

The OECD Good Regulatory Practices toolbox and Brazil's reform through transnational lenses

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Abstract

Brazil has embraced institutional and legal reforms towards "good regulatory practices" (GRP) built on the OECD's "better regulation" agenda. New laws and decrees made Regulatory Impact Assessment (RIA) mandatory in all public administration's rulemaking, as well as stock reviews and "ex-post" evaluations. Following such steps, a regulatory oversight body is under scrutiny by policymakers. This paper assesses national regulatory reforms through international and transnational lenses. It primarily argues that nation-states make policy immersed in a dense web of networks, highlighting that it is not possible to understand domestic legal changes without assessing transnational legal processes. It further argues the importance of the OECD as a purveyor of ideas and a critical node in transnational regulatory governance. First, it unpacks the concept of GRP codified into the OECD recommendations and its construction through *data collection, checklists, and toolkits*, challenging its coherence and functions as a golden standard policy for "better regulation." Secondly, it unveils how these techniques are disseminated worldwide through mechanisms of soft governance, such as *peer review, persuasion, surveillance, comparison, and ranking*. Then, it turns to the case of Brazil, assessing how these tools and technical knowledge have been transmitted to this specific institutional context. The case of Brazil sheds light on the effectiveness of policy and legal transfers through transnational processes involving peer pressure, social learning, the role of indicators, and cultural change.

Keywords: OECD; Good Regulatory Practices; Regulatory Reform; Brazil.

1. Introduction

Brazil has embraced legal and institutional reforms in its regulatory system. Since 2015 Brazil has reoriented its rulemaking process towards the adoption of "good regulatory practices" (GRP) according to the "better regulation" agenda promoted by the OECD¹. New laws and executive decrees from 2018 to 2021 made the employment of "ex-ante" Regulatory Impact Assessment (RIA) mandatory for all federal public administration's rulemaking².

¹ OECD (2016), pp. 113-122 and Querbach and Arndt (2017), pp. 37-39

² Law n° 13.874/19 (Economic Freedom Act - EFA) (Law n. 13,874, from 20 Sept 2019. Available at: http://www.planalto.gov.br/ccivil_03/ato2019-2022/2019/lei/L13874.htm. Accessed 10 Oct 2022) set the framework for the regulatory environment: i) the institutionalization of RIA as mandatory for all proposals or amendments of normative acts edited by all entities of the federal public administration; and ii) the recognition of international standards. Both provisions were regulated by Decrees 10.411/2019 (Decree n. 10,411, from 30 Jun

Regulatory agencies and other national governmental bodies have been encouraged to conduct "ex-post" evaluations and manage stock reviews to reduce, simplify, and consolidate existing regulations. A new institution to oversee regulatory decision-making is under scrutiny by policymakers. A mixture of deregulation and re-regulation has taken the stage.

This chapter assesses Brazilian regulatory reforms through transnational lenses. It draws on the rationale that, although nation-states still make policy, they are immersed in a dense web of transnational networks and processes³.

Reforms started domestically almost fifteen years earlier, but Brazil's formal request to accede to the OECD in 2017⁴ catalyzed previous efforts, provided political support, and helped to overcome resistance. As a result, in 2020, Brazil adhered to two OECD recommendations on regulatory governance.⁵ Although not legally binding, such instruments represent the political will of adherent countries.

Brazilian public law scholars have welcomed the recent reforms as a milestone in introducing GRP in Brazil since 2007⁶. Likewise, political scientists have considered a paradigmatic change in rulemaking and a key tool to maximize good governance, understood in the context of the diffusion and implementation of independent regulatory agencies (IRA)⁷, which has led to a Latin American version of the Regulatory State⁸.

Brazil is not an exception to such a trend, neither among transition economies⁹ nor within Latin American countries¹⁰. A recent Policy Brief from the Development Bank of Latin America highlighted the case of Brazil, arguing that state structural changes have been carried

2020. <https://www.gov.br/mdr/pt-br/assuntos/analise-de-impacto-regulatorio-air/D10411.pdf>. Accessed 10 Oct 2022) and 10.229/20 (Decree n. 10,229, from 05 Feb 2020. https://www.planalto.gov.br/ccivil_03/_ato2019-2022/2020/decreto/D10229.htm. Accessed 10 Oct 2022).

³ Shaffer (2012), p. 2; Halliday and Shaffer (2015), pp. 3-6 and Mahon and McBride (2008), p. 3.

⁴ Decree n. 9, 920/2019 established the Council for the Preparation and Monitoring of the Accession Process of the Federative Republic of Brazil to the Organization for Economic Cooperation and Development. (<https://www2.camara.leg.br/legin/fed/decret/2019/decreto-9920-18-julho-2019-788847-norma-pe.html>.

Accessed 18 Oct 2022) For a timeline on Brazil's engagement with the OECD, see the OECD webpage (<https://www.oecd.org/latin-america/countries/brazil/>. Accessed: 21 Oct 2022).

⁵ OECD (1995) and OECD (2012).

⁶ Jordão and Cunha (2020), pp. 227-255.

⁷ Carvalho et al. (2020), pp. 1-9 and Holperin (2019), pp. 1116-1137.

⁸ Levi-Faur and Jordana (2006), pp. 335-366 and Dubash and Morgan (2012), pp. 261-281.

⁹ Ponciano Intal and Gill (2016), pp. 1-145 and Jarvis (2017), pp. 1386-1416.

¹⁰ Aquila et al. (2019), pp. 1-9 and Donadelli et al. (2020), pp. 255-266.

out through consensus-building, strategic leadership, capacity-building, and large-scale cultural change¹¹.

The influence of the OECD's regulatory policy agenda on Brazil's reforms is unquestionable. However, from a domestic perspective, the OECD's model has usually been taken as an indisputable blueprint, a coherent and complete body of regulatory policy drawn from member countries' diverse - and "successful" - experiences. Hence, it is usually referred to as a "toolbox" that governments have at their disposal as highly technical knowledge to employ in the way it fits better in a continuous (*and never-ending*) learning process.¹²

This work unpacks the OECD's toolbox and challenges this conventional discourse by asking: How has the concept of GRP been developed and codified into the OECD recommendations and practices? Is this concept translated into a coherent and complete policy to drive reforms? Have been such concepts and practices effectively transmitted to the Brazilian institutional context?

The chapter is structured into three sections following this introduction. Section 2 examines the role of the OECD as a critical node in transnational regulatory governance and the construction of GRP through *data collection, checklists, and toolkits*. It provides an overview of this particular transnational norm¹³ by showing contradictions inside the so-called "GRP's toolbox". Section 3 turns to the case of Brazil, illustrating how such tools and technical knowledge have been conveyed to a specific institutional context through mechanisms of soft governance¹⁴, alternating movements of resistance, skepticism, and full embracement. Section 4 concludes.

¹¹ Albuquerque and Lopez (2022), pp. 1-13.

¹² The term "toolbox" is usually referred in policy literature such as working papers and reports from the OECD and the World Bank. See OECD (2021), pp. 25-27 and WORLD BANK GROUP (2010), pp. 16. The term is applied both to the European Commission policies and to the U.S. policies and regulations. See, as examples, European Commission (2021) and Cai (2016), pp. 296;511. Academic literature also refers to "regulatory toolbox", either as a blueprint for regulatory governance or in a critical perspective. For some examples see Kjaer (2018), p. 14; Lodge and Kai (2012), pp. 18-25 and Queiroz-Cunha and Rodrigo (2012), pp. 17. For the idea of a "never-ending" process, see particularly Pal (2018), as described better in Section 2.1 of this chapter.

¹³ I employ here the term "transnational norm" as "a collection of legal norms and associated institutions within a given domain that order behavior across national jurisdictions". The related concept "transnational legal process" is "the process through which the transnational construction and conveyance of legal norms take place". Both terms are defined in Shaffer and Halliday's framework as a sociolegal approach and methodological conception, where they shift the focus from transnational law as a body of law or legal doctrine to processes of transnational legal ordering and the construction and migration of legal norms across borders, regardless of whether they address transnational activities or purely national ones.

¹⁴ Marcussen (2014), pp. 103-128 and Pal (2012), pp. 63;96;121-156.

2. Unpacking the GRP's toolbox and the OECD's techniques of soft governance

This section focuses on the OECD and its role as a standard-setting institution and a knowledge producer in transnational regulatory governance through the construction of GRP¹⁵. In Halliday & Shaffer's framework for analyzing transnational legal processes and the dimensions and determinants of state change, one key factor to assess is the nature of the transnational norm being conveyed.¹⁶ Breaking down this idea, it becomes necessary to understand the transnational legal norm's legitimacy, clarity, and coherence¹⁷. By unpacking what lies behind the construction of the "GRP toolbox," I challenge specifically its coherence, illustrating the complexities, tensions, and contradictions enmeshed in the apparent "neutral" concept of GRP. Then, I briefly explain how the OECD has developed and refined techniques of soft governance to transmit its transnational norm.

2.1. Putting the tools inside the box

This analysis is inspired by Leslie Pal's work, which delved into representative OECD documents on the concept of "governance."¹⁸ I take the same steps to assess the primary documents that constitute the OECD transnational norm in regulatory governance, here named simply as the "GRP toolbox". Pal called "modernization under stress" the emulation and borrowing among nations that wish to move towards modernity.¹⁹ His narratives provide a series of 'inversions without end,' as "the OECD moved from the particular to the universal, from models to modalities, and from reform to redemption"²⁰. The literary allegory used by Pal²¹ resembles the Greek mythological figure of Sisyphus, who was forced to roll an immense boulder up a hill and then to roll down every time it neared the top, repeating this action for eternity. Not by chance, the World Bank named a cross-country survey on the implementation of regulatory reforms in developing countries "Giving Sisyphus a Helping Hand"²².

¹⁵ Baldwin (2010), pp. 259-278; Jakobi (2012), pp. 2-26 and Lang (2019), pp. 8-22.

¹⁶ Halliday and Shaffer (2015), pp. 11-15.

¹⁷ Halliday and Shaffer (2015), p. 32.

¹⁸ Pal (2008), pp. 60-76.

¹⁹ Pal (2008), p. 61.

²⁰ Id., in Pal's (2008) own words, "*reform would be a project without end, since the reformation of one part of the system will inevitably perturb other parts, which will, in turn, have to be adjusted and reformed, ad infinitum. Inversions without end.*" (p. 78)

²¹ See Cormac, McCarthy (1985) *Blood Meridian or the Evening Redness in the West*. Random House, cited by Pal (2008).

