



**Brazil-U.S. Business Council**

**ADVANCING THE  
REGULATORY COHERENCE  
AGENDA IN BRAZIL**

# ADVANCING THE REGULATORY COHERENCE AGENDA IN BRAZIL

A predictable and stable regulatory framework is beneficial to everyone: businesses, regulators, and civil society alike. It forms the bedrock of a modern rulemaking process by creating the predictability, consistency, and transparency needed in a rulemaking system that fosters investment and trade.

Businesses around the world depend on a number of sound regulatory practices in the markets in which they operate. By implementing foundational rulemaking principles, Brazil will ensure an environment where businesses operate more efficiently and productively, leading to increased economic growth and jobs.

## What is regulatory coherence, and what are the benefits?

Regulatory coherence is a concept that applies to the domestic rulemaking process. It refers to the internal coordination and review process under which the ‘whole-of-government’ works to ensure that rules and regulations are crafted in an open, transparent, and participatory manner and that outcomes are based on scientific evidence. A proper regulatory coherence system involves the implementation of good regulatory practices consistently across the entire government and ensures that all government agencies are coordinated and working together to achieve a specific policy goal, thereby avoiding overlapping and inconsistent rules. It does not imply less or more regulation; rather, it aims to ensure a better outcome through a better process.

Regulatory coherence is important to the policymaking process because unnecessary or inconsistent regulations make compliance difficult or even impossible. They create a burden on industry, and costs are often passed through to consumers. Moreover, poorly written rules and over-regulation are a burden on regulators and enforcers because they increase the workload and costs to the government without providing any additional safeguards.

Regulatory coherence provides meaningful engagement and comprehensive input from the private sector and civil society during the rulemaking process, which makes regulators’ jobs easier by identifying potential problems and addressing them in advance. Not only is the process more democratic, but the proposals can be improved by those directly affected, leading to better quality regulation.

Since a more streamlined process positively contributes to the business environment, regulatory coherence is beneficial for both domestic industry and foreign investors alike. And with a rational rulemaking process in place, the market will be more competitive and innovative: companies will spend less on compliance and invest more in their core business activities. This is why countries with a smooth-functioning regulatory system have an advantage in attracting both more domestic and foreign investment.

“Where regulation is transparent, efficient, and implemented in a simple way, it becomes easier for aspiring entrepreneurs to compete, innovate, and grow.”

*(Source: Doing Business 2013, World Bank)*

## What are good principles of regulatory coherence?

There are many widely accepted principles of good regulatory practice developed by governments and international organizations. Examples of best practices can be drawn from individual governments and established international fora such as the World Trade Organization (WTO), the Organization for Economic Development (OECD), and the Asia Pacific Economic Cooperation (APEC). From what has been experienced thus far, it is possible to list the core values and principles that should be observed in order to create a sound regulatory coherence program:

- A coherent rulemaking system is transparent, consistent, and predictable, makes decisions based on sound science and evidence, and uses impact assessments.
- Opportunity is provided for meaningful public consultation, with proposed rules announced to the public, and adequate time for review is allowed, including an actual draft text and preliminary impact assessment.
- A system of retrospective review exists to revisit previous assessments and predictions in order to correct errors in assumptions and ensure that regulations are functioning as intended. This ensures a system of continuous improvement in the rulemaking process.
- A strong central coordinating body should be empowered with the authority to ensure that all agencies are working together and aligned to provide consistency in the rules and regulations being formulated.

The OECD has developed widely-followed recommendations<sup>1</sup> to address regulatory policy, management, and governance as a whole-of-government activity that can and should be addressed by sectoral ministries and regulatory and competition agencies, establishing the following principles of regulation:

- Regulations must be consistent with law.
- Regulations must identify the nature and significance of the problem.
- Alternatives to address the problem must be identified and assessed.
- The costs and benefits of each alternative must be assessed.
- The alternative selected should maximize net benefits to society.

