

An Exploration of Domestic Regulatory Barriers to International Trade and Their Solutions

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Abstract: Conflicts over domestic regulation are a major cause of trade friction, and the behind-the-border non-tariff measures still pose a trade barrier that plagues international trade. This paper critically analyzes the limited discipline imposed on domestic regulation and the implied cooperation within the WTO framework. The paper applies CETA, USMCA, and CPTPP as case studies to examine the emerging regulatory cooperation mechanisms in regional trade agreements (RTAs). It suggests that while regulatory cooperation can effectively mitigate the constraints of diverse regulatory measures on international trade within the scope of regional agreements, setting multilateral discipline for domestic regulation is the most effective solution to comprehensively remove domestic regulatory barriers. The development of the Reference Paper on Services Domestic Regulation marks a significant step in the right direction. However, until major trading nations are willing to limit domestic regulation, cooperative approaches remain an alternative.

Keywords: Regulatory Cooperation, Good Regulatory Practices (GRP), Regional Trade Agreements (RTAs), Behind-the-border Non-tariff Measures, Multilateral Regulatory Discipline

I. ORIGIN OF THE ISSUE

In recent years, traditional trade barriers such as import tariffs and quantitative restrictions have been broken down, and different non-tariff measures have subsequently become the primary issue troubling the international trade community. Pascal Lamy, former Director-General of the WTO, identified those as “the real trade issues of the 21st century”.¹ Non-tariff measures are constraints on foreign suppliers that members exercise to safeguard public interest, that is, regulation. Typical non-tariff measures encompass diverse product standards,

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¹ Shawn Donnan, EU and Asean Agree to Pave Way for Trade Pact Talks, *Financial Times*, September 6, 2004.

separate licensing requirements for service providers, and recurring certification and conformity assessment procedures for goods, services, and production processes. These often present disguised barriers to trade. For instance, they may include complex and protracted licensing procedures and a lack of objectivity and transparency in regulatory measures. These factors indirectly impede the entry of foreign goods and services into domestic markets. Due to different political and legal systems, income levels, culture, attitudes towards risk aversion, technological level, as well as data and tools that WTO members use when analyzing risks and formulating countermeasures, conflicts between regulations of members are inevitable.² In the current context of global supply chain trade, the number of members involved in goods production and services provision is steadily increasing. For specific members (such as Country A and Country B), the conflict of their domestic regulations (e.g., the regulatory standards of Country A are higher than those of Country B) not only increases the costs of providing products and services between these members but also puts the trade between other member (such as Country C)³ and these members with different regulations (Country A and Country B) separately in an unequal position. Relatively speaking, it poses restrictions on the entry of products and services of the third member (Country C) into the overall market composed of these regulatory member (Country A and Country B) (because if both Country A and Country B adopt the lower regulatory standard, that is, the standard of Country B, the products and services of Country C will generally enter the market of Country A with ease), thus having a negative impact on the development of global trade in goods and services. The primary objective of the GATT/WTO system design is to impose binding regulations on its members' import tariffs and quantitative restrictions. However, there is no consensus on establishing comprehensive guidelines for each member's regulatory measures. Consequently, it is urgent to seek solutions to each type of domestic regulatory barrier.

2 WTO TBT Committee, Regulatory Cooperation between Members, Background Note by the Secretariat, G/TBT/W/340, September 7, 2011, pp. 1–2.

3 Michael J. Ferrantino, Using Supply Chain Analysis to Analyze the Costs of Non-tariff Barriers to Trade and the Benefits of Trade Facilitation, US International Trade Commission Office of Economics Working Paper No. 2012-01A, January, 2012, pp. 4–5.

Existing research has consistently highlighted the detrimental effects of domestic regulations and their potential conflicts on trade.⁴ While domestic scholars concentrate on textual analysis of the General Agreement on Tariffs and Trade (GATT), Agreement on Technical Barriers to Trade (TBT Agreement), Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement), and General Agreement on Trade in Services (GATS) within the WTO framework, foreign scholars have historically researched domestic regulation coordination and cooperation.⁵ This is particularly evident in their studies on regulatory cooperation within regional trade agreements (RTAs). Recently, as WTO negotiations on domestic regulation of trade in services started, domestic scholars have shifted towards this emerging field.⁶

This research, in conjunction with existing research findings, concentrates on the response and solution to domestic regulatory barriers. The text is structured as follows: The first section introduces the issues, while the second section describes the institutional design of regulation within international trade law. Initially, by differentiating tariff and domestic regulation measures in trade in goods and trade in services, this paper scrutinizes the relationship among domestic regulatory power, trade liberalization, and trade supervision. Subsequently, it explains several conceptual frameworks designed to manage the relationship among each member's domestic regulatory power. These include good regulatory practices (GRP), regulatory coherence, regulatory cooperation, and multilateral regulatory discipline, along with their logical interconnections. The third section critically examines the prevailing regulatory discipline and implied domestic regulatory cooperation within WTO agreements. The recent RTAs such as the EU-Canada Comprehensive Economic and Trade Agreement (CETA), Comprehensive and Progressive Agreement for

4 Richard Baldwin, *Regulatory Protectionism, Developing Nations and a Two-tier World Trade System*, CEPR Discussion Papers 2574, 2000; Jin Liang, *Improving China's Technical Regulation System to Address TBT/SPS Challenges*, *WTO Economic Guide*, No. 1, 2009, pp. 88–89; Baisheng An, *Analysis of TPP's Technology Barrier Rules and China's Response*, *Chinese Law Review*, No. 2, 2016, pp. 233–239.

5 Debra P. Steger, *Institutions for Regulatory Cooperation in "New Generation" Economic and Trade Agreements*, *Legal Issues of Economic Integration*, Vol. 39, No. 1, 2012, pp. 109–126.

6 Baisheng An, *Standardization and Technical Regulations: A WTO Perspective*, *Engineering Construction Standardization*, 2018, pp. 70–77.

Trans-Pacific Partnership (CPTPP), United States-Mexico-Canada Agreement (USMCA), and Regional Comprehensive Economic Partnership (RCEP) have highlighted international regulatory cooperation.⁷ Non-tariff measures and regulatory issues are the primary focus of many relevant chapters in RTAs.⁸ How do RTAs regulate cooperation? Compared with the regulatory cooperation mechanism in WTO agreements, what are the innovations of new rules related to regulatory cooperation in RTAs? Do these new rules match their purposes? This paper will discuss these issues. The fourth section meticulously scrutinizes the principal characteristics of the chapters within the CPTPP, CETA, USMCA, and RCEP that facilitate regulatory cooperation. The fifth section summarizes the important points of this paper.

II. SEVERAL INSTITUTIONAL DESIGNS FOR REGULATION IN INTERNATIONAL TRADE AGREEMENTS

A. Regulatory Power in Trade in Goods and Trade in Services

Within international trade agreements, a distinct demarcation exists between border measures pertaining to goods trade and domestic regulatory measures. Border measures, including tariffs and quantitative restrictions on imports (quotas), are both directed towards market access of foreign products, thereby categorized as protective. This is not only economically inconsistent with the principle of ensuring the free flow of production factors to optimally allocate resources, but also leads to inefficiency and waste while harming domestic consumers and foreign producers, so it should be prohibited or controlled. Therefore, for quantitative restrictions, Article XI of the GATT prohibits or restricts quantitative restrictions in general, so members can only implement

7 Reeve T. Bull et al., *New Approaches to International Regulatory Cooperation: The Challenge of TTIP, TPP, and Mega-regional Trade Agreements*, *Law and Contemporary Problems*, Vol. 78, No. 1, 2015, p. 2; Robert Basedow and Celine Kauffmann, *International Trade and Good Regulatory Practices: Assessing the Trade Impacts of Regulation*, OECD Regulatory Policy Working Papers, No. 4, 2016, p. 10.

8 Bernard Hoekman, *Fostering Transatlantic Regulatory Cooperation and Gradual Multilateralization*, *Journal of International Economic Law*, Vol. 18, No. 3, 2015, p. 609.

tariff measures against the market access of other members' products. In terms of tariff measures, the WTO and its predecessor, the GATT, had members to substantially commit to tariff concessions during multilateral negotiations. Concurrently, Article II, on duties, taxes, or charges on imports, sets disciplines on binding tariff concessions. Therefore, the concessionary tariff is strictly bound and cannot be rolled back. Consequently, the overall tariff level has consistently declined, leading to a reduction of market access barriers between members for other members' goods.

In comparison, domestic regulations usually serve legitimate, non-protectionist purposes such as consumer protection, safety, and health. Therefore, whether it is Article III of the GATT (national treatment for domestic taxes and other domestic regulations), or the TBT and SPS agreements, they all emphasize the regulatory right of members. Only when domestic regulations emphasize trade protectionism (under the TBT Agreement, this is reflected in regulatory measures that distort trade; under the SPS Agreement, this is reflected in regulatory measures not based on scientific evidence), especially those that are considered discrimination against imports, does the exercise of domestic regulatory right by members apply to the discipline set by Article III of the GATT, TBT and SPS Agreements. When a measure is classified as a border measure, it is subject to strict limitations or prohibitions. If these measures fall under Article III of the GATT and constitute domestic regulatory measures, they violate WTO provisions only if they exhibit discriminatory tendencies, among other factors. From a political perspective, it is reasonable to differentiate between domestic regulations and border measures. Any country must achieve certain policy objectives to provide public goods, and this requires it to have certain measures, such as those prohibiting products that harm the environment or human health from entering the market, regardless of whether it is domestic or imported. These domestic regulatory measures directly address sensitive social and political issues of sovereign states, regarding sensitive areas such as national health, environmental protection, and income redistribution through taxation.⁹ Therefore, WTO members can readily accept the binding

⁹ Joost Pauwelyn and Rien ne Va Plus, Distinguishing Domestic Regulation from Market Access in GATT and GATS, *World Trade Review*, Vol. 4, No. 2, 2005, p. 131.

disciplines of tariff reduction and the general prohibition of quantitative restrictions on import. However, it is difficult to reach a consensus on setting disciplines in terms of more sensitive domestic regulations that directly involve social and political issues.