²² Ladegaard and Petter Kamkhaji (2018). This World Bank cross-country quantitative study mapped developing countries' regulatory reforms in 60 countries from 2001 to 2016 to understand which ones produced successful RIA systems despite adhering or not to the overall package of GRP. Brazil and Armenia were considered notable outliers for having put in place functional RIA systems with limited observations of "good practices".

Progressively, the OECD became a global advocate for the New Public Management (NPM) model.²³ Beginning in the 1990s, the OECD's Public Management Committee (PUMA)²⁴ has produced a whole body of regulatory policy reference documents, checklists, recommendations, and toolkits on the design and implementation of regulatory reforms. It has influenced member and non-member countries from different political and institutional backgrounds.²⁵ Over time, this agenda moved from a deregulation approach based on competition, market orientation, and reduction of administrative burdens to a broader concept of regulatory governance.²⁶ Countries have implemented the recommendations and requested periodic reviews of their efforts and results.²⁷ After the OECD's enlargement process in 2004, emerging economies, such as Brazil, also began to adhere to programs of regulatory reforms.

The OECD crafted the normative concept of GRP, which is generally understood today and highly accepted worldwide.²⁸ Notwithstanding its high level of adherence, scarce studies assess this whole body of work, especially examining the process of changing from deregulation to the broad meaning of regulatory governance and, more recently, to "agile regulatory governance".²⁹ Jakobi considers the regulatory policy of the OECD "*unclear at best and contradictory at worst*", despite presenting itself as "*systematically developed over time, declaring seemingly contradictions as different stages in the development*"³⁰. For Lodge and Wegrish, this agenda is based on contradictory views regarding regulation and contested assumptions underlying such tools.³¹ As they remark, anyone would disagree with "high-quality regulation" instead of "low-quality regulation"; however, it is unclear what high quality *exactly* means.³² Lang argued that the difficulty of grasping the whole regulatory policy

²³ Pal (2008), p. 60. For a reference study on NPM, see Hood (2004).

²⁴ PUMA had a critical role in developing and disseminating New Public Management Reforms. In 2004 the name was changed to Public Governance Committee and in 2009 to Regulatory Policy Committee, which has acted as the central venue for the development and implementation of regulatory policy programs.

²⁵ Pal (2012), pp. 34-57.

²⁶ Jakobi (2012), pp. 9-10; Lang (2019), pp. 8-22.

²⁷ Jakobi (2012), pp. 14-17.

²⁸ The OECD does not define "Good Regulatory Practices" (GRP), but it does mention the expression in several documents. A vast academic and policy literature also refers to GRP. The idea of a normative concept comes from a compilation of the main OECD recommendations, guidelines, reports, country peer reviews and working papers on regulatory governance and reforms. The main OECD webpage referencing all these documents is available at: <https://www.oecd.org/regreform/regulatory-policy/recommendations-guidelines.html>. Accessed: 04 Nov 2022.

²⁹ OECD (2021).

³⁰ Jakobi (2012), p. 3.

³¹ Lodge and Wegrish (2009), p. 151.

³² Lodge and Wegrish (2009), p. 145.

developed by the OECD along almost 20 years "goes to the heart of (his) understanding of regulatory policy as a technique of global regulatory 'un-governance'.³³

The first Recommendation, proposed by PUMA and adopted by several countries, is a prosaic *Reference Checklist*³⁴ based on a questionnaire of ten questions in a problem-solving format to guide regulators in drafting new regulations on a rational basis.³⁵ The message in the Checklist is simple: there is a need to rationalize the process through which regulations are made. Despite this apparent simplicity, the context in which the Checklist was produced matters in understanding its underlying assumptions. Regulators from industrialized democracies were asked to report their "*successful governing responses to the diverse interests and values of modern societies*."³⁶ Deregulation and market-driven approach were keywords in the resulting document. The United States deregulation movement in the '70s mixed with the UK's Deregulation Unit in the '80s. The following experiences of Canada, Australia, New Zealand, Japan, and European countries were added. While some responses emphasized economic analysis and cost reduction, others stressed "due process", and others focused on simplicity.³⁷ In the face of diverse experiences, the OECD's task was to find *key principles* that "*should be flexible enough to apply to regulatory decisions in all or most policy areas*" and "*to provide practical guidance on the design of "high-quality regulations"*".³⁸ Such a construction demonstrates how transnational institutionalization of norms elevates one (or more) country's particular norms to the transnational status of universals.³⁹

In 1997, the OECD complemented the Checklist with a contextual analysis of the reforms undertaken by members, presenting a more realistic view of the challenges and resistances faced by governments.⁴⁰ Again, the experiences were "distilled" to extract their

³³ Lang (2019), p. 30. By 'un-governance,' Lang means that GRP embeds a set of *open-ended* organizational routines into regulatory decision-making, which may be associated with different political projects in diverse contexts. The constant ability to enact such rituals implies that GRP is not part of a broader rule-making project but rather a *contestability* project about *un-settling* market orders and un-making institutions.

³⁴ OECD (1995).

³⁵ The questions are: 1. Is the Problem Correctly Defined? 2. Is Government Action Justified? 3. Is Regulation the Best Form of Government Action? 4. Is there a Legal Basis for Regulation? 5. What is the Appropriate Level (or Levels) of Government for this Action? 6. Do the Benefits of Regulation Justify the Costs? 7. Is the Distribution of Effects across Society Transparent? 8. Is the Regulation Clear, Consistent, Comprehensible, and Accessible to Users? 9. Have All Interested Parties had the Opportunity to Present their Views? 10. How will Compliance be Achieved?

³⁶ OECD (1995), p. 8.

³⁷ OECD (1995), p. 9.

³⁸ OECD (1995), p. 9.

³⁹ Halliday (2013), p. 91.

⁴⁰ OECD (1997), p. 2.

essence and offer a "plan of action" to promote regulatory reforms,⁴¹ presented as an "integrated package" of seven principles, although with very conflicting perspectives.

Baldwin and Sahlin-Anderson have described well such a conflict. Baldwin remarks that the rise of the "better regulation" agenda in the UK, for example, was a rhetorical device designed to give coherence between the deregulation agenda ("red tape"), "regulatory quality" developments, and a third dynamic related to "rational planning" tools, such as RIA and cost-benefit analysis (CBA).⁴² Therefore, the language of 'better regulation' or 'high-quality regulation' was "an attempt to bridge these three related, but also conflicting dynamics"⁴³. Sahlin-Andersson refers to "*an amalgam of public choice theory, principal-agency theory, and transaction cost economics*", arguing that PUMA has edited out country-specific experience to produce generalizable conclusions, assembled as a reform agenda or policy package as if there was a common logic and common explanations to the reforms.⁴⁴

In 2002, the Regulatory Committee released a new report⁴⁵ setting three pillars for high-quality regulation: i) *regulatory reform*, related to individual regulations; ii) *regulatory policy*, to optimize the whole context in which regulations are set and ensure only "high-quality regulations"; and iii) *regulatory governance*, as the most ambitious concept. Various tools and one key institution were included inside the box: the systematic use of RIA as an empirical decision-making method, administrative simplification, diverse ways to increase transparency, public consultation, and improve accountability, and a key institution to oversee regulatory bodies close to the government, which most of the member states had already set at the time.⁴⁶ The final message in this report was that governments should *permanently* pursue "regulatory governance" as a broad agenda.⁴⁷

From 1998 to 2004, twenty member countries underwent peer review in their regulatory systems. New reports and guides were published, adding new layers to the debate while maintaining the seven principles from the 1997 Report.⁴⁸ In 2005, a famous study about better

⁴¹ OECD (1997), p. 2

⁴² Baldwin (2010), p. 4.

⁴³ Baldwin (2010), p. 4.

⁴⁴ Sahlin-Andersson (2000). National, international and transnational construction of new public management. Stockholm Centre for Organizational Research (SCORE) Working Paper 2000-4, cited by Mahon and McBride (2008), p. 11.

⁴⁵ OECD (2002).

⁴⁶ The Office of Regulation Review in Australia, the Office of Regulatory Affairs in Canada, the Better Regulation Task Force (BRTF) in the UK, the United States Office of Information and Regulatory Affairs (OIRA); and the Japan's Administrative Reform Committee.

⁴⁷ OECD (2002), pp. 28-37.

⁴⁸ Regulatory Impact Assessment Inventory (2004); OECD Guiding Principles for Quality and Regulatory Performance (2005); Introductory Handbook for Undertaking RIA (2008); Determinants of Quality in Regulatory Impact Analysis (2009).

regulation discourse in the European Union provided a cautionary note.⁴⁹ According to Radaelli, although a community of discourse emerged around better regulation programmes and RIA across Europe, the political and bureaucratic context played a pivotal role in the emergence of significant divergence. In some cases, RIA had been imported into EU countries with largely unrealistic models of the policy process. In Radaelli's metaphor, "*the result ha[d] been new bottles with poor or no wine at all*".⁵⁰

Notwithstanding, in 2008, the global financial crisis put pressure on the OECD Regulatory Policy Committee. The crisis exposed flaws in regulation, and effective regulation was part of the answer to regaining confidence from consumers and entrepreneurs. As countries emerged from the crisis, they were under intense pressure to strengthen their regulatory systems to avoid financial instability. On October 2010, participants in the international OECD Conference on "Regulatory Policy: Towards a New Policy Agenda" called for *new principles to redefine* the agenda for regulatory policy.⁵¹ A further recommendation should provide "*a clearer dialogue with members and non-members about the policies, practices, and institutions needed for systemic improvements to regulatory quality*".⁵²

In 2012, the OECD Council finally approved the new "*OECD Council Recommendation on Regulatory Policy and Governance*", heralding that "*in the shadow of the global financial crisis, the importance of sound regulatory frameworks has become more evident than ever*" and achieving good regulation is "*a demanding task and one that is never over*", in the words of Gary Banks, Chair of the Regulatory Policy Committee.⁵³ The Recommendation targeted developing a systemic governance framework that could deliver *ongoing* improvements to the quality of regulations. The twelve principles are the following: a "whole of government" approach at the highest political level (1st); transparency and participation in the regulatory process (2nd); mechanisms and institutions to provide oversight of regulatory procedures (3rd); integration of RIA at early stages (4th); systematic stock reviews (5th); reports on the performance (6th); consistent policy for regulatory agencies (7th); effective systems to review the legality and procedural fairness of regulation (8th); risk-assessment and management to design and implement regulation (9th); regulatory coherence

⁴⁹ Radaelli (2005).

