health, environment or labour protection.

5 An all-star approach to regulatory cooperation in FTAs

In this report, different mechanisms used for regulatory cooperation in FTAs have been mapped within four areas, namely, obligations related to *notifications*, *regulatory impact assessments*, *mutual recognition* and *harmonisation*. The objective of the report was to identify best practices to be incorporated in future regulatory cooperation and to highlight how these mechanisms can promote sustainability objectives.

A number of similar mechanisms to promote regulatory cooperation can be identified, although the details in specific provisions may vary. For example, many of the agreements reaffirm the commitments made in the TBT Agreement. Some agreements go further, also adding TBT plus obligations. This indicates that the level of regulatory cooperation in the TBT Agreement provides a baseline for regulatory cooperation.



Some of the agreements studied are significantly more far-reaching with regards to certain mechanisms. Typical for these mechanisms is that the parties are involved in extensive cooperation outside the framework of the agreement. This suggests that the context and the already established trust in each cooperation is a decisive factor for how far-reaching mechanisms can be included in a regulatory cooperation chapter.

Nevertheless, a number of mechanisms that would be beneficial to include in an ambitious regulatory cooperation chapter can be identified. *All-star* implies a cast comprising outstanding performers or players in their field.¹⁰¹ By compiling the “best of the best” from the mechanisms studied, we aim to create an all-star regulatory cooperation chapter, as outlined below.

101 [Cambridge Dictionary](#) Accessed 20 June 2022



Elements of an all-star regulatory cooperation chapter

	General to all mechanisms <ul style="list-style-type: none">• Reaffirm the commitments of the WTO TBT Agreement• Include sustainability as an objective for regulatory cooperation and also sustainability-related aspects in relevant mechanisms, as exemplified below.
	Transparency/notifications <ul style="list-style-type: none">• Also notify technical regulations that are in accordance with international standards.• Include more information about the regulations in the notifications, such as information on alternative approaches being considered.• Specify the time frame for comments and that comments received must be replied to in writing.• Translate any notified technical regulations.
	Good regulatory practices and regulatory impact assessments <ul style="list-style-type: none">• Encourage the development and use of RIAs, specifically RIAs that include an assessment of the effects on SMEs, the impact on trade and sustainability aspects. If the context permits, make commitments on RIAs binding.
	Mutual recognition <ul style="list-style-type: none">• Choice of mechanism will be largely dependent on the context and existing level of cooperation and trust between the parties.• Where the context permits, the most far-reaching commitments would be to recognise the technical regulations of the other party and allow goods accepted by one trading partner to also be sold in the territory of the other trading partner.
	Harmonisation <ul style="list-style-type: none">• List organisations that are considered to be developing international standards.

Transparency/Notifications

Several of the agreements analysed refer to the notification obligations in the TBT Agreement without developing these obligations any further. This indicates that the notification obligations in the TBT Agreement are perceived as far-reaching and sufficient. Thus, in an ambitious chapter on regulatory cooperation it would be important to reaffirm the notification obligations in the TBT Agreement.

In addition, some agreements¹⁰² include requirements that go beyond the notification obligations in the TBT Agreement. Such provisions may include notification of technical

¹⁰² For example, the Pacific Alliance and CPTPP.

regulations that are in accordance with international standards and to provide additional information regarding, for example, the issue that the technical regulation is designed to address, as well as alternative approaches considered in the notification. Although a broader selection of technical regulations to be notified may make notification and the review of notifications slightly more time consuming, it has the potential to increase transparency and help companies to adapt to new regulations, as well as foster dialogue on sustainability issues, for example. Moreover, the provision of additional information as early as the time of notification can provide clarity regarding the proposed legislation, thereby reducing the need for information exchange at a later stage. If this is combined with obligations related to the RIAs below, the requested additional information will already be available in the RIA, which could facilitate notification and reduce any additional burden.

In addition, specifying the time frame for comments and that any comments received must be replied to in writing could also help foster dialogue between partners and ensure the quality of regulations.

Through the use of recently developed transparency tools, such as the ePing database, stakeholders also have the opportunity to monitor and review regulations in which they are interested. This could make the review less time consuming.