Unlike goods, services are intangible. This enables trade in services to bypass customs supervision and be accounted for in international trade agreements. Unlike goods trade, members cannot regulate trade in services by using methods such as tariffs and import quotas. Instead, they must manage it by implementing domestic regulations like national treatment restrictions, licensing, approval, and qualification requirements. These measures can also obstruct trade in services. International trade agreements cannot promote the liberalization of trade in services by imposing disciplines in tariffs and import quotas. For example, on one hand, the WTO ensures fairness, reasonableness, and transparency of domestic measures that members take to regulate the services sector through specific binding commitments each member makes under Article XVI of the GATS. On the other hand, the WTO sets disciplines for the exercise of domestic regulatory power of members through the domestic regulations (domestic governance) in Article VI of the GATS. This ensures that members' domestic measures do not create unnecessary barriers or arbitrary discrimination against trade in services, thereby liberalizing trade in services. In other words, in terms of trade in services, tariff measures resembling those in goods trade are severely weakened, and domestic regulations constitute the core content of trade in services.

In trade in services, as in trade in goods, members have the power to implement domestic regulations. International trade agreements primarily establish guidelines for these regulations to ensure they are fair, reasonable, and transparent. These measures aim to prevent unnecessary barriers or arbitrary discrimination against trade in services.

B. Concepts Clarification: GRP, Regulatory Coherence, Regulatory Cooperation, and Multilateral Regulatory Discipline

The concept of regulatory coherence, originating from American administrative law, appeared in regional and international economic forums following advancements

by the Organization for Economic Cooperation and Development (OECD) and Asia-Pacific Economic Cooperation (APEC).¹⁰ The concept, originally designed to limit the discretion of administrative authorities, now emphasizes the use of GRP to safeguard the rationality, democratic accountability, and rule of law in domestic regulatory processes. An important indicator of GRP is regulation impact assessment, or “the process of systematically identifying and evaluating the expected impact of a regulation proposal using coherent analytical methods”.¹¹ The OECD promotes cost-benefit analysis of regulatory proposals, stressing that decisions should be based on sound evidence. In addition, several key elements of regulatory coherence include transparency, coordination, and compatibility across institutions, as well as administrative and judicial review. Concurrently, regulatory coherence can promote the development of compatible regulatory approaches that promise to reduce the adverse effects on international trade of cumbersome, repetitive, or divergent domestic regulations.¹²

Regulatory cooperation is generally understood as a process in which domestic regulatory agencies communicate and cooperate closely to reduce regulatory discrepancies and enhance the operability of regulations.¹³ The OECD further defines international regulatory cooperation as “any formal or informal agreement or organizational arrangement between States to facilitate some form of cooperation in the design, supervision, enforcement and post-enforcement management of regulatory rules with a view to achieving convergence of cross-border rules and enhancing their consistency”.¹⁴

Regulatory cooperation can take various forms. From the least to the most legally binding, regulatory cooperation includes dialogue/exchange of information; recognition and incorporation of international standards;

10 Phoenix XF Cai, *Regulatory Coherence and Standardization Mechanisms in the Trans-Pacific Partnership*, *British Journal of American Legal Studies*, Vol. 10, No. 5, 2016, p. 511.

11 OECD, *Recommendation of the Council on Regulatory Policy and Governance*, OECD Publishing, 2012, p. 4.

12 Chingfu Lin and Hanwei Liu, *Regulatory Rationalization Clauses in FTAs: A Complete Survey of the US, EU and China*, *Melbourne Journal of International Law*, Vol. 19, No. 1, 2018, pp. 150–151.

13 US Chamber of Commerce, *Regulatory Coherence & Cooperation in the Transatlantic Trade and Investment Partnership (TTIP)*, 2015, pp. 1–2.

14 OECD, *International Regulatory Co-operation: Addressing Global Challenges*, OECD Publishing, 2013, p. 19.

intergovernmental networks of regulators; mutual recognition; trade agreements with regulatory provisions; joint rule-making through intergovernmental organizations; regulatory cooperation partnerships; specific negotiated agreements; and regulatory harmonization through supranational institutions.¹⁵ Almost all these cooperation forms are adopted in modern trade agreements. Take the WTO as an example. The Agreement on the Technical Barriers to Trade (TBT Agreement) and the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) contain extensive provisions on harmonization through international standards, as well as mutual and unilateral recognition of technical regulations and conformity assessment procedures.¹⁶ In addition, the adoption of good regulatory practices has been regularly discussed at the TBT Committee.¹⁷

Although GRP, regulatory coherence, (narrow) regulatory cooperation, and setting regulatory discipline are conceptually independent of each other, they are not mutually exclusive in practice. Regulatory coherence is often based on GRP within a specific country and forms the basis for effective regulatory cooperation and regulatory discipline among countries. Moreover, GRP such as transparency are usually required while formulating and improving regulatory rules and seeking alternatives to regulation.¹⁸ Cooperation among domestic regulators is another effective way to learn from each other and increase awareness of GRP.¹⁹ These closely related concepts are not strictly distinguished in treaty design, so scholars often alternatively use them as synonyms.²⁰ For example, regulatory coherence is used in a broad sense in US-led RTAs,

¹⁵ *Ibid.*, pp. 22–25.

¹⁶ Jonathan B. Wiener and Alberto Alemanno, The Future of International Regulatory Cooperation: TTIP as a Learning Process toward a Global Policy Laboratory, *Law and Contemporary Problems*, Vol. 78, No. 4, 2015, p. 108.

¹⁷ WTO TBT Committee, *Eighth Triennial Review of the Operation and Implementation of the Agreement on Technical Barriers to Trade under Article 15. 4, G/TBT/41*, November 19, 2018, pp. 2–8.

¹⁸ Jiao Zhang, Rules for International Regulatory Cooperation in Free Trade Agreements: Development Trends and Empirical Analysis, *Wuhan University International Law Review*, 2017, No. 6, pp. 115–129.

¹⁹ Hanwei Liu and Chingfu Lin, The Emergence of Global Regulatory Coherence: A Thorny Embrace for China? *University of Pennsylvania Journal of International Law*, Vol. 40, No. 1, 2018, p. 151.

²⁰ Elizabeth Sheregold and Andrew D. Mitchell, The TPP and Good Regulatory Practices: An Opportunity for the TPP Regulatory Coherence to Promote Regulatory Autonomy? *World Trade Review*, Vol. 15, No. 4, 2016, pp. 590–593.

which encompasses regulatory cooperation. Article 25.2 of the CPTPP defines regulatory coherence as “the use of good regulatory practices in the process of planning, designing, issuing, implementing and reviewing regulatory measures in order to facilitate achievement of domestic policy objectives, and in efforts across governments to enhance regulatory cooperation in order to further those objectives and promote international trade and investment, economic growth and employment”. The USMCA chapter on GRP also contains provisions on regulatory cooperation.²¹ Meanwhile, recent RTAs have absorbed the idea of regulatory coherence in the chapter on regulatory cooperation. CETA is a typical example. For instance, one of the objectives of its Regulatory Cooperation chapter is to “improve the planning and development of regulatory proposals; promote transparency and predictability in the development and establishment of regulations; enhance the efficacy of regulations; identify alternative instruments; and recognize the associated impacts of regulations ...”. Some of illustrative regulatory cooperation activities are essentially GRP.²²

In contrast to regulatory cooperation focusing on procedural rules, regulatory discipline stresses substantive rules for domestic regulatory policies and measures. Depending on the number of participants, it can be divided into bilateral, regional, and multilateral regulatory disciplines, which have legal binding force on members or participants of agreements that include regulatory disciplines.

C. Narrow Regulatory Cooperation or Regulatory Discipline?

The economic rationale for international regulatory cooperation is to develop trade by reducing unnecessary divergent regulations and cutting the increased costs of necessary divergent regulatory rules, thereby lowering export costs, increasing economies of scale, and improving transparency and predictability of export market rules.²³ This is a reason for the growth in regulatory cooperation in global trade governance. It is difficult to find viable alternatives to weakening the restrictions that non-discriminatory regulations may impose on international

²¹ Article 28.17 of the USMCA.

²² Articles 21.3 (b) and 21.4 of the CETA.

²³ *Supra* n. 2, pp. 3–5.

trade. Unlike tariffs, non-tariff measures cannot be eliminated radically because they are often backed by important social regulatory purposes such as promoting public health and safety, protecting the environment, and ensuring that markets function properly. This is the difference between non-tariff measures and tariffs.²⁴ Moreover, despite differences in history, culture, politics, and laws among countries, they often face similar regulatory challenges. Therefore, they can learn from each other's regulations, better understand the impact of their domestic regulations on international parties, and develop common standards and frameworks for similar risks, ultimately perfecting domestic regulatory processes.²⁵

Regulatory cooperation covers a very wide range of cooperative mechanisms. These include agreements to engage in dialogue and mutual notification of new or proposed regulatory measures or consultations on them, as well as obligations to adopt international standards or recognition or coordination with the laws of other states,²⁶ along with the development of new binding regulatory disciplines. The former refers to the narrow sense of regulatory cooperation, while the latter can be referred to as setting regulatory discipline. In a broad sense, they belong to regulatory cooperation among countries. In a narrow sense, regulatory cooperation primarily stresses the procedures for regulatory cooperation among nations. Broadly speaking, regulatory cooperation includes not only the process of cooperation among nations on regulations but also their establishment of binding disciplines and rules based on these regulations.²⁷

The following illustrates the economic benefits created by the two critical mechanisms of setting regulatory disciplines (taking the formulation of unified standards as an example) and mutual recognition, as well as the limitations of these benefits in regulatory cooperation.