⁵⁰ Radaelli (2005), p. 940.

⁵¹ OECD (2010), pp. 22-26.

⁵² OECD (2010), p. 28.

⁵³ OECD (2012), p. 2

through coordination across supranational, national and sub-national levels (10th and 11th), and consideration to all relevant international standards (12th).⁵⁴

The 2012 Recommendation is currently the critical legal reference for regulatory policy adopted worldwide as a benchmark and an almost uncontested blueprint for reforms in non-member countries. Yet, like many other countries, Brazil has struggled to complete these twelve principles and roll up the boulder to the top of the hill, in a Sisyphus' work.

In 2019, the advent of the pandemic required new adjustments, and a new Recommendation was published on October 2021.⁵⁵ It provided for the following adjustments: *i)* to ensure that regulations are fit for the future; *ii)* to enable the development of agile, adaptive, and future-proof regulation; *iii)* to help innovators navigate the regulatory environment, and cooperation within and across jurisdictions; and *iv)* to adapt enforcement activities to evolving needs.⁵⁶ Building on momentum from the pandemic and disruption of supply chains, this Recommendation brings new challenges to governments and regulators, resembling Pal's allegory of "*inversions without end*"⁵⁷, renewed at each crisis.

2.2 Exporting the toolbox

The OECD recommendations on regulatory governance have been widely diffused in several countries and adopted in diverse institutional contexts.⁵⁸ To disseminate its policies, the OECD has developed and refined techniques of soft governance, such as peer review, persuasion, surveillance, comparison, and ranking. I turn to elaborate on these techniques below.

Peer review is a practice, more than a concept, having no definition or procedure narrowly established.⁵⁹ The OECD is the IO that has primarily developed the technique of peer

⁵⁴ OECD (2012), pp. 6-12.

⁵⁵ OECD (2021).

⁵⁶ OECD (2021).

⁵⁷ Pal (2008).

⁵⁸ The spread of policies, ideas, and institutions across different countries have been studied in international relations, public policy, comparative politics, sociology and other fields, with a terminological and conceptual diversity among scholars. Some studies focus on processes and others on outcomes. The most common denominations to explain these phenomena are "policy transfer", "policy diffusion" (Marsh and Sharman, 2009), "policy convergence" (Knill, 2005), and "institutional isomorphism" (DiMaggio et al., 1983). In this article, I employ "diffusion" as defined by Dobbin et al. (2007): "*international policy diffusion occurs when government policy decisions in a given country are systematically conditioned by prior choices made in other countries (sometimes mediated by the behavior of international organizations or private actors and organizations)*". For policy diffusion's analyses specifically involving the OECD Regulatory Policy, see De Francesco (2013) and Radaelli (2005) as primary references.

⁵⁹ There is scarce literature on peer review, and the topic is often addressed marginally in the context of compliance. See generally Downs et al. (1996).

review, but it has never laid down a standardized mechanism. Each peer review has its procedure, and the level of procedural detail can vary widely according to the context.⁶⁰ The effectiveness of peer review relies on the persuasion exercised during the process, known as "peer pressure"⁶¹. This process translates into recommendations, public scrutiny, comparison, and ranking among countries. Together, all such mechanisms may substantially impact domestic public opinion, national administrations, and policymakers. Constructivists argue that IOs do more than just manage relations among states. They help define the *identity of member states and their perceptions of self-interest*.⁶² This approach to understanding the OECD suggests that there are reasons to see its work as much more significant than is recognized by rationalist theories.⁶³ More than a highly technical research organization and a think-tank based on "evidence-based" policies, the OECD's knowledge production shapes the identity of its member states and those aspiring to be members.⁶⁴ As Robert Wolfe argued, "*the most important thing that changes because of the OECD might be the thinking of the people – from technical officials to ministers – who attend its meetings or participate in its peer-review process.*"⁶⁵

In practical terms, the OECD peer review often begins with a questionnaire formulated by the Secretariat, a sophisticated instrument with a vocabulary that conceptualizes the problem under analysis. The questionnaire usually covers macroeconomic issues and may raise critical political events, such as elections, and their influence on specific policies or plans to change laws and regulations. The Secretariat decides the review's focus, which topics should be covered, and the subsequent assessment phase. When the country under review answers the questionnaire, its government representatives must enter into the "mental framework"

⁶⁰ Pagani (2002).

⁶¹ Pagani (2002), p. 18.

⁶² Porter and Webb (2008), p. 44. Constructivist approaches assert that significant aspects of international relations are shaped by ideational factors, historically and socially constructed. For relevant references on this approach, see Ruggie (1998) and Finnemore and Sikkink (2001). Porter and Webb provide a case study of the OECD work on corporate governance from a constructivist approach, presenting the organization as a space where intersubjective meanings emerge through social interactions of its member states, and identities are socially constructed.

⁶³ Rationalist theories of international institutions see them as efficient mechanisms for states to pursue their self-interests, on the basis of rational calculation of the material costs and benefits of membership. Rationalist models operate according to a "logic of consequences" – with international negotiations understood primarily as strategic interaction among actors seeking to maximize exogenous interests (March and Olsen, 1998). Neo-liberal institutionalists also posit that international organizations assist states in achieving their ends (Hobson, 2000).

⁶⁴ Porter and Webb (2008), pp. 43-59.

⁶⁵ Wolfe (2008), p. 41.

established by the Secretariat. They have to address specific economic and political variables as they were previously framed in the questions.⁶⁶

After the answers are provided, the Secretariat conducts consultations with authorities, interest groups, civil society, and academics in the reviewed country. It may involve a visit by the OECD mission and meetings with ministries and domestic experts. Then, a report is prepared and shared with the government. In the final stage, members and the state discuss the draft report and then adopt it, in general, by consensus. The report's credibility is based on the reviewed state's involvement and the guarantee that it will endorse it and implement recommendations. However, "*the states' involvement should not go so far as to endanger the fairness and the objectivity of the review*" and "*should not be permitted to veto the adoption of the final report*".⁶⁷ Therefore, at the end of the process, participants are immersed in the same collective knowledge construction based on parameters that would barely be contested.

In addition, the report usually includes a comparison and ranking among countries. To make this comparison, the OECD identifies "appropriate" indicators to permit cross-national comparison and ranking, calling attention to "leaders" and "laggards".⁶⁸ In the case of regulatory policy, there are two systems of indicators: the Indicators of Product Market Regulation (PMR) and the Indicators of Regulatory Policy and Governance (iREG). PMR measures the country's regulatory barriers to competition, state involvement in the economy, the role of SOEs, and barriers to entry for domestic and foreign firms.⁶⁹ A key feature of the PMR database is that it captures the "*de jure*" policy settings. This means that the answers are not based on *subjective* assessments by market participants but on the laws in force in the country. iREG assesses regulatory policy practices according to the 2012 Recommendation, covering three principles: RIA, stakeholder engagement, and ex-post evaluation. In addition, it diagnoses successes and failures in specific regulatory policies and tools.⁷⁰

⁶⁶ Noaksson and Jacobsson (2003), pp. 25-31. The authors nicely describe the cycle of the peer review process, involving the joint efforts by the reviewed country, the examiners countries and the OECD Secretariat. The expression "mental framework" is referred by Rianne Mahon and Stephen McBride, when commenting on the OECD questionnaires and how the questions posed to the reviewed country direct their attention to a set of problem areas that the OECD finds interesting. (Mahon and McBride, 2008, p. 9).

⁶⁷ Pagani (2002), p. 19.

⁶⁸ March and Olsen (1998), p. 961.

⁶⁹ Vitale et al. (2020). This publication analyses the 2018 edition of the OECD PMR indicators and database.

⁷⁰ The OECD Measuring Regulatory Performance programme is available at: www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.html. Accessed: 09 Nov 2022.

The peer-review mechanism, accompanied by extensive and previous data collection through directed questionnaires, followed by surveillance, persuasion, comparison, and ranking, is at the heart of the OECD work. Technical knowledge and peer pressure are tools comparable to material power. Moreover, the creation and dissemination of complex indicators influence the terms in which problems are conceptualized and solutions imagined. As such, the OECD Regulatory Governance Indicators represent a quiet form of power translated into a governance technology.⁷¹

3. Brazil's regulatory reform

This section turns to Brazil's engagement with the OECD on regulatory reforms. It assesses domestic political struggles and legal changes and how they interrelate with international and transnational norms on regulatory governance. The assessment covers the period from 2000 to today, divided into three phases: 1) an early approach, when Brazil started as an observer at PUMA Committee, voluntarily submitting to a peer review in 2007, but was immersed in domestic controversies related to the proper role of regulatory agencies; 2) a period of government's skepticism towards the OECD, when the concepts of regulatory coherence and GRP entered in Brazil through bilateral channels, especially with the US and the UK, keeping the GRP agenda alive and mobilizing new actors; and 3) the last six years when the Brazilian government reoriented its political economy towards neoliberal policies, relying firmly on OECD indicators, and speeding up reforms.

This account shows how domestic political battles play a crucial role in reforms. But conversely, it also attempts to demonstrate how they are entangled in a web of transnational relations and processes influencing how states change. More importantly, it argues that self-perceptions of public officials and private actors involved in the process change according to the inter-relation they maintain with IOs, such as the OECD and networks of experts, in complex dynamics that lead to broad cultural changes.

3.1. Early approach: peer review and resistance (2000-2010)

In 2000, Brazil joined the PUMA Committee as an observer. At this time, PUMA was committed to assisting members in improving their public institutions' performance. PUMA's work was increasingly sought for innovative products, including popular policy briefs, practical

⁷¹ Merry et al. (2015).

handbooks, and toolkits on strengthening government capacity. The OECD Secretariat had just launched a "reinvention" of the program on public governance as a response to the Russian and Asian crises. This program identified "good governance" as the third element of its central priority-setting approach. Member countries have accepted the responsibility to support governance reforms in countries *outside the OECD area*, bilaterally and through International Institutions.⁷² According to the Revised Program of Work, *"the audience [was] there, and PUMA want[ed] to be heard and raise its voice to help governments stay the course in the reform of governance"*.⁷³

From a Brazilian domestic perspective, the importance of regulatory policy as a transversal theme across sectoral regulation was only "discovered" by public officials in 2005, during Lula da Silva's first administration (2003-2011).⁷⁴ The Chief of Staff of the Presidency had set up an Inter-ministerial Working Group (GTI) to evaluate the role of the regulatory agencies and the institutional arrangements created during Cardoso's privatization era.⁷⁵ The GTI's final report reaffirmed the agencies' model as essential for the success of private investments. Nevertheless, it defended that regulatory agencies were not eminently responsible for formulating sectoral policies and that such power should remain with Ministries, provided by *"a well-defined border between both"*.⁷⁶ The GTI proposed a controversial bill sent to Congress called "General Law of the Regulatory Agencies" (PL 3,337/2004), which remained for fifteen years in the Legislative⁷⁷. It became clear that the Worker Party's government preferred strengthening presidential influence over the regulatory agencies.⁷⁸ This controversy somewhat hindered Brazil's regulatory quality reforms at the domestic level.

