Checklist: The Bridge to Cooperation, Step by Step

## COSTA RICA







## BACKGROUND

Costa Rica relies on several sources of authority to improve its regulatory practices. These are: 1) Costa Rica's Constitution; 2) its General Public Administration Law (Law 6227 of 1978, Ley General de la Administración Publica); 3) its Citizens Protection Law Against Excessive Requirements and Administrative Burdens (Law 8220 of 2002, Ley de Protección al Ciudadano del Exceso de Requisitos y Trámites Administrativos y sus reformas); 4) the Law to Promote Competition (Law 7472 of 1994, Ley de Promoción a la Competencia y Defensa Efectiva del Consumidor y sus reformas); and 5) Executive Decree 37045-MP-MEIC of 2012, Reglamento a la Ley de Protección al Ciudadano del Exceso de Requisitos y Trámites Administrativos (Rules for Law 8220 of 2002). *See* Planes de Mejora Regulatoria y Cartas de Compromiso con la Ciudadanía, MIDEPLAN, 2014, pg. 10. The hierarchy of laws and regulations in Costa Rica is as follows, in order: 1) Costa Rica's Constitution; 2) international treaties and Central American technical regulations; 3) Costa Rican statutes; 4) Decrees by the executive branch; and 5) other regulations by the executive branch and regulations adopted by independent agencies (known as "entidades decentralizadas"). *See* Article 6, Costa Rica's General Public Administration law.

In Costa Rica, there are three main types of regulators: (1) Ministries, which focus on regulating in specific areas; (2) Departments within the Ministries that focus primarily on enforcement of their respective Ministry's regulations, but also have the authority to develop regulations; and (3) independent agencies (known as "Institución Autónoma"/"Entidad Decentralizada"). Ministries and Departments within the Ministries are part of the executive branch. *See* Manual de la Organización del Estado Costarricense, MIDEPLAN, July 2017 available at https://documentos.mideplan.go.cr/share/s/irKPAgonTKegR1ba2wft7w.

A Regulation in Costa Rica may be either a Decree or another type of regulation (e.g., a Rule or a Circular). A Decree must be signed by the President, whereas other types of regulations must be signed by the head of the respective regulatory agency.

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	Costa Rica does not require its regulatory agencies to prepare an annual regulatory agenda for regulations of general applicability.
1.Regulatory Forecast	For technical regulations ("RTs"), only the regulators that are part of Costa Rica's Technical Regulation Agency (Organo de Reglamentación Técnica or "ORT") <sup>1</sup> are required to prepare a regulatory agenda for RTs. Once these agencies prepare their respective agendas, the Ministry of Economy, Industry, and Commerce's (Ministerio de Economía, Industria y Comercio or "MEIC") Technical Regulation Department <sup>2</sup> (also known as ORT's Technical Secretariat or "ST ORT") and the Codex office <sup>3</sup> draft a four-year National Plan of Technical Regulations (known as "Plan Nacional de Reglamentación Técnica"). The Plan, which is developed with representatives of the private sector, the public sector, and ORT, lists the technical subject matters that the regulators will address and possibly regulate through RTs during that four-year time period. The latest version, covering the 2017-2021 timeframe, can be found here: <u>https://www.reglatec.go.cr/reglatec/principal.jsp?refrescar=true</u> .
	The rules, dates, and the format or matrix is established by the Department of Technical Regulations and the Codex office and communicated to all the ministries part of ORT and the business chambers, which are given a deadline to present the information.
	Costa Rica also has a National Standardization Plan (known as "Plan Nacional de Normalización") that lists the standards being developed by INTECO, a private, non-profit entity comprised of representatives from the public and private sectors of the Costa Rican economy. INTECO ("Instituto de Normas Técnicas de Costa Rica") <sup>4</sup> is recognized

<sup>&</sup>lt;sup>1</sup> The ORT is an interministerial commission that is affiliated with MEIC and comprised of representatives of seven Ministries: the Ministry of Economy, Industry, and Commerce; the Ministry of Agriculture and Livestock; the Ministry of Environment and Energy; the Ministry of Science, Technology, and Telecommunications; the Ministry of Trade; the Ministry of Health; and the Ministry of Infrastructure and Transportation. ORT contributes to the development of RTs by providing technical oversight during the RT drafting See Articles 39-41. Law 8279 of 2002: see also. Decree 32068-MEIC-S-MAG-MICIT-MOPT-COMEX-MINAE: process. https://www.reglatec.go.cr/reglatec/principal.jsp?irSeccion=true&seccion=154&padre=-1.

<sup>&</sup>lt;sup>2</sup> Costa Rica's Technical Regulation Department coordinates the development and modification of the country's RTs and ensures that RTs comply with WTO rules.

<sup>&</sup>lt;sup>3</sup> The Codex office, which is part of MEIC's Quality Directorate, coordinates Costa Rica's participation in the development of international food standards through Codex Alimentarius.

<sup>&</sup>lt;sup>4</sup> INTECO, which oversees all standards activities in Costa Rica, promotes the quality of goods and services in Costa Rica.