Formulation of unified standards involves the standards of two or more

24 Thomas J. Bollyky and Petros C. Mavroidis, Trade, Social Preferences and Regulatory Cooperation: The New WHO-think, *Journal of International Economic Law*, Vol. 20, No. 1, 2017, p. 12.

25 Marianna B. Karttunen, *Transparency in the WTO SPS and TBT Agreements: The Real Jewel in the Crown*, Cambridge University Press, 2020, p. 101.

26 *Supra* n. 14, pp. 22–25.

27 Gabriel Gari, Recent Preferential Trade Agreements' Disciplines for Tackling Regulatory Divergence in Services: How Far beyond GATs, *World Trade Review*, Vol. 19, No. 1, 2020, p. 23.

jurisdictions.²⁸ As different product standards rise and related economic losses expand, coordination through international standards as necessary approach to trade liberalization is becoming more common. The same standards have allowed products made in different countries to converge, giving both producers and consumers more choices while increasing consumer confidence in the quality of imported goods. At the same time, the same standards will improve the compatibility of imported and domestic products, provide a better international environment for network effects, and avoid increases in costs incurred when companies must adapt to different standards.²⁹ In addition, due to the previous artificial division of domestic and foreign markets caused by different standards, the formulation of unified standards intensifies competition.³⁰

Setting unified regulatory disciplines has a positive effect on the mobility of international trade. Analyzing data for 471 industries in 12 European countries, Moenius found that identical standards significantly enhanced trade between countries. He predicts that a 1% increase of identical standards will lead to a 3% increase of bilateral trade.³¹ Reys focuses on the electronics sector, looking at how US companies react to EU standards and international standards set by the International Electrotechnical Commission (IEC). The study found that as unified standards for various products emerged, the number of electronic products exported from the US to the European Union (EU) increased, especially attracting more young American small and medium-sized enterprises (SMEs) to enter the EU market, which was another reason for the growth in related US exports.³² There is also evidence that developing countries are beneficiaries of product standard harmonization in international trade.³³

28 Bernard Hoekman, *Trade Agreements and International Regulatory Cooperation in a Supply Chain World*, EUI Robert Schuman Centre for Advanced Studies, 2015, p. 4.

29 Bin Wang and Yuanyuan Liao, *Research on Product Compatibility Incentives and Government Behavior in International Standard Competition*, *Technology Economics*, Vol. 28, No. 10, 2009, pp. 23–28.

30 *World Trade Report*, *Exploring the Links between Trade, Standards and the WTO*, 2015, p. 54.

31 Johannes Moenius, *Information versus Product Adaptation: The Role of Standards in Trade* (February, 2004), pp. 15–17, <https://ssrn.com/abstract=608022> (Last Visited on October 24, 2024).

32 Jose-Daniel Reyes, *International Harmonisation of Product Standards and Firm Heterogeneity in International Trade*, *The World Bank Policy Research Working Paper* 5677, 2011, pp. 18–19.

33 Ben Shepherd, *Product Standards, Harmonisation, and Trade: Evidence from the Extensive Margin*, *World Bank Policy Research Working Paper* 4390, 2007, p. 23.

Although many benefits arise from setting regulatory disciplines, it is not always a good policy choice for resolving regulatory conflicts.³⁴ National characteristics are often the characteristics of their social production, and differences in these characteristics also reflect differences in risk tolerance, level of development, geography, culture and values, and should be respected.³⁵ Additionally, due to resource constraints, delays in reaching a consensus on the necessity of unified regulatory disciplines and their outcomes, and the difficulty for the involved parties to reach a consensus on unified disciplines, it is not always advantageous to formulate regulatory disciplines at the international level.³⁶ In addition, due to the varying expertise and negotiation capabilities of different participants in international standard-setting activities, the benefits from the formulation of unified standards are not necessarily evenly distributed. The compliance costs generated by setting regulatory disciplines are also not entirely equal.³⁷

In cases where the participants are unwilling to set regulatory disciplines or setting regulatory disciplines is not feasible; equivalence and mutual recognition agreements (MRAs) provide an alternative for the narrow regulatory cooperation to promote trade. Equivalence is unilateral recognition of an exporting member's regulation, and an MRA is an agreement in which two or more members recognize the equivalence of each other's regulations. MRAs and equivalence improve administrative efficiency by removing the excess costs and delays associated with additional approvals in destination countries, thus promoting trade. They are therefore considered as very desirable policy instruments in international trade.³⁸ Lower transaction costs lead to lower prices

34 Zeyu Zhao, Competition Policy Provisions of Regional Trade Agreements in the Context of International Antitrust Regulatory Conflicts on Digital Platforms, *Wuhan University International Law Review*, No. 1, 2022, pp. 120–140.

35 Alan O. Sykes, The (Limited) Role of Harmonisation in International Goods and Services Market, *Journal of International Economic Law*, Vol. 2, No. 1, 1999, pp. 66–67.

36 Richard E. Baldwin, Regulatory Protectionism, Developing Nations, and a Two-tier World Trade System, In: Brookings Institution, *Brookings Trade Forum*, Brookings Institution Press, 2000, pp. 264–265.

37 *Supra* n. 26, p. 54.

38 Anabela Correia de Brito, Celine Kauffmann and Jacques Pelkmans, The Contribution of Mutual Recognition to International Regulatory Co-operation, OECD Regulatory Policy Working Papers No. 2, OECD Publishing, 2016, pp. 54–56.

for final products. MRAs are particularly effective for developing countries seeking to expand their export markets. Wilson says that if developing countries implement MRAs, their exports could increase by 52.3%, and the positive impact on the agricultural sector is particularly obvious.³⁹ Moreover, although academia widely accepts that harmonization generally promotes trade more effectively than mutual recognition, some economists believe that mutual recognition grants countries the right to choose standards and sell products that meet those standards to trading partners, thereby avoiding the negative impact of harmonization on trade.⁴⁰ Enterprises of each country can freely enter each other's markets without incurring additional harmonization costs. Therefore, mutual recognition may promote trade better than harmonization when product diversity plays a key role in trade or when it is costly to adapt to a new harmonized technology.⁴¹

Despite the advantages of MRAs and equivalence, there are still some difficulties in fully implementing them in international trade. Firstly, the assessment of equivalence often involves a complex process of identifying legislative objectives and comparative parameters.⁴² Given the thematically diverse and wide range of regulations, the equivalence assessment has to be carried out sector-by-sector, or even product-by-product. If there is any change in the relevant regulation of one of the parties to an MRA, a new evaluation of equivalence may be required. Therefore, in practice, the cost of negotiating a MRA is very high.⁴³ Moreover, since regulations are supposed to be equivalent in achieving a certain policy objective under MRAs, MRAs require a certain degree of trust among countries regarding their respective ability adequately

39 Humberto Zuniga Schroder, *Harmonization, Equivalence and Mutual Recognition of Standards in the WTO Law*, Wolters Kluwer, 2011, p. 135.

40 Mingliang Liu, Research on Standardization Cooperation under the Framework of Regional Trade Agreements, *Journal of International Business Studies*, No. 1, 2011, pp. 32–40 & 66.

41 WTO Trade Report, Trade and Public Policy: A Closer Look at Non-tariff Measures in the 21st Century, 2012, p. 150.

42 Frode Veggeland, Trade Facilitation through Equivalence and Mutual Recognition: The EU Model, Norwegian Agricultural Economics Research Institute Report 2006-3, p. 31.

43 Communication from the European Union, A Policy Framework for the Facilitation of Trade in the Fields of Trade Standardisation and Conformity Assessment: A Toolbox of Instruments, WTO Doc. G/TBT/W/173/Add. 1, April 19, 2002, p. 51.

to monitor the validity of testing abroad. Therefore, if the agreement signing situation of developing countries is not considered, the probability of existence of MRAs in regional agreements concluded between developed countries is higher than that in multilateral agreements.⁴⁴ As a result, the practical role of MRAs and equivalence has currently been limited.⁴⁵ As of 2022, the Committee on Technical Barriers to Trade (TBT) received only 165 MRAs, with most initiating countries being OECD members.⁴⁶

III. EXAMINATION OF REGULATORY DISCIPLINES AND REGULATORY COOPERATION IN THE WTO LEGAL FRAMEWORK

The TBT, SPS, and GATS agreements within the WTO legal framework involve domestic regulation, which sets out requirements for domestic regulatory measures in terms of non-discrimination, transparency, and unnecessary trade restrictions. These limited regulatory disciplines are seen as important provisions for the coordination between domestic regulatory sovereignty and free trade. However, the implementation of these agreements has encountered challenges due to the tension between domestic regulatory sovereignty and free trade. In the past several years, the WTO has begun to recognize the limitations of current rules. On one hand, it tries to explore ways to deal with domestic regulatory barriers through regulatory cooperation. On the other hand, it begins to try to discipline domestic regulatory measures of participants with the Joint Statement Initiative (JSI).⁴⁷

⁴⁴ *Supra* n. 30, p. 55.

⁴⁵ Ministry of Business, Innovation & Employment of New Zealand, *Evaluation of Conformity Assessment Mutual Recognition Agreements and Arrangement*, 2018, p. 11.

⁴⁶ Note by the Secretariat, *Twenty-sixth Annual Review of the Implementation and Operation of the TBT Agreement*, G/TBT/ 45, February 18, 2021, p. 26.

⁴⁷ The multilateral trade negotiations under the WTO framework adopt a package deal approach, where any member must accept or reject all proposals. From another perspective, this institutional design grants any member the power to veto any proposal they are unwilling to accept. Therefore, the difficulty of negotiations under this system can be imagined. In order to resolve some specific trade rule issues among certain members, at least agreements can be reached among these members. In WTO practice, a tool for trilateral trade negotiations has emerged in the form of Joint Statement Initiatives (JSI) that can be initiated by some members. The negotiation of domestic regulations on trade in services is conducted in this manner.