Despite such controversy over the amount of power given to the regulatory agencies, in 2007, the Chief of Staff of the Presidency launched the Program for Strengthening the Institutional Capacity for Regulatory Management (PRO-REG) with the Ministries of Finance,

⁷² OECD (1998), p. 4.

⁷³ OECD (1998), p. 5.

⁷⁴ Interview with a representative from the Ministry of Economy. On file with author.

⁷⁵ Bresser-Pereira (2004), p. 173.

⁷⁶ Brazil, Casa Civil. *Análise e avaliação do papel das agências reguladoras no atual arranjo institucional brasileiro: relatório do Grupo de Trabalho Interministerial*. Editora República Federativa do Brasil, Casa Civil, 2003. Available at: <http://www.nuca.ie.ufrj.br/furnas/fianibibliografia/camara2.pdf>. Accessed: 06 Nov 2022.

⁷⁷ Câmara dos Deputados, EMP 16/2004, PL 3,337/2004. Available at <https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=251367>. Accessed: 10 Nov 2022.

⁷⁸ Prado (2008), pp. 27–42.

Planning, Budget, and Management.⁷⁹ The Inter-American Development Bank (IADB) financed the project, following the OECD Recommendations and Guidelines on Regulatory Policy. In March 2007, Brazil asked for a peer review with the OECD. In the same year, Brazil's relationship with the OECD had scaled to "enhanced engagement."⁸⁰ For the OECD, the Brazilian peer review would be the first for a country involved in the *Enhancement Engagement Strategy*.⁸¹

This new status of the relationship between Brazil and the OECD should not be understated to explain the peer review context and its importance in seedling the ground for the "better regulation" agenda promoted by the OECD. Since the 1990s, the OECD began to face pressures to include non-members in its work to oversee the "developing dialogue".⁸² After 1994, the OECD expanded its membership to Mexico, South Korea, and East European countries. In 2006, the former Mexican foreign minister, Angel Gurría, took office as the new Secretary-General, declaring his aim to make the OECD a "globalization hub."⁸³ In June 2007, during the OECD Ministerial Conference held after the G8 Summit, enlargement and engagement with non-members became a contentious theme.⁸⁴ From one side, leaders asked the Organization to act as a platform for dialogue with the major emerging economies of Brazil, China, India, Mexico, and South Africa. On the other side, according to Noboru's report,⁸⁵ only "like-minded" countries that shared the OECD's democratic political values and market-based economics could contribute to the OECD's voluntary consensus-building and socialization processes.

Moreover, this shared identity was indispensable for the functioning of the OECD's deliberative processes and peer review mechanisms. Therefore, a core dilemma was on the table: expanding membership to sustain the institution's relevance could undermine the shared identity. The Ministerial Council responded to this dilemma by inviting five countries⁸⁶ and

⁷⁹ Presidential Decree n. 6,062, March 17th, 2007. Available at: http://www.planalto.gov.br/ccivil_03/_ato2007-2010/2007/decreto/d6062.htm. Accessed: 06 Nov 2022.

⁸⁰ OECD (2007).

⁸¹ OECD (2008).

⁸² Wolfe (2008), p. 32.

⁸³ Mahon and McBride (2008), p. 3.

⁸⁴ OECD (2004).

⁸⁵ Noboru (2004).

⁸⁶ The five countries invited were Chile, Estonia, Israel, Russia, and Slovenia.

initiating discussions for "enhanced engagement" with Brazil, China, India, Indonesia, and South Africa for possible future membership.⁸⁷

For these reasons, the "enhanced engagement" with the OECD and the peer review on regulatory governance, both in 2007, represented a mechanism for the OECD to strengthen its relationship with Brazil, one of the emerging countries targeted for the necessary enlargement of the Organization to remain effective in a new geo-economic scenario.⁸⁸ This inter-relationship between domestic struggles over regulatory reforms and the momentum of the OECD in the international scenario brings new light to the context of peer review. Although this mechanism is usually referred to for its importance to the reviewed country in terms of receiving an international endorsement for domestic reforms, it also reveals how processes that produce and reinforce identity and knowledge can be located in transnational spaces.⁸⁹

At the outset, the OECD peer review report highlighted that Brazil had entered a new phase of economic development "*with the need to strengthen the institutional foundations for a market-based economy.*"⁹⁰ Regarding the controversies over PL 3,337/04, the report was straightforward: "*The debates over a new bill on agencies discussed in Congress reflected the variety of views in the country. If Brazil wants to close the gap with the OECD countries, there is a need to ensure that agencies will be 'put to work,' fulfilling the mission for which they were created.*"⁹¹ Concerning the implementation of GRP's toolbox, recommendations were also clear: "*Brazil lacks a systematic use of regulatory quality tools*", and the "*diversity of experience offered by OECD countries provides a wide range of possible solutions that could be adapted to the Brazilian context.*"⁹²

After the peer review, from 2008 to 2010, PRO-REG produced more than a thousand pages of studies and reports. Three books were published,⁹³ and intense capacity-building training programs took place in Brazil.⁹⁴ Despite that, PRO-REG lost political support and

⁸⁷ Porter and Webb (2008).

⁸⁸ Mahubani (2012).

⁸⁹ Porter and Webb (2008), p. 58.

⁹⁰ OECD (2008), p. 11.

⁹¹ OECD (2008), p. 13.

⁹² OECD (2008), p. 15.

⁹³ For a thorough review of PRO-REG and the documents produced, see <https://www.gov.br/casacivil/pt-br/assuntos/governanca/regulacao/sistema-regulatorio-brasileiro/historico-do-pro-reg>. (Accessed: 09 Nov 2022)

⁹⁴ Brazil signed a Cooperation Agreement with the United Kingdom to carry out a project on "Better regulation." A course on "Regulation Theory and Practice" was held in July 2010, taught by professors Martin Lodge from the London School of Economics and Kai Wegrich from the Hertie School of Governance. National and foreign consultant experts were hired to study international experiences on RIA, oversight bodies, institutional designs,

slowed down after three years. In 2011, after Rousseff's election, the Brazilian government remained skeptical about seeking OECD membership.⁹⁵ Without direct governmental support, the regulatory program kept dormant, starting to run only with resources from the Federal Budget.⁹⁶

The PL 3,337/04 represented an endogen initiative, raising a controversial but fundamental debate over the power of the Executive on regulatory agencies. In contrast, PRO-REG was backed by an exogen influence. For some officials involved, the program lacked "substantive political support from the heart of the government" and had an overly "theoretical grip" besides being too focused on the regulatory agencies.⁹⁷

In 2016, a week before Rousseff's impeachment, PRO-REG was strategically transferred to the Ministry of Planning, Budget, and Management and revitalized, as described in section 3.3 below. However, between the down of PRO-REG and its recoup in 2016, different initiatives started taking place in Brazil connected to the "better regulation" agenda.

3.2 Government's skepticism and the role of bilateral trade relations with the US (2011-2015)

From 2011 to 2015, while PRO-REG languished in the Civil House of Presidency, a separate and more diffuse initiative concerned with regulatory improvement mobilized public officials from the Ministry of Development, Industry and Foreign Trade (MDIC) and the Brazilian Foreign Trade Board (CAMEX). The view of this initiative as "separate" from PRO-REG was articulated in a short position document published by the Brazil-US Business Council (BUSBC), aiming to advance the Regulatory Coherence Agenda in Brazil through meaningful engagement from the private sector and civil society.⁹⁸

During this period, new expressions such as "regulatory coherence", "regulatory cooperation," and "regulatory convergence" entered the lexicon of Brazilian foreign trade discourses, coming from the government's agenda backed by the private sector and the academy.⁹⁹ However, those expressions and initiatives did not seem predominately

the development of databanks to support evidenced rulemaking, and ombudsman institutions for regulatory agencies.

⁹⁵ Sanchez (2008) and Davis (2016).

⁹⁶ Queiroz-Cunha and Rodrigo (2013), p. 8.

⁹⁷ Interview with a public official from the Ministry of Economy. On file with author.

⁹⁸ Brazil-US Business Council (2014): Advancing the Regulatory Coherence Agenda in Brazil. Available online at https://www.brazilcouncil.org/wp-content/uploads/2015/11/021933_Brazil_RegCoherence_IN_final.pdf. Accessed: 22 Nov 2022.

⁹⁹ Ministério do Desenvolvimento, Indústria e Comércio Exterior. Brasil e Estados Unidos anunciam novos acordos em convergência regulatória e patentes, 19/11/2015,

endogenous either. Instead, they reflected and reverberated a broader movement at the international level, which started to be disseminated in Brazil through bilateral commercial relations with the US, the EU, and the UK.¹⁰⁰

'Regulatory Coherence', GRP, and 'Regulatory Cooperation' may be understood as dimensions of a broader phenomenon related to how domestic regulation intersects with the international trade regime. This relation gained prominence from the beginning of the millennium, with the failure of the Doha Round and the increasing distrust of the multilateral trading system. In this context, the political economy built around global supply chains pushed countries to align regulations through different instruments and institutions to minimize regulatory divergence and reduce transaction costs.¹⁰¹ Among such tools were enhanced transparency and notifications commitments embedded in new preferential trade agreements (PTAs) and evidence-based regulatory processes supported by GRPs, with a special role for RIA. At this point, regulatory reforms in the transition and developing countries met with a new wave in trade relations characterized by the pressing need to reduce non-tariff barriers to trade, which means domestic regulations.