Another important aspect to enhance the notification obligation in FTAs is the translation of notified technical regulations. When technical regulations are notified in the EU through the notification procedure in directive (EU) 2015/1535, the legislative drafts are translated into all official EU languages. This facilitates dialogue between member states by ensuring that the drafts can be effectively scrutinised. It also ensures the involvement of stakeholders established in different countries, as translation is necessary for all interested parties to ensure that they are able to analyse and comment on notified proposals. The benefits of the translation of notifications and related documents was also highlighted at the 9th Triennial Review of the TBT Agreement.¹⁰³ The USMCA includes an interesting provision in this regard as it encourages the parties to share translations of other WTO Members' notified drafts with each other. Such a provision can facilitate dialogue as more stakeholders have access to information on the regulation.

Good Regulatory Practices and Regulatory Impact Assessments

The most far-reaching type of provisions on RIAs explicitly states that a RIA is to be made, and sometimes also requires inclusion of the effects on trade and SMEs. However, in most agreements, RIA provisions are not detailed as the parties merely make commitments to encourage regulatory authorities to carry them out.¹⁰⁴ Some agreements also contain requirements to make ex-post evaluations of regulations.¹⁰⁵

In an ambitious chapter on regulatory cooperation, it would be important to include provisions that encourage the development of RIAs, specifically RIAs that include an assessment of the effects on SMEs, the impact on trade and sustainability aspects. This is important for increasing transparency and also making it easier for stakeholders, including other trading partners, consumers and companies, to understand and scrutinise the rationale and justification for regulations, as well as the compatibility of regulations with trade agreements and sustainability objectives. This will enable commitments on

103 See, for example ,proposals from the Philippines and Singapore, respectively, WTO Documents Online, G/TBT/W/746/Rev.1 and G/TBT/W/755, Section 1.

104 Protocolo Adicional al Acuerdo Marco de la Alianza del Pacifico, article 15bis5, CPTPP, article 25.5, and EU-Japan FTA, article 18.8.

105 See for example EU-Japan FTA, article 18.9.

RIAs to contribute to creating transparent and strong institutions, as well as regulations that take sustainability aspects into account. As mentioned above, requirements to develop an RIA can also facilitate notifications and dialogue as the requested information is already available. Given the potential of commitments on RIA to contribute to both facilitating trade and enhancing sustainability, a further development could be the inclusion of commitments in FTAs that make RIAs mandatory.

Another important aspect to include is the ex-post review of regulations. Ex-post evaluation of existing regulations can help prevent trade barriers, as well as ensure that regulations promote sustainability. When such provisions are included in a horizontal chapter, this can also create positive spill over effects on a more general regulatory level.

Mutual recognition

If a definite stand is to be taken on the actual benefits of the provisions on mutual recognition, and therefore which mechanisms would be useful to include in an *All-Star Regulatory Cooperation Chapter* in FTAs, then this must be done cautiously. Multiple different aspects related to the current relationship between trading partners will be decisive, for example, geographical distance, ongoing dialogue, level of economic integration and similarity between regulatory systems. For example, it will be easier to build trust between trading partners that already share similar regulatory frameworks. Furthermore, the mutual recognition of conformity assessment between two or more trading partners will also be enabled if there is an already existing mechanism, such as a mutual recognition agreement, that other parties can join.

An agreement that illustrates such aspects is the TTMRA, which includes far-reaching provisions that provide for the recognition of technical regulations. This agreement may be better understood by noting that it is based on two geographically interlinked and interdependent economies with a bilateral regulatory cooperation that goes far back in time.

In situations in which such conditions do not exist, most of the analysed provisions aim to achieve strengthened information exchange and dialogue between FTA partners. In the long run, such provisions could result in an enhanced understanding of the regulatory rationale of trading partners, which may pave the way for more ambitious regulatory commitments between trading partners in the future.

Harmonisation

A number of different approaches to encourage harmonisation have been identified in this analysis and could be included in an all-star regulatory cooperation chapter.

One example would be to include provisions in which organisations whose standards are to be considered as international standards are listed. Such provisions could help to provide clarity and avoid trade conflicts. This issue is often discussed in the TBT Committee and has also been the subject of disputes in the WTO dispute settlement system.¹⁰⁶ Another example could be for trading partners to harmonise their legislation with legislation in a third country that regulates the same issue. Such an approach would be supported by transparency commitments such as notifications.

106 See for example *European Communities – Trade Description of Sardines* (DS231).

Greater promotion of sustainability

A common denominator in the different mechanisms recommended is the opportunity to use provisions on regulatory cooperation to promote sustainable development. The analysis shows that each of the mechanisms for regulatory cooperation could be used to promote sustainability aspects. However, this opportunity appears to be underutilised in FTAs as explicit references to sustainability are quite rare in the agreements studied.