A. Limited Regulatory Discipline

As previously noted, the WTO imposes restrictions on the domestic regulatory measures of its members. However, the WTO agreement primarily restricts the trade protective domestic regulatory measures of members, with the scope of constraints being limited. For instance, the sole regulatory provision for non-tariff measures within the GATT is the non-discrimination requirement stipulated in Article III. This provision was originally crafted to deter importing countries from leveraging other domestic policy instruments to undermine tariff reductions. Within the GATT framework, if members do not discriminate against imported similar products, they have the unrestricted ability to enact laws to unilaterally accomplish their legislative objectives. The principle of non-discrimination does not extend to the characteristics of regulatory intervention. While these rules may not breach the non-discrimination obligation, they can be overly stringent, idiosyncratic, and ineffective. These domestic regulatory barriers, which are not subject to WTO discipline, impose significant compliance burdens on international trade in the context of global value chains.⁴⁸ Consequently, WTO agreements cannot address the widespread inefficient, redundant, or non-discriminatory regulatory barriers. The challenge for international trade agreements in regulating domestic regulations lies in distinguishing necessary regulations and balancing the regulatory sovereignty of members and free trade.

B. The Implicit Obligation of Regulatory Cooperation

The primary objectives of the TBT and SPS Agreements are to eradicate superfluous trade barriers, while acknowledging members' rights to pursue legitimate regulatory objectives in accordance with their standards. Despite not explicitly emphasizing regulatory cooperation, numerous articles within these agreements endeavor to apply diverse methodologies to foster international regulatory cooperation among WTO members.⁴⁹ This approach has prompted

⁴⁸ Ming Du, Domestic Regulatory Autonomy under the TBT Agreement: From Non-discrimination to Harmonization, *Chinese Journal of International Law*, Vol. 6, No. 2, 2007, pp. 281–282.

⁴⁹ WTO and OECD, *Facilitating Trade through Regulatory Cooperation: The Case of the WTO's TBT and SPS Agreements and Committees*, 2019, pp. 4–5.

some scholars to suggest that the WTO has transitioned from negative integration — which involves the prohibition of discriminatory non-tariff barriers to trade — to positive integration, characterized by the use of common policies to foster market creation.⁵⁰

Firstly, as the term suggests, international standards are the result of multilateral cooperation. The preamble to the TBT Agreement underscores the crucial role of international standards in promoting international trade. According to Articles 2.4 and 5.4 of the TBT Agreement, WTO members are mandated to base their technical regulations and conformity assessment procedures on international standards, unless they are proved invalid or unsuitable for achieving their regulatory objectives. Furthermore, Article 2.6 obliges members to participate in the activities of setting international standards. Paragraph G of Annex 3 to the TBT Agreement explicitly encourages standardizing bodies to participate in the activities of setting international standards, within the limits of their resources.

Secondly, the provisions concerning mutual recognition and equivalence of technical regulations and conformity assessment procedures aim to prevent traders from encountering redundant requirements or procedures due to regulatory discrepancies across markets. This fosters cooperation among WTO members. Article 2.7 of the TBT Agreement mandates that despite different regulations between countries, WTO members are obligated to “actively consider” accepting equivalent technical regulations from other members if these can fully achieve their own legislative objectives.

Thirdly, the inclusion of transparency provisions facilitates the initiation of advantageous regulatory cooperation among members. Transparency is a fundamental norm within the WTO trading system and of paramount importance. It holds greater significance than engaging in formal negotiations or resolving trade disputes, from this perspective.⁵¹ Articles 2.9 and 5.6 of the TBT Agreement establish a multilateral framework within which WTO

50 Robert Basedow, *The WTO and the Rise of Plurilateralism — What Lessons Can We Learn from Europe Union’s Experience with Differentiated Integration?* *Journal of International Economic Law*, Vol. 14, No. 2, 2018, p. 414.

51 Petros C. Mavroidis and Robert Wolfe, *From Sunshine to a Common Agent: The Evolving Understanding of Transparency in the WTO*, *Brown Journal of World Affairs*, Vol. 21, No. 2, 2015, pp. 117–118.

members are required to ensure openness and transparency. This includes measures such as the public dissemination of notices, notifications, provision of copies, and setting aside a reasonable period for consultation and publication between the issuance of notices and their implementation when significant trade-impacting measures are considered. The provision of advance notice grants WTO members an opportunity to voice their opinions on proposed regulations at an initial stage, thereby allowing these opinions to receive consideration during the regulatory process.⁵² Since the entry-into-force of this agreement, involved parties have submitted over 31,531 notifications.⁵³ The requirement for the timely publication of trade-related technical barrier measures adopted significantly reduces the cost and difficulty for members to obtain information from their trading partners. The provision for a reasonable period before the measures are implemented allows exporters to adapt to the new requirements.⁵⁴ The requirement to furnish justification empowers members to access information beyond the mere existence and content of technical regulations, such as the legislative objectives and rationale behind deviations from international standards of the member proposing submissions, which is a valuable complement to other transparency obligation provisions.⁵⁵ Furthermore, Article 10.1 of the TBT Agreement mandates that members furnish reference points capable of addressing all reasonable inquiries from other members and interested parties. These stipulations have fostered the domestic development of opportunities for public comment, thereby enabling other members, particularly developing countries, to acclimate to new standards. This is advantageous in averting conflicts and preventing disputes.

Fourthly, the establishment of the Committee on TBT and the Committee

52 Henrik Horn, Petros C. Mavroidis and Erik N. Wijkstrom, In the Shadow of the DSU: Addressing Specific Trade Concerns in the WTO SPS and TBT Committees, *Journal of World Trade*, Vol. 47, No. 4, 2013, p. 733.

53 Technical Barriers to Trade Information Management System, <http://tbtims.wto.org> (Last Visited on September 9, 2022).

54 Appellate Body Report, *United States – Measures Affecting the Production and Sale of Clove Cigarettes*, WT/DS406/AB/R, April 24, 2012, p. 272.

55 Denise Prevost, Transparency Obligations under the TBT Agreement, In: Tracey Epps and Michael Trebilcock, *Research Handbook on the WTO and Technical Barriers to Trade*, Edward Elgar, 2015, p. 162.

on Sanitary and Phytosanitary Measures (Committee on SPS) has provided collaborative platforms for WTO members. This facilitates their understanding of each other's regulatory systems and encourages discussion on draft regulations that impact international trade.⁵⁶ A notable platform enables WTO members to voice specific trade concerns, providing feedback on draft proposed measures prior to their consideration by the committee or existing regulations that may inadvertently impose unnecessary barriers to trade. Since the implementation of the TBT agreement, the Commission on TBT has deliberated on over 700 of these concerns.⁵⁷ These deliberations fostered a heightened consensus among WTO members regarding the regulatory system, incentivized mutual learning, and substantially mitigated trade tensions associated with technical barriers to trade (TBT) along with sanitary and phytosanitary (SPS) measures.⁵⁸ Furthermore, both the Committee on TBT and the Committee on SPS routinely formulate decisions and recommendations to facilitate members' effective implementation of the agreement's specific provisions.⁵⁹

The regulatory cooperation mechanisms advocate for the reduction of regulatory measures, thereby diminishing associated trade costs. However, with the escalating significance of non-tariff measures in international trade, it has been challenging to adapt these mechanisms to changes.⁶⁰ Statistical data indicates most WTO members have maintained the foundational principle of non-discrimination, but at the same time exhibit a trend towards negative integration. Given this scenario, there is a pressing need to enhance regulatory cooperation. For instance, while WTO articles offer a foundation for international regulatory cooperation, the reality is that WTO members do not strictly adhere to these agreements. Instead, they continue to implement

⁵⁶ See Articles 13.1 and 12.1 of the TBT Agreement and Article 12.2 of the SPS Agreement.

⁵⁷ *Supra* n. 53.

⁵⁸ *Supra* n. 52, p. 730; Robert Wolfe, Reforming WTO Conflict Management: Why and How to Improve the Use of Specific Trade Concerns, *Journal of International Economic Law*, Vol. 23, No. 4, 2020, p. 822.

⁵⁹ Erik N. Wijkstrom, The Third Pillar, Behind the Scenes, WTO Committee Work Delivers, E15 Task Force on Regulatory Systems Coherence Think Piece, 2015, pp. 2-5.

⁶⁰ Jian Han, Qianhong Zhang and Fan Feng, Trade Creation Effects of Free Trade Agreements beyond the WTO Era: An Examination of the Impact of Tariff and Non-tariff Measures on Trade, *World Economy Study*, No. 11, 2018, pp. 51-64.

repetitive, unnecessary, and inefficient unilateral regulatory measures.⁶¹ For example, regulatory authorities might implement redundant rules and conformity assessment procedures due to a lack of awareness or concern about the trade costs resulting from these redundancies, a lack of confidence in the effectiveness of oversight by foreign parallel bodies and rule enforcement, or to generate revenue for the regulator through rent-seeking. Social preferences, attitudes towards risk, distinct institutional structures, and rule-making procedures, as well as capacity constraints can influence regulators to impose regulations with varying degrees of stringency. It is crucial to recognize that inconsistencies in regulation do not inherently signify a violation of the TBT or SPS agreements.⁶² From the standpoint of trade and international regulatory oversight, the current outcomes are suboptimal. For instance, the obligations under the existing WTO regulatory cooperation are constrained. The provisions in both the TBT and SPS agreements advocate for MRAs and equivalence as solutions to issues. However, these provisions have a limited scope, requiring each party to “give positive consideration” without offering a structured framework for regulators to engage in regulatory cooperation arrangements. Article 2.7 of the TBT Agreement imposes a legal obligation on WTO Members to “give positive consideration” to accepting as equivalent technical regulations of other Members. However, this obligation is confined to the act of actively considering requests for equivalent recognition. The assessment of this duty hinges solely on the subjective standard that the WTO member does not challenge the validity of the foreign technical regulation.⁶³ Furthermore, Article 2.7 offers no directives on its practical implementation. Even though it only mentions unilateral recognition of equivalence, in practice, the equivalence is technically feasible and politically acceptable only on a bilateral level, country by country.⁶⁴ Currently, MRAs are prevalent among members with analogous

61 Robert W. Stiger and Alan O. Sykes, *International Trade, National Treatment and Domestic Regulation*, *Journal of Legal Studies*, Vol. 40, No. 1, 2011, p. 150.