While Brazil was taking its peer review on regulatory governance and struggling with domestic concerns over the appropriate role of the newly established regulatory agencies, new PTAs were negotiated, including regulatory coherence and GRP clauses to tackle regulatory divergences and ease trade in goods and services. Both the Transatlantic Trade and Investment Partnership (TTIP) between the US and the EU¹⁰² and the Transpacific Partnership (TPP), later

<http://www.comexresponde.gov.br/portalmDIC/sitio/interna/noticia.php?area=5¬icia=14179> (Accessed: 01 Dec 2022); Casa Civil da Presidência da República, Coerência e Boas Práticas Regulatórias, Abril, 2015, available at: https://www.gov.br/casacivil/pt-br/assuntos/governanca/regulacao/eventos/2018/coerencia-regulatoria-sag-casa-civil-se-camex-e-inmetro/apresentacoes/apresentacaocoerenciaregulatoria_sag_06abr2018.pdf. Accessed: 01 Dec 2022.

¹⁰⁰ International Trade Administration. US Brazil Commercial Dialogue Statement, March 2015, available at: <https://www.trade.gov/brazil-us-brazil-commercial-dialogue-statement-march-2015>. Accessed: 03 Dec 2022; FGVEESP Centro de Estudos do Comércio Global e Investimento. Regulatory Coherence and Convergence. Presentation of the project supported by the Great Britain and Northern Ireland Embassy and funded through the Prosperity Fund. Available at: <https://ccgi.fgv.br/en/regulatory-coherence-and-convergence>. Accessed: 03 Dec 2022; Thorstensen and Nogueira (orgs.) Coerência e Convergência Regulatória: Modelos Regulatórios de Parceiros do Brasil. EUA, EU, Canadá, Coréia do Sul, Japão, México, Acordos Regionais de Comércio de EUA e UE. Available at: https://ccgi.fgv.br/sites/ccgi.fgv.br/files/u5/Coerencia-Convergencia-Regulatoria-INMETRO2019_TN.pdf; <http://camex.gov.br/images/Eventos/ConvRegulatoria/RELATORIO-FINAL-Vol-4---Sintese-e-Concluses.pdf>. Accessed: 03 Dec 2022.

¹⁰¹ Hoekman and Sable (2019), p. 217.

¹⁰² In 2007, the Transatlantic Economic Forum (TEC) for regulatory cooperation and economic convergence was established between the United States and the European Union. In the TEC's founding document signed by U.S. President George Bush and German Chancellor Angela Merkel, both countries committed themselves to a robust regulatory cooperation agenda, promising "to remove unnecessary differences between their regulations to foster economic integration. Available at: <http://ec.europa.eu/trade/policy/countries-and-regions/countries/united-states/>. Accessed: 12 Dec 2022.

signed as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) among eleven Asia Pacific countries,¹⁰³ had the first regulatory clauses and chapters. As political scientist scholars pointed out, there was a "regulatory turn" in international trade, through which the US and EU started exporting their rules by promoting their regulatory systems abroad.¹⁰⁴ Nevertheless, beyond treaty-based provisions in PTAs, the promotion of regulatory coherence, cooperation, and GRP took two other venues and channels of diffusion: plurilaterally, through the OECD work on regulatory governance, and bilaterally, through informal trade relations between the US and the EU and their trading partners, such as private commercial dialogues, pushing their regulatory systems over other countries.

The 2012 OECD Recommendations, as mentioned in section 2, already reflected such a conceptualization when it included its 10th to 12th principles on "*regulatory coherence through coordination across supranational, national and sub-national levels*" and "*consideration to all relevant international standards and potential effects of regulation outside jurisdictions*".¹⁰⁵ A year later, in 2013, the OECD published a report on "International Regulatory Cooperation" (IRC),¹⁰⁶ which was highly diffused to countries as a paradigm of a new step for regulatory coherence in the world of supply chains. The 2012 Recommendation became the blueprint for most regulatory clauses in the new PTAs and influenced regulatory reform programs and foreign trade policies worldwide. Also, US president Barack Obama issued Executive Order 13,609,¹⁰⁷ emphasizing IRC by establishing a working group led by the Office of Information and Regulatory Affairs (OIRA) to address "*unnecessary regulatory differences between the United States and its major trading partners across borders*".¹⁰⁸ As a result, pursuing regulatory coherence and GRP as an international trade policy became a priority objective of US domestic trade policy.¹⁰⁹

¹⁰³ The TPP - Trans-Pacific Partnership was the result of an expansion of the Trans-Pacific Strategic Economic Partnership Agreement (TPSEP, also referred to as P4), between Brunei, Chile, New Zealand and Singapore in 2005. From 2008, other countries joined the discussion for a broader agreement: Australia, Canada, Japan, Malaysia, Mexico, Peru, the United States, and Vietnam. In January 2017, the United States withdrew from the TPP. On December 30, 2018, the CPTPP entered into force among the 11 remaining countries.

¹⁰⁴ Young (2015); Benvenisti (2015) and Laursen and Roederer-Rynning (2017). See also the critical academic project jointly coordinated by the Institute for International Law and Governance (IILJ), the New York University (NYU) Law School, and the National Graduate Institute for Policy Studies (GRIPS) in Tokyo on the TPP as a U.S. megaregulation and political ordering project (Kingsburry et al., 2019).

¹⁰⁵ OECD (2012).

¹⁰⁶ OECD (2013).

¹⁰⁷ Executive Order 13,609 (May 1, 2012), 77 FR 26413.

¹⁰⁸ The Office of Information and Regulatory Affairs (OIRA) is a U.S. sub-agency within the Office of Management and Budget (OMB), integrating the President's Executive Office. It was created in the Paperwork Reduction Act signed by President Carter in 1980 and was given the role of reviewing Regulatory Impact Analysis (RIA) for all major regulations by Executive Order 12291.

¹⁰⁹ Sunstein (2012).

Against this background, although Brazil had kept relatively isolated from the mega-regional agreements¹¹⁰ and remained skeptical of seeking OECD's membership within the Enhanced Engagement program,¹¹¹ the regulatory coherence agenda in Brazil made its way through more informal trade channels. In March 2011, a visit of US President Obama to president Dilma Rousseff ignited trade talks between both countries, having regulatory coherence and cooperation issues as relevant topics.¹¹² During President Obama's visit, the US and Brazil concluded an Agreement on Trade and Economic Cooperation (ATEC),¹¹³ creating a new bilateral trade dialogue designed to foster deeper cooperation on intellectual property rights, trade facilitation, and technical trade barriers.¹¹⁴

Reflecting on such trade talks with the US in September 2011, the Brazilian Foreign Trade Board (CAMEX) formed an Inter-ministerial Technical Group on Trade Regulation to consolidate and improve domestic regulation related to foreign trade to harmonize, rationalize, and simplify it.¹¹⁵ In August 2014, the BUSBC, Amcham-Brasil, and Brazil's National Confederation of Industry (CNI) organized a series of 'Regulatory Coherence Roundtables' to engage *"all relevant players to move forward with the regulatory coherence agenda in Brazil"*.¹¹⁶ The event was supported from Brazil's side by MDIC and CAMEX and the US's side by the Department of Commerce (DoC) and the OIRA. The idea of regulatory coherence as a mechanism to simplify, rationalize and produce 'better regulation', not only related to trade but on a cross-sector basis, spread out to the Brazilian foreign trade agenda, to regulators, the private sector, and the academy.¹¹⁷ In addition, regulatory coherence was raised as a top priority

¹¹⁰ Trubek et al (2017).

¹¹¹ Sanchez (2008) and Davis (2016).

¹¹² Under the Worker Party's administration, Brazilian foreign policy had prioritized relations with nontraditional partners in the developing world ("South-South" relations) and coalitions with Brazil-Russia-India-China- South Africa (BRICS) group and the India-Brazil-South Africa (IBSA) forum.

¹¹³ Joint Statement on the Occasion of the Visit by President Barack Obama to Brazil (March 19, 2011). Available at: <https://www.brazilcouncil.org/wp-content/uploads/2015/11/JointStatementObamaandRousseff-Mar192011.pdf>. Accessed 20 Dec 2022.

¹¹⁴ White House, Office of the Press Secretary, "Strengthening the U.S.-Brazil Economic Relationship," March 19, 2011.

¹¹⁵ CAMEX Resolution 44/2011. Available at: <http://www.camex.gov.br/resolucoes-camex-e-outros-normativos/58-resolucoes-da-camex/1000-resolucao-n-44-de-11-de-julho-de-2011>. Accessed: 30 Dec 2022.

¹¹⁶ Brazil-US Business Council (2014).

¹¹⁷ Ministério do Desenvolvimento, Indústria e Comércio Exterior. Brasil e Estados Unidos anunciam novos acordos em convergência regulatória e patentes, 19/11/2015, available at: <http://www.comexresponde.gov.br/portalmDIC/sitio/interna/noticia.php?area=5¬icia=14179>. Accessed: 30 Dec 2022; Casa Civil da Presidência da República, Coerência e Boas Práticas Regulatórias, Abril, 2015, available at: https://www.gov.br/casacivil/pt-br/assuntos/governanca/regulacao/eventos/2018/coerencia-regulatoria-sag-casa-civil-se-camex-e-inmetro/apresentacoes/apresentacaocoerenciaregulatoria_sag_06abr2018.pdf. Accessed: 30 Dec 2022.

in the Trade Dialogue between MDIC and DoC,¹¹⁸ an informal mechanism established to advance bilateral trade relations.¹¹⁹

Therefore, while the OECD's Regulatory Policy dialogue with the Chief of Staff of the Presidency weakened and the PRO-REG kept dormant, the GRP's agenda moved through different channels within the Brazilian bureaucracy, involving informal trade dialogues, Memorandum of Understandings (MoUs) between ministries of trade, regulatory agencies, and public and private bodies.¹²⁰ During this period of skepticism from the Brazilian government concerning a closer relationship with the OECD, bilateral trade relations and private sector engagement kept the GRP's agenda alive. The mechanisms of socialization and persuasion among trade officials and capacity-building with regulators continued. The GRP agenda would return fully in 2015 when the political economy was reoriented towards more neoliberal policies at the domestic level, and the foreign trade policy agenda began to prioritize Brazil's accession to the OECD.