For example, mechanisms in the area of mutual recognition and harmonisation could focus on products that are important for sustainable development in order to facilitate trade in such products, thereby contributing to sustainability. Moreover, provisions on RIAs could make it mandatory for FTA partners to consider sustainability issues when developing regulatory impact assessments. In order to ensure that regulatory cooperation leads to higher standards related to environmental, social and economic sustainability, FTAs could focus more on highlighting sustainability as a goal of regulatory cooperation and the need to not lower standards. Not least, recent developments such as the COVID-19 pandemic, climate crisis and Russia's war on Ukraine show the importance of ensuring that regulatory cooperation efforts promote sustainability objectives.

In conclusion, one of the most important take aways from the analysis is that commitments on regulatory cooperation offer significant opportunities to promote sustainable development. Sustainability should be prioritised and included in each mechanism of an *All-Star Regulatory Cooperation Chapter*.

In this context, technical regulations, standards and conformity assessment procedures can be regarded as *superheroes*, with the ability to facilitate trade and promote sustainable development.



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Sammanfattning på svenska

Summary in Swedish

Denna rapport kartlägger och analyserar flertalet frihandelsavtal (FTA) i syfte att identifiera verktyg och mekanismer som kan användas för att mer effektivt främja regulativt samarbete och minska förekomsten av tekniska handelshinder (TBT). Analysen innefattar kapitel om god regleringssed och regelsamarbete, TBT, transparens samt sektoriella kapitel och bilagor i totalt 14 frihandelsavtal. Rapporten baseras på en teoretisk analys av bestämmelserna i frihandelsavtalen och fokuserar särskilt på fyra områden: *förpliktelser i samband med anmälan av tekniska föreskrifter, konsekvensutredning av lagstiftning, ömsesidigt erkännande och regelharmonisering*. Analysen belyser också hur regulativt samarbete kan användas för att främja hållbarhetsmål och stödja den gröna omställningen.

Rapporten drar slutsatsen att även om vissa mekanismer ofta återkommer i avtalen finns det möjlighet till olika ambitionsnivåer i tillämpningen av mekanismerna och verktygen. Rapporten identifierar också överenskommelser som är betydligt mer långtgående vad gäller vissa mekanismer och drar slutsatsen att ett kännetecken för de mer framgångsrika samarbetena, är att parterna också är involverade i ett omfattande regulativt samarbete även utanför frihandelsavtalet.

Rapporten identifierar också ett antal mekanismer som skulle vara fördelaktiga att inkludera i kapitel om regulativt samarbete för samtliga fyra områden. Dessutom dras slutsatsen att dessa mekanismer kan medföra betydande möjligheter för att främja mål för hållbar utveckling och grön omställning, men att dessa möjligheter tycks vara underutnyttjade i befintliga frihandelsavtal.

Rapporten rekommenderar därför att hållbarhet prioriteras i kapitlen om regulativt samarbete och i större utsträckning ingår i de mekanismer som tillämpas för samarbete inom TBT-området.

Appendix

Table 1. Analysed Free Trade Agreements

Agreement	Parties/ Member States	Establishment	Legal texts covered by the analysis
Association of Southeast Asian Nations (ASEAN)	Brunei, Cambodia, Indonesia, Lao, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam.	The ASEAN Charter entered into force in December 2008. The ASEAN Trade in Goods Agreement (ATIGA) entered into force in May 2010.	ATIGA Chapter 7 standards, technical regulations and conformity assessment procedures.
ASEAN-Australia-New Zealand Free Trade Area (AANZFTA)	ASEAN, Australia and New Zealand.	Entered into force in 2010.	Chapter 6 standards, technical regulations and conformity assessment procedures.
Trans-Tasman Mutual Recognition Agreement (TTMRA)	Australia and New Zealand	Entered into force in 1998.	Part III, Establishment of Arrangement.
Economic Community of West African States (ECOWAS)	Benin, Burkina Faso, Cabo Verde, Côte d'Ivoire, the Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo.	Revised treaty entered into force 1995.	Ecowas Council of Ministers Regulation 14/12/12 Adopting Ecowas Standards Harmonisation Model & Procedure.
African Continental Free Trade Area (AfCFTA)	Ghana, Kenya, Rwanda, Niger, Chad, Congo Republic, Djibouti, Guinea, Eswatini, Mali, Mauritania, Namibia, South Africa, Uganda, Ivory Coast, Senegal, Togo, Egypt, Ethiopia, The Gambia, Sierra Leone, Saharawi Republic, Zimbabwe, Burkina Faso, São Tomé and Príncipe, Gabon, Equatorial Guinea, Mauritius, Angola, Lesotho and Tunisia, Somalia, Algeria, Cameroon, Nigeria and Zambia (countries that have ratified the AfCFTA). ¹	Entered into force 2019.	Annex 6 on Technical Barriers to Trade.