62 *Supra* n. 24, pp. 12–13.

63 Ludivines Tamiotti, Article 2 TBT, In: Rüdiger Wolfrum, Peter-Tobias Stoll and Anja Seibert-Fohr (Eds.), *WTO – Technical Barriers to Trade and SPS Measures*, Martinus Nijhoff, 2007, p. 226.

64 A. Beviglia Zampetti, *Mutual Recognition in the Transatlantic Context: Some Reflections on Future Negotiations*, In: Thomas Cottier and Petros C. Mavroidis (Eds.), *Regulatory Barriers and the Principle of Non-Discrimination in World Trade Law*, University of Michigan Press, 2000, p. 318.

national conditions, typically within FTAs. However, only a handful of countries extend harmonized standards to all other parties.

Regrettably, the WTO Appellate Body (AB)'s interpretation of rules has not fostered regulatory cooperation. Taking Article 2.4 of the TBT Agreement as a case study, it mandates members to base their technical regulations on international standards, permitting exceptions only when these standards fail to achieve or be inconsistent with their regulatory objectives. The AB determined that it does not constitute a general rule – exception relationship between Parts 1 and 2 of Article 2.4. Consequently, when a party alleges non-compliance with Article 2.4 in relation to a WTO member's technical regulations, the accused member is exempt from providing evidence. Instead, the complainant should demonstrate that the international standard is not used as a basis for the technical regulation and that the international standard can effectively and appropriately achieve the legitimate objective pursued by members through the adoption of these regulations.⁶⁵ The AB's interpretation of Article 2.4 assigns the complainant the responsibility of proving that an international standard serves as a viable and suitable replacement for the TBT rules in question.⁶⁶ This approach unequivocally reflects the AB's profound respect for policy choice sovereignty. However, some argue that it has neglected an opportunity to foster regulatory cooperation via international standards. Textually, the legislative mandate explicitly prioritizes international standards unless they are deemed invalid or unsuitable as a foundation for legislation. The term "exceptional" can only be interpreted in this way. Given this, it is more logical to assign the responsibility of proof to the accused party. This approach aligns with one of the primary goals of the TBT agreement, which is to foster coordination.⁶⁷

Furthermore, several WTO members have incorporated the concept of GRP into the agenda of the Committee on TBT to foster information exchange and practical experience sharing.⁶⁸ The Committee on TBT has formulated

65 WTO Appellate Body Report, *European Communities – Trade Description of Sardines (EC – Sardines)*, WT/DS231 /AB/R, October 23, 2002, p. 275.

66 Erich Vranes, *Trade and the Environment: Fundamental Issues in International Law, WTO Law, and Legal Theory*, Oxford University Press, 2009, p. 313.

67 Petros C. Mavroidis, Last Mile for Tuna (to a Safe Harbour): What Is the TBT Agreement All about? *European Journal of International Law*, Vol. 30, No. 1, 2019, pp. 294–295.

68 *Supra* n. 10, pp. 2–8.

a comprehensive set of voluntary good practice standards to guide the formulation and application of regulations.⁶⁹ However, in the absence of follow-through mandates and institutional support, these initiatives are more likely to diverge from the Commission's objective of fostering cooperation among WTO members and serve as guidelines for unilateral measures.⁷⁰

In summary, the existing WTO regulations are inadequate to fully address domestic trade barriers. There is an urgent need for additional tools, mechanisms, and institutional support beyond what is currently provided by the WTO rules.⁷¹ Regrettably, efforts to reform domestic regulation discipline have been hindered due to prolonged difficulties encountered during the Doha Round of WTO negotiations.

C. Reference Paper on Services Domestic Regulation

The incorporation of trade in services into the multilateral trading system occurred only during the Uruguay Round, thereby making many domestic regulation-specific rules contingent on GATS negotiations. Specifically, Article 6 paragraph 4 of the GATS mandates that the Council for Trade in Services (CTS) establishes necessary disciplines to ensure that qualification requirements and procedures, technical standards, and licensing requirements do not pose undue barriers to services trade. In December 2017, several WTO members initiated negotiations on the JSI of Services Domestic Regulation. The objective of these negotiations was to set disciplines that can foster trade in services and alleviate the detrimental restrictive impacts on trade resulting from measures related to licensing requirements and procedures, qualification requirements and procedures, and technical standards. The domestic regulation negotiations for trade in services cleverly utilize the unique advantages of GATS that stipulates each member's commitment through the schedule of specific commitments. The Reference Paper on Services Domestic Regulation (Reference Paper) adopts an approach where participants incorporate its commitments into their own schedule of specific commitments. Instead of choosing to include it in the

69 TBT Committee, *Good Regulatory Practice: Voluntary Mechanisms and Related Principles*, Proposal by the Government Chairman, October 27, 2014, JOB/TBT/119.

70 *Supra* n. 24, p. 15.

71 Alexia Brunet Marks, *The Right to Regulate (Cooperatively)*, *University of Pennsylvania Journal of Science International Law*, Vol. 38, No. 1, 2016, pp. 50–51.

WTO legal framework as a separate new agreement, this avoids developing members like India and South Africa who strongly oppose to any plurilateral negotiation to use the consent principle to cast a veto. On December 2, 2021, the negotiating parties formally signed the Reference Paper in Geneva. This marks the first achievement in setting discipline on domestic regulation since the WTO's establishment.

In terms of application scope, the Reference Paper was signed by a total of 67 members, with the EU counted as 27 members. These signatories comprised the top nine, including China, the US and EU members, in terms of services trade exports and imports. The exception was India, who ranked eighth in exports and tenth in imports but did not participate. This signing represents approximately 90% of the global services trade. On December 16, 2022, a total of 55 members, inclusive of China, the US, and EU members, finalized their domestic ratification procedures. The Reference Paper will be implemented among these members on a most-favored-nation (MFN) basis. Furthermore, the agreement maintains an open invitation to other interested parties, potentially leading to an increase in both the number of participants and the proportion of global services trade covered.

The Reference Paper is comprised of three sections, the first being general provisions. This section delineates the scope of application for the rules and explicitly states that they pertain to service sectors where members have made commitments to openness under the schedule of specific commitments of the GATS. The general provisions exhibit significant flexibility. They not only stipulate that developing members will be granted a transition period of up to seven years but also affirm that members retain the power to manage service provision and enact new regulations within their territories, thereby safeguarding their policy regulatory room. The second section highlights that domestic regulations pertaining to trade in services are designed to streamline the licensing and approval procedures, seek to enhance the transparency and accessibility of government oversight, diminish the operating costs for enterprises, and foster a more favorable business environment for global services trade. In terms of transparency, the Reference Paper mandates the publication of all licensing requirements and authorization procedures. It also necessitates the establishment of suitable mechanisms for consultation by

service providers, and soliciting for opinions of stakeholders and taking the opinions in consideration during the publication of regulations. Regarding predictability, it is essential to have an indicative timeline for application processing, provide progress updates on applications, permit minor corrections or additional information from applicants, offer reasons for rejection of applications with provision for re-application, and ensure that applications become effective immediately upon approval. In terms of convenience, what are required include: submitting the application to only one supervisory authority; allowing the applicant to submit the application at any time; enabling them to include electronic applications and photocopies of materials; a reasonable and transparent application fee; technical standards being formulated in a public and transparent manner; ensuring the fairness and adequacy of procedures; and gender-based discrimination being avoided.

The third section of the Reference Paper is dedicated to regulations regarding the financial sector. Its guidelines largely align with those in the second section, except that it omits provisions concerning single window approval, the establishment of technical standards, and the mutual recognition of industry qualifications, etc.

It is important to note that, despite its name, the Reference Paper is primarily a standard for reference for domestic regulation among participants. This document has not yet evolved beyond domestic regulatory cooperation and thus represents at best the highest version of it. However, the Reference Paper, as an open plurilateral agreement, is binding to all WTO members that have ratified it. It is a result of setting disciplines for members' domestic regulations. Consequently, it can be characterized as a regulatory discipline founded on cooperative regulation. This approach represents a progressive step towards mitigating domestic regulatory barriers. It is anticipated that the next step will involve setting domestic regulatory discipline within the framework of both the TBT and SPS agreements.

IV. REGULATORY COOPERATION IN REGIONAL TRADE AGREEMENTS

Given the failure of the Doha Round and the current stagnation of WTO

negotiations, there has been a consequential diminution in focus on the WTO. Consequently, efforts to curtail unnecessary, repetitive, and burdensome non-tariff measures have shifted towards FTAs.⁷² In 2012, the US enacted the Executive Order 13609, which explicitly advocated for the enhancement of international regulatory cooperation. This order sought to foster cooperation within RTAs, introduce a core focus on GRP, and commit to ensuring the consistency of national internal regulations as well as the transparency and efficiency of domestic regulations. The US has progressively incorporated the concepts of regulatory coherence and regulatory cooperation into its negotiations for RTAs, including the Trans-Pacific Partnership (TPP) Agreement and the USMCA. This approach was subsequently adopted in the CETA negotiations between Europe and Canada. Newly formed mega-RTAs have established a regulatory cooperation mechanism, encompassing aspects of objectives, modes, rules, and guarantees. This has become a defining feature of recent FTAs.⁷³

A. The EU-Canada Comprehensive Economic and Trade Agreement

The CETA is a trade agreement between the EU and Canada, which came into temporary effect on September 21, 2017. Distinct from prior RTAs, this agreement pioneers advancements in the Regulation Cooperation chapter within RTAs.⁷⁴ This is not the first time that both sides have striven to use regulatory cooperation to eliminate excessive institutional divergence. As early as 1976, both Parties established a committee to enhance the efficiency of regulatory practices across sectors. To date, this committee has facilitated the negotiation and conclusion of numerous mutual recognition and equivalence agreements. However, prior to the signing of CETA, there was an unsuccessful attempt to integrate stronger regulatory cooperation into a comprehensive trade agreement. The bilateral cooperation was predominantly characterized by “informal,

72 Guanfu Tan, On the Liberalizing Obligations of Digital Trade, *Journal of International Economic Law*, No. 2, 2021, pp. 27–47.