3.3 Full embracement with GRP and the role of OECD indicators (2015-2021)

In 2015, Brazil faced a sharp drop in GDP by 3,8%, and the economy returned to the level of 2011. The country entered one of its longest recessions and political turmoil following the impeachment process in 2016 and corruption scandals involving the Worker Party in the context of the Car Wash Operation.¹²¹ In January 2015, Joaquim Levy, an engineer trained in economics from the University of Chicago, took over the Brazilian Ministry of Finance amid a severe financial crisis at the beginning of the second Rousseff mandate.¹²² Levy proposed an ambitious fiscal adjustment plan and economic reform package, reorienting the Brazilian economy. This shift provoked friction with government members from the Worker Party, and most of the proposals ended up not being approved in a Congress increasingly hostile to

¹¹⁸ The Trade Dialogue was originally established in 2006 through a Letter of Intent to intensify the dialogue between the defense industries of the two countries and increase the trade flow in this sector. Available at: www.mdic.gov.br/index.php/component/content/article/61-noticias/1951-brasil-e-estados-unidos-assinam-cartade-intencoes-para-intensificar-dialogo-na-industria-da-defesa. Accessed: 30 Dec 2022.

¹¹⁹ Brazilian Ministry of Economy, Industry, Foreign Trade, and Services. Available at: www.trade.gov/bcd/pdfs/moi-coherence-private-sector.pdf. Accessed: 30 Dec 2022.

¹²⁰ For a full reference of these informal trade dialogues, see Section 3.3. of this chapter, especially notes 143-146.

¹²¹ Sanchez-Badin and Badin (2019).

¹²² Levy has experience in left and right-wing governments. He is a former secretary of the National Treasury of Lula da Silva's government (2003), a former finance minister of the Dilma Rousseff government (2015), and a former president of BNDES of the Bolsonaro government (2018). Interview to BBCNews Brasil. Available at: <https://www.bbc.com/portuguese/brasil-50677801>. Accessed: 03 Jan 2023.

Rousseff's government. After that, however, the economic gears would steadily change towards more liberal winds.

At this point, Brazil reapproximated to the OECD and signed a Framework Cooperation Agreement, which provided the legal basis for the relationship between Brazil and the Organization.¹²³ According to Levy, the agreement was "*part of a series of actions aimed at reviving economic growth and penetrating the international market*".¹²⁴ The signing of the agreement followed the launching of Brazil's Economic Summary 2015 by the OECD, concluding that Brazil should pursue "*convergence with advanced economies*", fiscal and monetary policies able to stabilize the public debt/GDP ratio and reduce inflation.¹²⁵ The Agreement led to a biennial work program for 2016-17, designed to support Brazil in advancing its reform agenda and informing public policies. The program's launching also reignited an Inter-Ministerial Working Group on the OECD led by the Ministry of Foreign Affairs, which had been created in 2007 as a mechanism of steering and monitoring cooperation with the Organization.¹²⁶

The new Ministry of Foreign Affairs, Mauro Vieira, conveniently dubbed the new orientation a "diplomacy of results" and a reconciliation with Brazil's middle-power status.¹²⁷ During Rousseff's previous mandate, she had decided to pull Brazil out from global initiatives. However, Rousseff did not give up on the diplomatic ambitions of a rising Brazil, such as the BRICS, and kept working alongside its emerging partners to launch, in the same year, 2015, the New Development Bank. and even becoming the only Latin America country to join the China-led Asian Infrastructure Investment Bank (AIIB).¹²⁸

Between Rousseff's impeachment in 2016 and the election of President Bolsonaro in 2018, despite heated debates about Brazil's orientations, the interim government of Michel

¹²³ OECD. Signing of cooperation agreement between the OECD and Brazil. Available at: <https://www.oecd.org/brazil/signing-of-cooperation-agreement-between-oecd-and-brazil.html>. Accessed: 10 Jan 2023. Despite the signing of the agreement happened in 2015, only in 2019, under the Bolsonaro's administration, the Decree 10,109, of November 7, promulgated the Cooperation Agreement between Brazil and the OECD.

¹²⁴ The event of signature was attended by Joaquim Levy, Minister of Finance; Mauro Vieira, Minister of Foreign Affairs; and Angel Gurría, Secretary-General of the OECD; besides several representatives from Fundação Getúlio Vargas. (FGV). Available at: <https://portal.fgv.br/en/news/fgv-participates-signing-protocol-between-brazilian-government-and-oecd>. Accessed: 03 Jan 2023.

¹²⁵ OECD (2015), p. 28.

¹²⁶ OECD, The OECD and Brazil, March 2018. Available at: <https://www.oecd.org/brazil/Active-with-Brazil.pdf>. Accessed: 12 Jan 2023.

¹²⁷ See Casarões (2020), pp. 89-90 and Cervo e Lessa (2014), pp. 133–151.

¹²⁸ China Daily. 2015. Brazil Sole Nation in LatAm to Join AIIB, 7 April. Available at: http://www.chinadaily.com.cn/cndy/2015-04/07/content_20012806.html. Accessed: 15 Jan 2023.

Temer boosted the relationship between Brazil and the OECD. It accelerated formal adherence to several OECD legal documents.¹²⁹ As Trubek, Morosini, and Sanchez-Badin pointed out, despite "grand debates" and rhetoric between "developmentalists" from one side and "opening-ists" from the other, *Brazil pragmatically and quietly experimented with new directions in trade policies and international insertion strategies* during this period.¹³⁰ Three directions are relevant for our purposes: *i)* Brazil's formal request to accede to the OECD in 2017; *ii)* the beginning of Brazil's bilateral trade negotiations with Mexico, Colombia, and Chile, outside of the Mercosur framework; and *iii)* exploratory relations with the US.

The political decision to legalize the relationship with the OECD in 2015, and the formal request in 2017, united scattered efforts and separated agendas toward GRP in Brazil. Regulatory reform attempts during the PRO-REG heyday met with experimentations by Brazilian diplomats and trade officials in negotiating agreements involving GRP with Mexico, Colombia, and Chile. These three negotiations involved non-binding commitments to adopt regulatory coherence and GRP in rulemaking.¹³¹ More importantly, two different bureaucracies in Brazil that did not have much in common and usually were understood as pursuing quite diverse objectives started to maintain closer relations and seek common goals: regulators and trade officials. The mobilizations made by CAMEX and MDIC between 2011-2014, supported by the private sector (CNI and BUSBC), encountered now fertile soil within the heart of the government, represented by the Chief of Staff of the Presidency, explicitly reoriented to the OECD accession process. In 2016, a week before Rousseff's impeachment, PRO-REG was transferred to the Ministry of Planning, Budget, and Management and revitalized.

Two Brazilian officials responsible for negotiations with Mexico commented that *"in 2015, when we started negotiations, Mexico arrived with a "TPP-style" proposal for supervision, good practices... then a bomb dropped, nobody knew what it was. The Itamaraty did not know, the MDIC did not know"*.¹³² Regarding the new approach from Chief of Staff

¹²⁹ OECD Legal Instruments. Available at:

<https://legalinstruments.oecd.org/en/instruments?mode=advanced&adherentIds=27&yearFrom=2015&yearTo=2018>. Accessed 15 Jan 2023.

¹³⁰ Trubek et al (2017), pp. 651-656.

¹³¹ Ministério das Relações Exteriores, "Negociação Brasil-México para ampliação e aprofundamento do ACE-53-Troca de Lista de Pedidos Recíprocos (2015); available at: <http://perma.cc/FA3K-B4AK>. Accessed: 15 Jan 2023; Ministério das Relações Exteriores, "República da Colômbia"; available at: <http://perma.cc/CD7P-WDX5> (Accessed 15 Jan 2023); Ministério das Relações Exteriores, "República do Chile"; available at: <http://perma.cc/P9J4-8XUG>. Accessed: 15 Jan 2023.

¹³² Interviews with a trade official and a diplomat. Interviews on file with author. "Itamaraty" refers to the Brazilian Ministry of Foreign Relations. The origin of the name is due to a tribute to the palace that belonged to

officials, they reported, "...as soon as [they] went to the Chief of Staff, we went there, in the first week, and said: look, we have these plans, these ideas, we have negotiations with Mexico already, in which we saw that it was necessary to establish a mechanism or procedure for the coordination and supervision of foreign trade regulation, and we wanted to have this support and partnership from the Chief of Staff (...) CAMEX can be this mechanism or a partnership with the Chief of Staff for coordinating foreign trade."¹³³

A leading reformer currently working on the front line of the OECD accession process reaffirmed the year 2016 as an inflection point:

"In Brazil, the topic has been addressed for at least fourteen years. (...) Closely linked to cultural aspects, the regulatory improvement agenda takes time to be understood, learned, and effectively implemented. (...) The processes of specialization and agencification in the public sector have generated advantages but also challenges. One of these challenges was the fragmentation of the public sector into silos that did not communicate. (...) Discussions continued for a long time, mostly erratically, depending on the period, but with a relatively low degree of institutionalization and governance. As of 2016, there was a turning point, with new actions following up on those adopted by PRO-REG." (Free Translation) ¹³⁴

Two laws and one federal decree materialized such actions: Law 13.334/2016 on the investment partnership program for the strengthening and interaction between the state and the private sector and the regulatory role of the state;¹³⁵ Law 13.726/2018 for the de-bureaucratization and efficiency of the state;¹³⁶ and Federal Decree 9.203/2017, which established an Interministerial Governance Committee to advise the policy and governance of the federal public administration.¹³⁷ One of the critical actions was the creation of a Chief of Analysis and Monitoring of Governmental Policies of the Chief of Staff of the Presidency (SAG/CC). Such a body took over the strategic leadership to coordinate discussions within a technical group integrated by the Ministries of Finance and Planning, all the regulatory

the Barão do Itamaraty located in the city of Rio de Janeiro, and which served as the first headquarters of the Ministry of Foreign Affairs of the country between 1898 and 1970.

¹³³ Interviews with a trade official and a diplomat. Interviews on file with author.

¹³⁴ Albuquerque and Lopez (2022), pp. 10-11.

¹³⁵ Presidência da República, Secretaria-Geral, Subchefia para Assuntos Jurídicos. Available at: <https://legislacao.presidencia.gov.br/atos/?tipo=LEI&numero=13334&ano=2016&ato=c9ITW650dZpWT5b4>. Accessed: 20 Jan 2023.

¹³⁶ Ministério da Justiça e Segurança Pública, Conselho Nacional de Arquivos. Available at: <https://www.gov.br/conarq/pt-br/legislacao-arquivistica/leis-e-decretos-leis/lei-no-13-726-de-8-de-outubro-de-2018>. Accessed: 02 Feb 2023.