¹ Tralac, "[Status of AfCFTA Ratification](#)" (15 March 2020) accessed 1 December 2020.

Agreement	Parties/ Member States	Establishment	Legal texts covered by the analysis
US – Korea FTA (KORUS)	USA and South Korea	Entered into force 2012	Chapter 5, Pharmaceutical products and Medical Devices Chapter 9, Technical Barriers to Trade
Pacific Alliance	Chile, Colombia, Mexico and Peru.	Established in 2011, Framework Agreement signed in 2012 and entered into force in 2015. Protocolo Adicional al Acuerdo Marco de la Alianza Pacífico (establishing a free trade area) signed in 2014 and entered into force in 2016. Chapter 15 bis Mejora Regulatoria and Annex 7.11 Cosméticos were added later and entered into force in 2020.	Capítulo 7 Obstáculos Técnicos al Comercio and annexes, Capítulo 15 Transparencia, Capítulo 15 bis Mejora Regulatoria (in Protocolo Adicional al Acuerdo Marco de la Alianza del Pacífico).
Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)	Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam.	CPTPP was signed by the 11 CPTPP countries in March 2018. Entered into force at the end of 2018 in Australia, Canada, Japan, Mexico, New Zealand and Singapore and in the beginning of 2019 in Vietnam.	Chapter 8 Technical Barriers to Trade and annexes, Chapter 25 Regulatory Coherence, Chapter 26 Transparency and Anti-Corruption and Annex 26-A.
East African Community (EAC)	Burundi, Kenya, Rwanda, South Sudan, Tanzania and Uganda.	The Treaty for the Establishment of the East African Community was signed in 1999 and entered into force in 2000. The Common Market Protocol was signed in 2009 and entered into force in 2010. The Protocol on the Establishment of the East African Customs Union was signed in 2004. East African Community Protocol on Standardisation, Quality Assurance, Metrology and Testing was signed in 2001 and the East African Community Standardisation, Quality Assurance, Metrology and Testing Act was enacted in 2006.	Treaty for the Establishment of the East African Community, Common Market Protocol, Protocol on the Establishment of the East African Customs Union, East African Community Protocol on Standardisation, Quality Assurance, Metrology and Testing and Standardisation, Quality Assurance, Metrology and Testing Act.

Agreement	Parties/ Member States	Establishment	Legal texts covered by the analysis
Southern African Development Community (SADC)	Angola, Botswana, Comoros, Democratic Republic of Congo, Eswatini, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, United Republic of Tanzania, Zambia, Zimbabwe	The SADC Treaty was adopted in 1992. The Protocol on Trade from 1996 has been amended several times since then. TBT Annex from 2014.	SADC Treaty Protocol on Trade, TBT Annex to the Protocol on Trade.
USMCA	USA, Canada and Mexico	Entered into force July 2020.	Chapter 11 on Technical Barriers to Trade and Chapter 28 on Good Regulatory Practices.
EU-Japan FTA	EU and Japan	Entered into force 2019.	Chapter 7 Technical Barriers to Trade and Chapter 18 Good Regulatory Practices and Regulatory Cooperation.
Comprehensive Economic and Trade Agreement (CETA)	EU and EU Member States and Canada	Entered into force provisionally in 2017.	Chapter 4 Technical Barriers to Trade and annexes, Chapter 21 Regulatory Cooperation and Protocol on the mutual acceptance of the results of conformity assessment.
EU-South Korea FTA	EU and EU Member States and South Korea	Provisionally applied from 2011, formally ratified in 2015.	Chapter 4 Technical Barriers to Trade, Annex 2-B, 2-C and 2-D.

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Kommerskollegium
National Board of Trade Sweden

Box 6803, 113 86 Stockholm
Telefon 08 690 48 00
E-post registrator@kommerskollegium.se
www.kommerskollegium.se