73 Bernard Hoekman and Petros C. Mavroidis, Regulatory Spillovers and the Trading System: From Coherence to Control Cooperation, E15 Task Force on Regulatory Systems Coherence Overview Paper, 2015.

74 Rodrigo Polanco Lazo and Pierre Sauve, The Treatment of Regulatory Convergence in Preferential Trade Agreements, *World Trade Review*, Vol. 17, No. 4, 2018, p. 590.

execution-oriented consultations, exchanges of information, and the adoption of good practices”.⁷⁵ The Regulatory Cooperation chapter in the CETA pertains to the development, review, and methodology aspects of a broad spectrum of regulatory measures. These encompass not only the TBT Agreement and the SPS Agreement, but also trade rules in goods, services, trade and sustainable development, trade and labor, and trade and environment.⁷⁶

The CETA Regulation Cooperation chapter primarily aims to tackle the challenges of regulatory barriers to trade. These include regulatory protectionism (unnecessary trade barriers), regulatory divergence (encompassing regulatory compatibility, recognition of equivalence, and convergence), and regulatory effectiveness (GRP).⁷⁷ Article 21.4 provides the Parties with 19 regulatory cooperation activities to undertake, ranging from bilateral discussions on regulatory governance and information exchange, sharing proposed regulatory copies, conducting post-implementation reviews of regulations, to achieving greater convergence through mutual recognition and use of international standards in agreed areas. Furthermore, the agreement fosters cooperation by prompting each Party to contemplate regulatory actions that counterparts take on analogous matters and providing stakeholders with a platform to engage in regulatory cooperation activities.⁷⁸ These clauses delineate the precise activities anticipated within regulatory cooperation, underscoring the need for ongoing interaction among regulators, circumventing unnecessary barriers at their inception, and seeking avenues to reconcile prior regulatory discrepancies.

CETA also created the Regulatory Cooperation Forum, which is intended to facilitate regulatory cooperation between the Parties. This is a dedicated committee and new institutional forum co-chaired by senior representatives from both sides. Its responsibilities encompass providing a forum to discuss regulatory policy issues; assisting individual regulators to identify potential partners for cooperation activities; reviewing regulatory initiatives; and

⁷⁵ Stanko S. Krstic, Regulatory Cooperation to Remove Non-tariff Barriers to Trade in Products: Key Challenges and Opportunities for the Canada-EU Comprehensive Trade Agreement, *Legal Issues of Economic Integration*, Vol. 39, No. 3, 2012, pp. 4–5.

⁷⁶ Article 21.1 of the CETA.

⁷⁷ Articles 21.2 and 21.3 of the CETA.

⁷⁸ Articles 21.5 and 21.8 of the CETA.

encouraging the development of bilateral cooperation activities.⁷⁹ While the forum lacks the authority to enact legally binding decisions, and there are no supervisor or censor mechanisms for the regulatory work of the Parties involved, it is noteworthy that the forum can submit draft decisions to the CETA Joint Committee. These drafts typically exhibit a high degree of professionalism. Consequently, discussions within the forum may exert a significant influence on the decisions made by the Joint Commission and, to a certain extent, shape the regulatory agenda of Parties.⁸⁰ The functions of the Forum are notably similar to those of the Regulatory Cooperation Committee, established in 2011. The primary responsibility of this Committee is to identify and recommend opportunities that could augment regulatory cooperation between the US and Canada.⁸¹

The CETA has established a comprehensive set of obligations and constructed an innovative institutional framework for regulatory cooperation and mitigating differences in regulations among Parties. However, it is crucial to underscore the voluntary, procedural, and open nature of these activities. In this regard, no specific forms of cooperation or predefined outcomes are required.⁸² As the agreement does not impose specific “hard” obligations, Parties retain significant autonomy in determining whether and how to engage in regulatory cooperation. To underscore the voluntary aspect of the agreement, Article 21.2.6 stipulates that “the Parties may undertake regulatory cooperation activities on a voluntary basis. For greater certainty, a Party is not required to enter into any particular regulatory cooperation activity, and may refuse to cooperate or may withdraw from cooperation. However, if a Party refuses to initiate regulatory cooperation or withdraws from cooperation, it should be prepared to explain the reasons for its decision to the other Party”. The provisions in the agreement appeared unclear, and Canada and the EU signed a Joint Interpretation Instruments in October 2016, reaffirming that neither

⁷⁹ Article 21.6 of the CETA.

⁸⁰ Nils Meyer-Ohlendorf, Christiane Gerstetter and Inga Bach, Regulatory Cooperation under CETA: Implications for Environmental Policies, *The Ecologic Institute*, November 1, 2016, p. 18.

⁸¹ Simon Lester and Inu Barbee, The Challenge of Cooperation: Regulatory Trade Barriers in the TTIP, *Journal of International Economic Law*, Vol. 16, No. 4, 2013, pp. 860–863.

⁸² Articles 21.4, 21.5 and 21.7 of the CETA.

regulatory agency had an obligation to participate in cooperation or adopt its results. Consequently, some commentators have suggested that regulatory cooperation under this agreement is, to a certain degree, a journey towards an unidentified endpoint.⁸³ There are other perspectives that successful regulatory cooperation necessitates the establishment of specific rules and joint institutions with explicit enforcement mechanisms.⁸⁴ The significance of supplementary binding regulations for achieving effective regulatory cooperation was acknowledged in a joint study commissioned by the EU and Canada prior to the initiation of CETA negotiations.⁸⁵ Nonetheless, when juxtaposed with the initial ambitions, the final Regulatory Cooperation chapter of the agreement appears insufficient.

B. The Comprehensive and Progressive Agreement for the Trans-Pacific Partnership

The Trans-Pacific Partnership (TPP), initially known as the Trans-Pacific Strategic Economic Partnership, was inaugurated by four nations: New Zealand, Singapore, Chile, and Brunei. Despite its initial modest size, it swiftly gained prominence following the US' involvement in the negotiations in 2008.⁸⁶ During the Obama administration, the US government maintained its engagement with the negotiations, positioning them at the core of its strategic deployment in the Asia-Pacific.⁸⁷ After 19 rounds of negotiations, a total of 12 members — the US, Canada, Japan, Mexico, Chile, Peru, Australia, New Zealand, Vietnam, Singapore, Malaysia, and Brunei — signed the agreement in early 2016. However, it never received ratification from the US Congress. In January 2017, President Trump officially withdrew the US from the TPP on his inaugural day in office. The remaining signatories have since pursued a revised agreement, referred to as the CPTPP, which largely retains the original

⁸³ *Supra* n. 80, p. 4.

⁸⁴ *Supra* n. 5, p. 124.

⁸⁵ Global Affairs Canada, Canada-European Union Joint Report: Towards a Comprehensive Economy Agreement, March 5, 2009, para. 3.9.

⁸⁶ Jiansheng Wu et al., The Trans-Pacific Partnership Agreement (TPP): Trends, Implications, and Strategic Countermeasures, *International Economic Review*, Vol. 1, 2014, pp. 65–76.

⁸⁷ Ming Du, Explaining China's Tripartite Strategy towards the TPP, *Journal of International Economics Law*, Vol. 18, No. 2, 2015, pp. 411–414.

provisions.⁸⁸

The Regulatory Coherence chapter is one of the CPTPP's most innovative parts. It is a groundbreaking step forward in establishing a central coordination and review mechanism for regulations of Parties, adhering to GRP, especially regulatory impact assessments, to help achieve domestic policy objectives, and promoting global norms for regulatory cooperation.⁸⁹ For instance, each Party to the agreement reserves the right to flexibly determine the scope of measures subject to the regulatory coherence obligation, provided that "each Party should aim to achieve significant coverage".⁹⁰

The Regulatory Coherence chapter encompasses five principal elements:

Firstly, it advocates for the formation of a central coordinating body to ensure efficient inter-agency coordination and review of proposed regulatory measures covered by the chapter. This body is tasked with: reviewing proposed covered regulatory measures; developing such measures adheres to good regulatory practices; strengthening consultation and coordination among domestic agencies so as to identify potential overlap and duplication and to prevent the creation of inconsistent requirements across agencies; and making recommendations for systemic regulatory improvements.⁹¹

Secondly, the chapter urges the adoption of GRP by Parties when developing proposed regulatory measures covered. These practices primarily emphasize conducting regulatory impact assessment procedures. This includes assessing the need for a regulatory proposal; examining feasible alternatives; explaining the grounds for concluding that the selected alternative achieves the policy objectives in an efficient manner; and relying on the best reasonably obtainable existing information including relevant scientific, technical, economic or other information.⁹² Within the context of regulatory impact assessment methodologies, the agreement underscores the relevance of cost-

88 James McBride and Andrew Chatzky, *What Is the Trans-Pacific Partnership (TPP)? Council on Foreign Affairs Relations Background*, 2019.