¹³⁷ Presidência da República, Secretaria-Geral, Subchefia para Assuntos Jurídicos. Available at: http://www.planalto.gov.br/ccivil_03/ato2015-2018/2017/decreto/d9203.html. Accessed: 02 Feb 2023.

agencies, and INMETRO.¹³⁸ This group became an essential locus for technical debate, information exchange, consensus building, and joint elaboration of documents.

The third thread mentioned by Trubek *et al.* was the scaling up of bilateral exploratory trade relations between Brazil and the US. In 2015, MDIC and CAMEX signed two Memorandum of Understanding (MoU) with DoC and Commerce's International Trade Administration (ITA). The first concerned Joint Cooperation on Regulatory Coherence and Meaningful Engagement with the Private Sector,¹³⁹ and the second addressed Standards and Conformity Assessment.¹⁴⁰ Brazil has maintained a pragmatic and dynamic relationship with the US on trade relations since 2006, based on MoUs as umbrella agreements for several other sectorial cooperation.¹⁴¹ The inclusion of GRP as a transversal theme and a top priority in this bilateral trade agenda catalyzed future actions related to regulatory reforms in Brazil. After these MoUs were signed, several high-level meetings and Joint Commercial Dialogues between Brazil and the US concerning GRP would dominate the international trade agenda.¹⁴² A culmination of such arrangements was the signature, in 2020, already in Bolsonaro's administration, of the Protocol on Trade Rules and Transparency, containing wide-scope and binding provisions on GRP.¹⁴³ The Protocol was the first subsequent agreement to use the GRP framework established in the USMCA between the US, Mexico, and Canada.¹⁴⁴ The joint

¹³⁸ INMETRO is the Brazilian regulatory body for quality and safety product regulation.

¹³⁹ Memorandum of Intent on Joint Cooperation on Regulatory Coherence and Meaningful Engagement with the Private Sector. Available at: <https://legacy.trade.gov/bcd/pdfs/moi-coherence-private-sector.pdf>. Accessed: 02 Feb 2023.

¹⁴⁰ US Department of Commerce and Brazil Ministry of development, Industry and Foreign Trade, "Joint Statement of the 13th edition of the Brazil-US Commercial Dialogue" (Brasília, Nov. 19, 2015). Available at: <http://perma.cc/E792-V58D>. Accessed: 06 Feb 2023.

¹⁴¹ Trubek et al (2017), p. 668.

¹⁴² For a full reference of US-Brazil Commercial Dialogues, see: <https://www.trade.gov/brazil-us-commercial-dialogue>. Accessed: 10 Feb 2023.

¹⁴³ Ministério das Relações Exteriores. Protocol to the Agreement on Trade and Economic Cooperation Between the Government of the Federative Republic of Brazil and the Government of the United States of America Relating to Trade Rules and Transparency. Available at: <https://www.gov.br/mre/en/contact-us/press-area/press-releases/protocol-to-the-agreement-on-trade-and-economic-cooperation-between-the-government-of-the-federative-republic-of-brazil-and-the-government-of-the-united-states-of-america-relating-to-trade-rules-and-transparency>. Accessed: 10 Feb 2023.

¹⁴⁴ The Protocol was signed during the Coronavirus health crisis. On May 21, 2020 the governments issued a joint statement highlighting the commitment to reduce trade barriers and to increase bilateral trade and investment. Topics were trade facilitation, regulatory practices, technical regulations, standards and conformity assessment procedures, intellectual property, and digital trade. The Protocol was negotiated entirely virtual during lockdowns, with great efforts from private sector entities in both countries. Available at: <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2020/april/brazil-us-joint-statement-enhancement-bilateral-economic-and-trade-partnership>. Accessed: 10 Feb 2023. There was an underlying pressure to conclude this agreement before the presidential elections in the U.S on November 3, 2020. The goal was to take advantage of the narrow "political window" opened by the synergy between presidents Trump and Bolsonaro because only an agreement that did not include tariffs could be negotiated without the US Congress' approval and the MERCOSUR's consent. US

statement on the new Protocol stated that it "*complemented Brazil's domestic reforms to improve competitiveness and opportunities for innovation, including the Regulatory Agencies Law, the Economic Freedom Law, and its succeeding presidential Decrees*".¹⁴⁵

After Bolsonaro's election in 2018, the steps taken during Temer's interim administration, closer to the OECD, gained full traction. Brazil thoroughly embraced the GRP's international agenda, made accession to the OECD a foreign policy priority, and approved several laws and executive decrees, as described below. In addition, regulatory agencies and other national government bodies were encouraged to manage stock reviews to reduce existing regulations.¹⁴⁶

The Regulatory Agencies' Bill (PL 3,337/2004), stuck in Congress for fifteen years, was finally approved as Law 13,848/19.¹⁴⁷ At this time, the Brazilian regulatory agencies had already implemented RIA in their rulemaking process on an *ad hoc* basis. However, to be in line with the OECD's best practices, it was necessary to make it mandatory. The law's approval resulted from a consensus between the Chief of Staff of the Presidency, regulatory agencies, and the Ministries of Finance around an essential text. According to two officials in charge of the reforms in the new government, "*it was basic, but after just over 20 years of the creation of the first agencies and after 15 years of debate on the same topic, the basics become revolutionary and urgent*".¹⁴⁸

Despite all that, the primary law that set the stage to anchor all the subsequent reforms was the Economic Freedom Act (EFA), Law n° 13.874/19.¹⁴⁹ EFA is a controversial law

Congress' approval was highly unlikely, given robust and explicit opposition by the Democrats to pursuing any type of trade agreement or expanded economic partnership with Brazil's President Jair Bolsonaro.

¹⁴⁵ Brazil. Ministério das Relações Exteriores. [19 Oct 2020] Available at: <https://www.gov.br/mre/en/contact-us/press-area/press-releases/joint-press-release-united-states-and-brazil-sign-new-protocol-on-trade-rules-and-transparency>. Accessed: 12 Feb 2023.

¹⁴⁶ Brasil. Casa Civil. Gestão do Estoque Regulatório: Iniciativas das Agências Reguladoras Federais. Maio 2018. Available at: <https://www.gov.br/casacivil/pt-br/assuntos/governanca/regulacao/apresentacao-regulacao-pasta/acesse-aqui/gestao-estoque-regulatorio/gestao-estoque-regulatorio-iniciativas-das-agencias-reguladoras-federais>. Accessed: 22 Feb 2023. Decree No. 10.139/19 stated the obligation to review and consolidate all normative acts lower than a decree in the federal administration. Presidência da República, Secretaria-Geral, Subchefia para Assuntos Jurídicos. Decreto N 9,203/2017. Available at: http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2017/decreto/d9203.html. Accessed: 22 Feb 2023.

¹⁴⁷ Brasil. Presidência da República, Secretaria-Geral, Subchefia para Assuntos Jurídicos. Lei N 13.848/2019. Available at: http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2019/lei/l13848.htm. Accessed: 22 Feb 2023.

¹⁴⁸ Albuquerque and Guarany (2018), PL das Agências Reguladoras: quando o básico é revolucionário e urgente. Jota, 28/08/2018. Available at: <https://www.jota.info/tributos-e-empresas/regulacao/pl-das-agencias-reguladoras-quando-o-basico-e-revolucionario-e-urgente-28082018>. Accessed: 22 Feb 2023 (free translation).

¹⁴⁹ Presidência da República, Secretaria-Geral, Subchefia para Assuntos Jurídicos. Lei N 13.874/2019. Available at: http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2019/lei/l13874.htm. Accessed: 22 Feb 2023.

resulting from a provisional measure sent by President Bolsonaro to Congress on April 30, 2019.¹⁵⁰ The reasons underpinning the proposal stated that a "Declaration of Economic Freedom" was urgent to "*change the reality of Brazil as an emergence*", representing "*the rights of the Brazilians against an irrationally controlling State*".¹⁵¹ In addition, the document departed from the assumption that "*the Brazilian entrepreneur, in contrast to the rest of the developed and emerging world, did not feel safe to produce, generate employment and income*".¹⁵² Yet, according to the provisional measure's reasoning, Brazil ranked 150th in the Heritage Foundation/Wall Street Journal Economic Freedom ranking, 144th in the Fraser Institute ranking, and 123rd in the Cato Institute ranking. Such a lousy performance was supposedly the leading cause of more than 12 million unemployed, economic stagnation, and the lack of real income growth, *urging* precise action from the government.¹⁵³

In 2019, Bolsonaro's government reorganized several institutions, merging five former ministries (finance, planning, labor, industry, foreign trade and services, and social security) into the Ministry of Economy (ME), headed by Paulo Guedes, a Chicago-trained economist.¹⁵⁴ The new ME and their secretariats started to rely heavily on indicators, attempting to improve Brazil's figures on such indexes. One such indicator was the OECD's PMR.¹⁵⁵ Several speeches and official presentations from the ME's representatives usually started with Brazil's shameful performance on the OECD PMR index as a "laggard" country compared with the OECD average.¹⁵⁶ Therefore, the passing of the provisional measure would symbolize a "landmark

¹⁵⁰ Congresso Nacional. Medida Provisória N 881/2019 (Liberdade Econômica). Available at: <https://www.congressonacional.leg.br/materias/medidas-provisorias/-/mpv/136531> (Accessed 22 Feb 2023).

¹⁵¹ The document with the reasons for the proposal was electronically signed by Marcelo Pacheco dos Guarany, Sergio Fernando Moro, and Renato de Lima França. EMI n° 00083/2019 ME AGU MJSP, Brasília, 11 de Abril de 2019. Available at: https://www.planalto.gov.br/ccivil_03/_ato2019-2022/2019/Exm/Exm-MP-881-19.pdf. Accessed: 22 Feb 2023.

¹⁵² EMI n° 00083/2019 ME AGU MJSP, p. 2.

¹⁵³ EMI n° 00083/2019 ME AGU MJSP, p. 1.