## What has Brazil done to improve regulatory coherence?

In Brazil, there are at least 30 government bodies at the federal level alone with the authority to produce rules and regulations. When an issue relates to more than one of these agencies, it is common to have duplication in the process, or even worse, contradiction within the rules. Therefore, horizontal mechanisms and common procedures, applying to the whole-of-government, should be established in order to increase predictability and planning for the private sector and to ensure coordination between agencies pertaining to the same domain.

Conscious of that need, in 2007 the Brazilian government created<sup>2</sup> a program to strengthen institutional capacity for regulatory management—PRO-REG, according to the Portuguese acronym. Under a separate initiative, in 2011 the Brazilian Foreign Trade Board (CAMEX) formed an inter-ministerial technical group to modernize and consolidate domestic legislation relating to foreign trade, with a view towards harmonizing, rationalizing, and simplifying it.<sup>3</sup> Since 2013, various bodies of the Brazilian government have been exchanging experiences on rulemaking processes with other countries as well as international organizations.

In August 2014, the U.S. Department of Commerce, the Brazil-U.S. Business Council, the Brazilian National Confederation of Industry, and AmCham Brazil hosted a series of U.S.-Brazil Regulatory Coherence Roundtables, with the participation of

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1 On March 22, 2012, the OECD adopted the Recommendation of the Council on Regulatory Policy and Governance.

2 Executive Ordinance 6062/2007

3 CAMEX Resolution 44/2011

representatives from both governments and private sectors, to exchange experiences on regulatory coherence policies. This initiative successfully engaged all the relevant players needed to move forward with the regulatory coherence agenda in Brazil. It also strengthened the overall bilateral relationship by bringing the two governments together for a productive exercise in sharing best practices.

## **What results can be expected once regulatory coherence is adopted?**

With such a system in place, more effective, efficient, and comprehensive regulations will be developed and implemented, resulting in cost savings for businesses, consumers, and government. Society can expect the adoption of clear, predictable, non-discriminatory rules and regulations, and the implementation of correspondingly simple, common sense compliance procedures and enforcement mechanisms. Regulatory coherence, therefore, improves public policy quality while simultaneously reducing bureaucracy.

Brazil has an excellent opportunity to implement a new regulatory coherence system tailor-made to its unique characteristics and enriched by the best examples from around the world. The Brazilian and U.S. private sectors are united in their recommendation that Brazil continue the good work it has already begun to implement a system that delivers regulations that meet public policy objectives and makes a positive impact on the economy and society.

### **A WORD ON REGULATORY COOPERATION**

In addition to sound baseline regulatory practices, the business community also values specific regulatory cooperation arrangements. Regulatory cooperation aims to prevent and remove barriers to trade, investment, and cross-border operations resulting from unnecessary regulatory divergences with trading partners. These differences are often the result of a lack of communication or cooperation among regulators. Regulatory cooperation initiatives look to align both overall regulatory processes and sector-specific initiatives and typically consist of information exchanges, coordination of regulatory activities, sharing of best practices, bilateral agreements, and oversight mechanisms to ensure continued progress.

There are multiple ways of pursuing regulatory cooperation, and they lead to tangible positive results for the economies involved. With regulatory coherence systems in each country in place, bilateral or multilateral regulatory cooperation efforts will be much more effective and will enable sector and regulation specific work plans.



## **Brazil-U.S. Business Council**

**The Brazil-U.S. Business Council** is the premier business advocacy organization dedicated to strengthening the economic and commercial relationship between Brazil and the United States. Established in 1976, the Council is composed of two sections. The U.S. Section of the Council represents major U.S. companies that invest in or have business in Brazil. It operates under the administrative aegis of the U.S. Chamber of Commerce and maintains independent policy formulation and membership. The Brazil Section of the Council is managed by the Brazilian National Confederation of Industry (CNI), composed of the 27 Brazilian state-level Federations of Industries. The Council also works in conjunction with the American Chambers of Commerce for Brazil (AmCham Brazil), the U.S.-Brazil CEO Forum, and sectoral associations in both countries. Together, this powerful structure enables the Council to forge consensus between the two private sectors and communicate to both governments with a unique bilateral voice.



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