89 Jeff Weiss, *The Regulatory Coherence Chapter of the Trans-Pacific Partnership Agreement: Making the Link between Adherence to Good Regulatory Practice Principles and Promoting International Trade and Regulatory Cooperation*, *Yale Journal on Regulation*, <https://www.yalejreg.com/nc/the-regulatory-coherence-chapter-of-the-trans-pacific-partnership-agreement-making-the-link-between/> (Last Visited on October 28, 2024).

90 Article 25.3 of the the CPTPP.

91 Article 25.4 of the the CPTPP.

92 Article 25.5 (2) of the CPTTP.

benefit analysis in reviewing feasible alternative regulatory measures and demonstrating their efficacy. Despite acknowledging that it may be challenging to quantify and monetize certain costs and benefits, the agreement mandates members to assess the costs and benefits of these alternative measures “to the extent feasible”. This aligns with the OECD and APEC directives that advocate for cost-benefit analysis as the primary instrument for assessing existing regulations and their alternatives in regulatory impact assessment.⁹³ GRP also includes: taking into consideration the potential impact of the proposed regulation on SMEs; ensuring that new covered regulatory measures are plainly written and are clear; providing public access to information on new covered regulatory measures; and reviewing, 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.⁹⁴

Thirdly, the Regulatory Coherence chapter establishes a Committee on Regulatory Coherence (Committee) composed of government representatives of the Parties. The Committee shall: consider issues associated with the implementation and operation of this Chapter; consider identifying future priorities, including potential sectoral initiatives and cooperative activities; meet within one year of the date of entry into force of this Agreement, and thereafter as necessary; at least once every five years after the date of entry into force of this Agreement, consider developments in the area of good regulatory practices and in best practices in maintaining processes or mechanisms, as well as the Parties’ experiences in implementing this Chapter with a view towards considering whether to make recommendations to the Commission for improving the provisions of this Chapter.⁹⁵

Fourthly, the Regulatory Coherence chapter outlines several cooperative mechanisms designed to facilitate coordination among Parties in regulatory activities. These mechanisms include: information exchanges, dialogues or meetings with other Parties and interested persons; training programmes; strengthening cooperation and other relevant activities between regulatory agencies.⁹⁶ The level of regulatory cooperation envisioned in the CPTPP is

⁹³ *Supra* n. 20, p. 599.

⁹⁴ Articles 25.5 (3), (4), (5) and (6) of the CPTPP.

⁹⁵ Article 25.6 of the CPTPP.

⁹⁶ Article 25.7 of the CPTPP.

notably less ambitious than that proposed in the CETA.

Fifthly, there is the recognition that differences exist among members regarding regimes, societies, cultures, laws, and development circumstances and may therefore lead to specific regulatory methodologies. As a result, the CPTPP quickly confirmed each Party's sovereign right to identify its regulatory priorities and establish and implement regulatory measures to address these priorities, at the levels that the Party considers appropriate.⁹⁷ This openly acknowledges that some regulatory conflicts are inevitable and not necessarily inappropriate. The agreement does not require a member to use another member's regulatory measure as the basis for its own regulation.⁹⁸ To alleviate any concerns that the Regulatory Coherence chapter might unduly limit regulatory sovereign rights, the agreement explicitly stipulates the non-application of dispute settlement.⁹⁹ Theoretically, this non-application is necessary to foster increased participation by states, given the varying levels of development among the Parties and the broad spectrum of domestic regulatory measures encompassed by the chapter.¹⁰⁰

C. USMCA

In November 2018, the US, Mexico, and Canada signed a new trade agreement known as the USMCA, which is an updated successor to the 1994 North American Free Trade Agreement (NAFTA).¹⁰¹ Notably, this deal represents the first significant trade agreement negotiated by the Trump administration and is anticipated to set a precedent for future US engagement in international trade negotiations.¹⁰²

⁹⁷ Article 25.2 (2) of the CPTPP.

⁹⁸ Thomas J. Bollyky, *Regulatory Coherence in the TPP Talks*, In: Chin L. Lim, Deborah Kay Elms and Patrick Low (Eds.), *The Trans-Pacific Partnership: A Quest for a Twenty-first Century Trade Agreement*, Cambridge University Press, 2013, p. 182.

⁹⁹ Article 25.11 of the CPTPP.

¹⁰⁰ *Supra* n. 20, p. 600.

¹⁰¹ Sheng Zhang, *From the North American Free Trade Agreement to the United States, Mexico and Canada Agreement: New Developments in International Investment Law and China's Response*, *Journal of Central South University (Social Sciences)*, Vol. 25, No. 4, 2019, pp. 51–61.

¹⁰² M. Angeles Villarreal, Ian F. Angeles Villarreal and Ian F. Fergusson, *NAFTA Renegotiation and the Proposed United States-Mexico-Canada Agreement (USMCA)*, Congressional Research Service T44981, February 26, 2019, pp. 1–2.

The USMCA and CPTPP share several similarities. Firstly, Chapter 28 of the USMCA aims to “set out specific obligations with respect to good regulatory practices, including practices relating to the planning, design, issuance, implementation, and review of the Parties’ respective regulations”, a goal that closely aligns with the Regulatory Coherence chapter in the CPTPP.¹⁰³ Secondly, the USMCA emphasizes the role of a central regulatory coordinating body of “promoting good regulatory practices; performing key advisory, coordination, and review functions to improve the quality of regulations; and developing improvements to their regulatory system”, which is similar to the CPTPP.¹⁰⁴ Furthermore, the USMCA stresses the necessity of: internal processes or mechanisms providing for consultation, coordination, and review; ensuring that those regulations are clear, concise, and easy for the public to understand; and implementing regulatory impact assessment when developing proposed regulations.¹⁰⁵

Despite the numerous parallels, the USMCA stipulations are more comprehensive and prescriptive, elevating the regulatory coherence agenda to an unprecedented level.¹⁰⁶ Firstly, in contrast to the CPTPP, which permits Parties to independently determine which regulatory measures fall under relevant provisions, the USMCA encompasses nearly all regulatory measures within its coverage.¹⁰⁷ Secondly, the USMCA offers more comprehensive transparency provisions than the CPTPP. For instance, the USMCA incorporates an “Early Planning” clause, which can be interpreted as an early warning system for new regulations, ensuring that any interested person has ample time to provide feedback on proposed measures.¹⁰⁸ Each Party shall publish annually a list of regulations that it reasonably expects within the following 12 months to adopt or propose to adopt. Each regulation should be accompanied by: a concise description of the planned regulation; a time table; a

¹⁰³ Article 28.2 (2) of the USMCA.

¹⁰⁴ Article 28.3 of the USMCA.

¹⁰⁵ Articles 28.4, 28.8 and 28.11 of the USMCA.

¹⁰⁶ Ronald Labonte et al., USMCA (NAFTA 2.0): Tightening the Constraints on the Right to Regulate for Public Health, *Global Health*, Vol. 15, No. 1, 2019, p. 7.

¹⁰⁷ Article 28.1 of the USMCA.

¹⁰⁸ Article 28.9 of the USMCA.

point of contact; an indication of sectors to be affected and whether there is any expected significant effect on international trade or investment.¹⁰⁹ The principle of regulatory transparency further stipulates specific requirements for the publication of a draft regulation and opportunities for public comment.¹¹⁰ It is noteworthy that the concept of regulatory transparency, a fundamental element of good regulatory practices, is extensively interpreted in other chapters of the CPTPP. These include Transparency and Anti-corruption (Chapter 26), Technical Barriers to Trade (Chapter 8), and Sanitary and Phytosanitary Measures (Chapter 7). This is the rationale behind the absence of a definitive solution in the Regulatory Coherence chapter. Thirdly, the USMCA extends the scope of GRP regarding the development and execution of regulations. This encompasses good practices such as the utilization of reliable and high quality information and expert advisory, as well as conducting retrospective review procedures.¹¹¹

The USMCA also envisions the future of regulatory cooperation within its GRP chapter. This chapter, in comparison to Article 25.7 of the CPTPP, offers a more comprehensive list of potential regulatory cooperation activities. These include: (i) early stage formal or informal exchange, including coordinating research agendas, to reduce duplicative research; (ii) exploring possible common approaches to the evaluation and mitigation of risks or hazards; (iii) seeking to collaborate in relevant international fora; (iv) co-funding of research in support of regulations and implementation tools of joint interest; (v) facilitating the greater use of relevant international standards; (vi) coordinating in the implementation of regulations and sharing compliance information; (vii) periodically exchanging information, as appropriate, concerning any planned or ongoing post-implementation review or evaluation of regulations in effect affecting trade or investment. Similar to that of the CETA and CPTPP, the regulatory cooperation activities anticipated in Article 28.17 of the USMCA are of optional nature. Hence, cooperation obligations under this agreement are in nature soft obligations on the basis of “give positive consideration”, and any

¹⁰⁹ Article 28.6 of the USMCA.

¹¹⁰ Articles 28.9 and 28.15 of the USMCA.

¹¹¹ Articles 28.5 and 28.13 of the USMCA.

contracting Party only commits to fulfill its obligations within the limits of its will.¹¹²

Unlike in the CPTPP, the GRP chapter in the USMCA provides that dispute settlement shall be recourse to in case of “address[ing] a sustained or recurring course of action or inaction that is inconsistent with a provision of this Chapter”.¹¹³ This reflects that the Parties to the agreement can better adapt to the GRP, attributable to deepening economic integration and lessons gleaned from the NAFTA era.¹¹⁴ Conversely, among the CPTPP Parties, there remains a significant number of developing countries characterized by imperfect regulatory systems. Consequently, incorporating the GRP chapter into dispute settlement procedure would exacerbate concerns that GRP compromises regulatory autonomy and precipitates regulatory convergence.¹¹⁵

D. Summary

Each mega-RTA’s regulatory cooperation encompasses a forward-looking process that can identify potential regulatory conflicts at an early stage. This prevents the unnecessary emergence of regulatory conflicts in national legislation, which could become specific measures affecting trade.¹¹⁶ However, significant differences persist among the three agreements. For instance, it has been posited that the EU’s approach to regulatory cooperation, as outlined in the CETA, is generally more moderate and less institutional than the US approach reflected in the USMCA.¹¹⁷ Despite these differences, regulatory cooperation within the three agreements still displays several key trends. A thorough examination of these trends will enhance our understanding of how the new generation of RTAs deal with non-tariff measures and unnecessary regulatory conflicts.