¹⁵⁴ The result was the creation of seven special secretariats and the National Treasury Attorney's Office, coordinated and supported by the Executive Secretariat. Each ME special secretariat has between one and four secretariats or equivalent units. The ministry had approximately 42,000 civil servants, a payroll of R\$2 billion (Brazilian real) per month, and more than 1,300 buildings. See Brasil – Ministério da Economia: Análise das funções principais e seus macroprocessos operacionais Macroprocessos operacionais de benchmarking com experiências do Canadá, da Espanha, dos Estados Unidos, da França, do México, do Peru e do Reino Unido. Available at: <https://publications.iadb.org/publications/portuguese/document/Brasil-Ministerio-da-Economia-Analise-das-funces-principais-e-seus-macroprocessos-operacionais-Macroprocessos-operacionais-de-benchmarking-com-experencias-do-Canada-da-Espanha-dos-Estados-Unidos-da-Franca-do-Mexico-do-Peru-e-do-Reino-Unido.pdf>. Accessed: 22 Feb 2023.

¹⁵⁵ See supra note 69.

¹⁵⁶ An example of such presentations may be found at: <https://events.iadb.org/events/handler/geteventdocument.ashx?AFCE784DCD0CBF43BE2C6862BF3344018B/A7DAC5632DC23F96E18F163AE4759CB4A62D8098D5AA588F0E2825B52F233ADF4C0BA8E245E6BD8/AE0D1A0B986D2FDE23A6575964F078E>. Accessed: 22 Feb 2023. Geanluca Lorenzon was the head of the Secretary of Advocacy for Competition and Competitiveness of the Ministry of Economy (SEAE). He was one of

legislation on regulatory policy", changing historical statutes reflecting "anti-business legal doctrines" by proclaiming the principles of "*in dubio pro libertatem*", the legal vulnerability of citizens and companies, and the economic freedom as a *right before the state*.¹⁵⁷

The provisional measure was converted into law by Congress only five months later, on September 2019.¹⁵⁸ The Law (EFA) set two relevant provisions regarding the regulatory environment in Brazil: *i)* the institutionalization of RIA for *all* proposals or amendments of normative acts edited by *all entities of the federal public administration*; and *ii)* the recognition of international standards by expressly stating the rights of every person to develop, execute, operate or commercialize new types of products and services when the infra-legal rules become outdated due to internationally consolidated technological development. Both provisions were later regulated in detail by two decrees.¹⁵⁹

Additionally, a Council for the Monitoring and Evaluation of Public Policies (CMAP) was established as a collegiate body comprised of the Ministry of Economy, the Chief of Staff of the Presidency, and the Office of the Comptroller General (CGU). Later, the Secretary for Competition Advocacy and Competitiveness (SEAE) within the Ministry of Economy was informally appointed to lead regulatory activities in Brazil. However, it still lacks a formal specific mandate.¹⁶⁰

After these changes in law, in 2020, Brazil formally adhered to the two main OECD recommendations on regulatory governance: *i)* the 1995 Recommendation of the Council on Improving the Quality of Government Regulation (1995) and *ii)* the 2012 Recommendation of the Council on Regulatory Policy and Governance. In 2021-2022 the country was submitted to a new peer review to listen to the OECD about the work performed domestically. The new report, published in June 2022, comprised two parts.¹⁶¹ First, a comprehensive assessment

the formulators of the Economic Freedom Provisional Measure, and first occupied the directorate of debureaucratization of the Ministry of Economy. Before working to the Ministry of Economy, Lorenzon was a consultant at McKinsey and director of the Mises Institute in Brazil.

¹⁵⁷ EMI n° 00083/2019 ME AGU MJSP, p. 6-7. Available at: https://www.planalto.gov.br/ccivil_03/_ato2019-2022/2019/Exm/Exm-MP-881-19.pdf. Accessed: 22 Feb 2023.

¹⁵⁸ Câmara dos Deputados. MPV 881/2019. Available at: <https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=2199763>. Accessed: 22 Feb 2023.

¹⁵⁹ Respectively, Decree 10.411/20 and Decree 10.229/20. Decree 10.411/2020 also regulated an embryo of ex-post evaluation, specifying that public entities of the federal government shall conduct an evaluation of regulatory outcomes (called ARR - Análise de Resultado Regulatório). Such obligations came into force in October 2022.

¹⁶⁰ SEAE's roles and responsibilities are established in Article 119 of Decree 9,745/2019, which defines the structure of the Ministry of Economy. However, the decree does not specify an explicit mandate to promote and oversee the regulatory policy.

¹⁶¹ OECD (2022).

based on the PMR Indicators. The information used to evaluate Brazil's PMR was collected through a questionnaire sent to national authorities in 2018, including over 1,000 questions on economy-wide or industry-specific regulatory provisions.¹⁶² The overall result of this assessment was that *Brazil's PMR indicator values often compare markedly unfavorably with the OECD average.*¹⁶³ They also compared *unfavorably with the average PMR values for Latin American OECD economies.* For the OECD, recent reforms *may pave the way for more substantial changes that could bring Brazil in line with OECD economies.*¹⁶⁴ In other words, Brazil seems "on the right track" from the OECD's perspective, yet still quite far from being in line with the PMR Indicators.

In the second part of the review, the OECD's overall conclusion was that, *despite Brazil having introduced several initiatives to foster the development of high-quality regulations, these efforts are not part of a long-term strategy with explicitly defined goals.*¹⁶⁵ For the OECD's experts, the introduction of legal instruments is *not underpinned by a single, high-level policy statement, such as a law that covers all the regulatory policy's tools, institutions, and instruments.*¹⁶⁶ This means that *Brazil lacks an integrated, comprehensive policy framework that supports the design and adoption of a whole-of-government program on better regulation.*¹⁶⁷ For the OECD experts, Brazil has gradually introduced tools such as RIA, *ex-post* evaluation, and administrative simplification. However, the challenge is to embed such tools in the rulemaking culture. The challenge most often quoted during the fact-finding mission was the need to change the culture of most public officials.

Another interesting finding in the report was that several Brazilian stakeholders mentioned that the obligation for carrying out due public consultation in RIAs would not derive from national laws but from Brazil's commitments set out in the Protocol on GRP signed with the US.¹⁶⁸ Such a finding reveals how an international commitment may act as a *harder* instrument to constrain domestic policies in the absence of a national statute or regulation. Moreover, it confirms what has been said in the joint statement about the Protocol that it complemented Brazil's regulatory reform. Such bilateral trade relations with the US concerning

¹⁶² OECD (2022), p. 5.

¹⁶³ OECD (2022), p. 31.

¹⁶⁴ OECD (2022), p. 31.

¹⁶⁵ OECD (2022), p. 69.

¹⁶⁶ OECD (2022), p. 69.

¹⁶⁷ OECD (2022), pp. 43;70;80.

¹⁶⁸ OECD (2022), p. 72.

GRP demonstrate how different channels may mobilize domestic actors around the same agenda and trigger other mechanisms of "best practices" transmission. Frequently, other channels come into operation when a track becomes blocked or slows down the transmission flow. In this case, Brazil's commitment before the US with binding GRP clauses may function as a crucial instrument for implementing GRP's rules, institutions, and practices.

4. Concluding Remarks

The case of Brazil's engagement with the OECD on regulatory reforms illustrates the interrelation between domestic political struggles, legal changes, and transnational norms and processes on regulatory governance. Although governments with different political orientations determine diverse interactions, in any case, national policymaking is immersed in a web of transnational networks that shapes state and cultural changes. As sharply pointed out by Lang about the features of the GRP, as a set of *open-ended* organizational routines in regulatory decision-making, such routines may be associated with different political projects and transmitted to diverse contexts.¹⁶⁹

By unpacking the GRP's toolbox, this chapter demonstrated the OECD's role as a knowledge producer and the contradictions enmeshed in the apparent "neutral" and "complete" concept of GRP as "high-quality regulation". It further explained how the OECD has developed and refined techniques of soft governance to transmit its transnational norm, relying primarily on persuasion, peer pressure, and cultural change. Indicators, public scrutiny, comparison, and ranking among countries complete the transmission mechanisms, representing subtle forms of material power. In this process, the state's identity and public officials' self-perceptions are carefully molded in collective knowledge construction based on parameters of modernity. Extensive data collection and directed questionnaires force national policymakers to conceptualize the problems into a pre-defined framework.

In the case of Brazil, three particular moments and types of interaction were identified. First, during Brazil's early approach to the OECD, enhanced engagement and the first regulatory peer review were fundamental in seedling the ground for the "better regulation" agenda. If Brazil was reticent towards the OECD, the OECD was eager to include Brazil in its socialization processes, together with other transition economies. But Brazil was still struggling over the proper role of its new regulatory agencies. For these reasons, the program was seen as

¹⁶⁹ Lang (2019), p. 24.

a more exogenous initiative, running slowly. After that, in Rousseff's mandate, while the government remained skeptical of seeking OECD membership, the regulatory coherence and GRP's agenda made their way through bilateral trade relations, moving different actors within the Brazilian bureaucracy and engaging the private sector.

After a turning point in 2015, with the reorientation of the political economy towards more liberal winds, Brazil reapproximated to the OECD and started to follow "*convergence with advanced economies*".¹⁷⁰ Brazil's formal request to accede to the OECD in 2017, bilateral negotiations with Latin American countries outside the Mercosur framework, and exploratory commercial relations with the US put the GRP's agenda in motion again. With Bolsonaro's election in 2018, this agenda was thoroughly embraced. A symbolic provisional measure of economic freedom was converted into law and made RIA mandatory for all federal regulations.¹⁷¹ The new Ministry of Economy, which merged five former ministries, started to rely heavily on indicators, including the OECD's PMR. However, despite all such initiatives, the OECD second peer review concluded that Brazil still lacks a long-term strategy and a *comprehensive policy framework that supports adopting a whole-of-government program on better regulation*.¹⁷² The challenge ahead is *to change the culture*.

Besides the OECD recommendations, a binding Protocol on GRP signed with the US triggered a different set of mechanisms for "best practices" transmission, which requires further research on the role of the international trade regime in developing regulatory reforms in transition and development economies.

All such reasons highlight the importance of understanding the OECD as a purveyor of ideas and a relevant node in transnational regulatory governance. The case of Brazil sheds light on the effectiveness of policy and legal transfers through transnational processes involving peer pressure, social learning, the role of indicators, and cultural change. National policymakers, trade officials, and diplomats, immersed in bilateral, plurilateral, and transnational networks, operate as conveyors of state change within transnational legal processes.

¹⁷⁰ OECD (2015), p. 28.

¹⁷¹ Presidência da República, Secretaria-Geral, Subchefia para Assuntos Jurídicos. Lei N 13.874/2019. Available at: http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2019/lei/L13874.htm. Accessed: 22 Feb 2023.

¹⁷² OECD (2022), pp. 43;70;80.

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