112 Article 28.17 of the USMCA. Federico Ortino and Emily Lydgate, Addressing Domestic Regulation Affecting Trade in Services in CETA, CPTPP and USMCA: Revolution or Timid Steps? *Journal of World Investment and Trade*, Vol. 20, No. 5, 2019, p. 702.

113 Article 28.20 of the USMCA.

114 Jun Wan, The Impact of the USMCA on the Investment of the Three Countries in North America, *Journal of Latin American Studies*, No. 2, 2019, pp. 1–24 & 154.

115 Stuart Trew, *International Regulation and the Public Good*, Canadian Centre for Policy Alternative, 2019, pp. 32–34.

116 *Supra* n. 2, p. 3.

117 *Supra* n. 5, p. 118.

Firstly, obligations on new generation of RTAs impose regulatory cooperation obligations on a myriad of domestic regulations, some of which are not directly related to trade. This contrasts with the WTO, which confines its cooperation within a narrow scope of domestic laws and policies, such as TBT and SPS. For instance, the Regulatory Cooperation chapter of the CETA encompasses all trade regulations concerning goods, services, trade and sustainable development, trade and labor, and trade and the environment.¹¹⁸ Similarly, the GRP chapter of the USMCA applies to all regulations with which compliance is mandatory, with the exception of those stipulated in Annex 28-A.¹¹⁹ Although corresponding provisions in the CPTPP are more flexible, allowing each Party to decide the scope of regulatory measures covered by the Regulatory Coherence chapter, each Party “should aim to achieve significant coverage”.¹²⁰

Secondly, two of the three agreements (CPTPP and USMCA) mandate that contracting Parties adhere to specific GRP when formulating domestic regulations. These practices encompass notification and comment, opportunities for public comment, and coordination between domestic regulatory agencies and regulatory impact assessments. The clear objective of incorporating GRP into RTAs is to enhance the quality of domestic regulations within contracting Parties.¹²¹ Furthermore, the implementation of GRP can facilitate international trade, investment, and economic growth, while contributing to each Party’s ability to achieve its public policy objectives.¹²² The incorporation of GRP signifies an expansion of the regulatory scope of RTAs to include regulatory inputs throughout the domestic rule-making process. This represents a significant departure from the traditional emphasis on regulatory content in the WTO.¹²³ It is because the domestic rule-making process itself has now fallen

¹¹⁸ Article 21.1 of the CETA.

¹¹⁹ Article 28.1 of the USMCA.

¹²⁰ Article 25.3 of the CPTPP.

¹²¹ Lei Zhang and Lin Xu, Good Regulatory Practices for International Trade: A Comparative Study Based on Domestic and International Two-tier Governance, *International Trade*, No. 11, 2021, pp. 11 & 80–88.

¹²² Article 25.2.1 of the CPTPP; Article 28.2.1 of the USMCA.

¹²³ WTO agreements such as the Agreement on Technical Barriers to Trade (TBT) and the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS) contain procedural requirements such as notice and comment, openness and transparency, but are far more limited than good regulatory practices in regional free trade agreements.

within the ambit of RTAs that governments have legitimate concerns about the possibility that strict adherence to GRP would erode their policy space.¹²⁴ Consequently, the CPTPP excludes disputes related to failure to comply with GRP from its dispute settlement mechanism, while the USMCA provides only limited jurisdiction over these disputes.¹²⁵

Thirdly, the Regulatory Coherence chapter is intertwined with other substantive sections, such as those addressing the TBT and SPS. It should be interpreted holistically. When juxtaposed with WTO agreements, these three RTAs exhibit greater detail in areas such as international standards, mutual recognition and equivalence, transparency, and public participation. Furthermore, they impose more specific obligations. In the context of transparency, Article 28.6 of the USMCA's GRP chapter introduces an early planning system for new regulations expected within the following 12 months to adopt. This system ensures that Parties have enough time to offer feedback on proposed measures. The notification should encompass a detailed description of the planned regulation, a point of contact, sectors to be affected, expected significant effect on trade, and a comprehensive timeline for subsequent measures, including opportunities for public comment. While notification requirements are encompassed in WTO regulations, they exhibit greater flexibility concerning timing and content. Specifically, members are not mandated to delineate the sectors impacted by the proposed measures or furnish an analysis of anticipated trade effects. These issues are usually raised subsequently by members affected by the proposed measures of the Committee on TBT and the Committee on SPS.¹²⁶ Article 8.6 of the Technical Barrier of Trade chapter within the CPTPP delineates specific guidelines for mutual recognition of conformity assessment bodies among Parties. It explicitly mandates that each Party shall grant national treatment to the conformity assessment bodies of all other Parties, ensuring that products exported from

124 Alberto Alemanno, The Regulatory Cooperation Chapter of the Transatlantic Trade and Investment Partnership: Institutional Structures and Democratic Consequences, *Journal of International Economic Law*, Vol. 18, No. 3, 2015, p. 625.

125 Inu Manak, Regulatory Issues in the New NAFTA, October 2018, <https://ielp.worldtradelaw.net/trade-law-and-international-law/> (Last Visited on October 28, 2024).

126 *Ibid.*

one Party require only testing and certification prior to entry into the markets of other Parties.

Fourthly, each of these three RTAs has adopted new strategies that focus on encouraging regulatory cooperation among Parties in various forms, ranging from informal exchange of information, coordination of regulatory approaches and implementation of regulations, to signing MRAs and developing common standards. Joint bodies have also been created to oversee the implementation of rules, such as the Regulatory Cooperation Forum under CETA, the Regulatory Coherence Committee under CPTPP, and the GRP Board under USMCA.

The last common denominator of these three agreements regarding regulatory cooperation or regulatory coherence is that they all focus on improving procedures when planning, adopting, and implementing national regulations without focusing on the coordination of substantive content of national regulations.¹²⁷ These key procedures include: (i) ensuring economic rationality by regulatory impact assessment mechanisms; (ii) transparency and the legitimate participation of interested persons, particularly through open, prompt notification and consultation mechanisms, as well as fair public review and appeal procedures; (iii) intergovernmental coordination through joint bodies that monitor the coherence of proposed regulations with treaty provisions.¹²⁸ Nevertheless, compared to the CPTPP and USMCA which focus more on domestic regulatory procedures, the CETA emphasizes substantive convergence of regulatory approaches by demonstrating the preference for contemporaneous or joint risk assessments and regulatory impact assessments reaching harmonized, equivalent, or compatible solutions, and mutual recognition in specific cases.¹²⁹ Given the huge differences in cultures, legal traditions, and levels of economic development among countries, it is unsurprising that there is little trust and mutual understanding between different regulatory systems, and that negotiating parties decide not to promote harmonization of substantive content.

127 *Supra* n. 112, p. 694.

128 *Supra* n. 74, p. 600.

129 *Ibid.*, p. 595.

V. CONCLUSION

Regulatory conflicts predominantly contribute to trade frictions in the context of global value chains. The COVID-19 pandemic and the subsequent global economic and social crisis remind us of the interconnectedness of the world. This is a stark reminder that domestic solutions, while essential, are inadequate in effectively coping with global challenges.¹³⁰

Within the past years, RTAs have expanded beyond WTO provisions, introducing innovative and comprehensive approaches to GRP and regulatory cooperation. While these new regulatory cooperation mechanisms do not impose significant substantive obligations on specific regulatory actors, they have established a robust network of procedures that can facilitate the delivery of higher-quality regulations. Regulatory cooperation can mitigate the negative impact of international trade regulation conflicts among RTA members. Furthermore, it may exert a spillover effect on non-members and become a model for enhancing domestic regulatory cooperation among members within the WTO framework. Although setting multilateral disciplines for domestic regulations represents the ultimate solution to the issue of domestic regulatory barriers, until major trading nations are willing to self-regulate, domestic regulatory cooperation remains a viable alternative.

China must not only actively advocate for and participate the legislation of international regulations within the WTO framework, but also take initiative to reform China's domestic economy and government management system. This approach will help foster China's institutional advantages and fulfill GRP. Consequently, it will facilitate positive interactions between international and domestic rule of law, thereby enhancing its influence in global governance within the area of domestic regulation.

In services trade, the development of the Reference Paper marks a significant initial step in the right direction. This is a predictive indicator for

130 OECD, No Policy Maker Is an Island: The International Regulatory Cooperation Response to the COVID-19 Pandemic Crisis, June 8, 2020, p. 6; Joost Pauwelyn, Export Restrictions in Times of Pandemic: Options and Limits under International Trade Agreements, *Journal of World Trade*, Vol. 54, No. 3, 2020, pp. 727–747.

the future trajectory and accomplishments of the WTO. China's constructive involvement during the negotiation of the Reference Paper further signifies its acceptance of new heightened standards within domestic regulation. In this context, it is both feasible and advisable for China to utilize the Reference Paper in future negotiations for RTAs, as well as in negotiations aimed at upgrading existing ones. This would involve introducing domestic regulatory disciplines, or at least introducing into appropriate regulatory cooperation mechanisms. However, it should be acknowledged that there is still a disparity between China's domestic regulatory measures and those outlined in the Reference Paper. This is primarily evident in the substandard disclosure of domestic regulations and the absence of certain rules. Therefore, China should revise and optimize its laws and regulations in accordance with the Reference Paper.