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	by Decree as Costa Rica's National Standards Body. <i>See</i> Article 1, Decree 37302-MEIC of 2012; <i>see also</i> , Law 8279 of 2002. Although not explicitly required under Costa Rican law, INTECO produces the National Standardization Plan each year, the latest version of which is available here: <u>https://s3-us-west-2.amazonaws.com/inteco-website/b558a40e330b6832bbf0ce40b4700b5b13d8e98b</u> . <i>See</i> Article 46, Law 8279 of 2002.
	Costa Rica provides a database of all laws and regulations on the website of the Attorney General's Office (Procaduría General).
	See Procaduría General website available at: <u>www.pgr.go.cr/sinalevi.</u>
2. National Regulatory Register	However, all Costa Rican RTs, as well as RTs developed by other countries that may create a technical barrier to trade, are archived on the ReglaTec website, which is administered by the Technical Regulation Department. ReglaTec also allows interested stakeholders to comment on a proposed RT.
	See Sistema de Reglamentacion Tecnica ("ReglaTec") website available at: www.reglatec.go.cr.
	Notice of the proposed domestic RT and the opportunity to submit comments is required to be published in Costa Rica's Official Gazette (Diario Oficial La Gaceta) and in a national newspaper.
3. Advanced Notice of Proposed Rulemaking	Costa Rica does not have a process for advanced notice of proposed rulemaking.
4. Opportunity for Public Comment and Participation	Under Costa Rican law, an opportunity for the public and interested stakeholders to comment on proposed regulations has been available since 1978. Unless there is a matter of urgency or public interest, the comment period has to be open for a minimum of ten (10) days. (The law does not specify whether these are ten business or calendar days.) <i>See</i> Article 361, Law 6227 of 1978.

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	In July 2016, MEIC's Regulatory Improvement Office (Dirección de Mejora Regulatoria, or "DMR") created the Sistema de Control Previo ("SICOPRE") website (explained in Section 5 below) where proposed regulations that add or modify an administrative burden are made available for public comment for a minimum of ten (10) business days through the website. Proposed regulations that do not add or modify an administrative burden are not open for public comment through the regulatory agency's website.
	See Article 12-bis and 13-bis, Rules of Decree 8220 of 2002.
	Interested stakeholders are notified of the comment period for a proposed regulation in two ways. The regulator must post a notice on its website and, if the regulation adds or modifies an administrative burden, on the SICOPRE website. Interested stakeholders may also register on SICOPRE to receive notifications about proposed regulations for selected sectors that add or modify an administrative burden.
	See id.
	Proposed domestic RTs (i.e., those not developed by the Central American Community) are made available on the ReglaTec website for a public comment period of at least ten (10) business days. Notice of the proposed domestic RT and the opportunity to submit comments is required to be published in Costa Rica's Official Gazette (Diario Oficial La Gaceta) and in a national newspaper. The notice must include the title of the proposed domestic RT, the physical and electronic location where documents relating to the RT are available, and the physical or electronic location where comments may be submitted.
	The specific format that the notice must follow is available as Annex D of the Domestic RT Development Guide.
	<i>See</i> Section 2.6.1, Guía Para La Elaboración de Reglamentos Técnicos Nacionales (2015) ("Domestic RT Development Guide"); <i>see also</i> , Article 16, Decree 32068.
	After the domestic public comment period ends, ST ORT determines whether the proposed RT may create a technical barrier to trade. If it does, ST ORT notifies the World Trade Organization ("WTO") of the proposed RT and a sixty

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	(60) day international public comment period begins. WTO members may comment on the proposed RT and may also request to extend the comment period through the WTO website.
	See Section 2.7.1, Domestic RT Development Guide of 2015; see also, Section Article 17, Decree 32068 of 2004.
	Regulators are required to publish evidence and regulatory analysis on SICOPRE if the draft regulation (including RTs) requires review by DMR. Regulations that require review by DMR are those that add or modify an administrative burden. For all other regulations, no evidence or analysis is required to be made available.
	See Articles 1 and 12, Law 8220 of 2002; see also, Article 12-bis and 13-bis, Rules of Decree 8220 of 2002.
	If the draft regulation would add or modify an administrative burden, the regulator must fill-out the RIA form and publish the following information on SICOPRE:
5. Publication of Evidence/ Regulatory Analysis	<ol> <li>A description of the draft regulation;</li> <li>A questionnaire, with its corresponding answers, regarding the draft regulation's impact on administrative burdens;</li> <li>A description of the problem that the draft regulation intends to solve;</li> <li>A description of the draft regulation's objectives;</li> <li>The regulatory agency's legal authority to regulate in the area;</li> <li>The alternatives to the draft regulation that were considered and the cost-benefit analysis for each alternative;</li> <li>The justification for why the draft regulation is the best option to solve the identified problem;</li> <li>The details of the draft regulation's administrative burden (for example, does it add to or modify an administrative burden, involve another regulator, impose costs on the public, etc.);</li> <li>The agency's budget to implement the administrative burden;</li> <li>A description of how the effectiveness of the regulation will be evaluated;</li> <li>A discussion of if/how interested stakeholders were consulted during the development of the regulation; and 12) A description of the results of the cost-benefit analysis for the draft regulation; and solve the draft regulation.</li> </ol>

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		PART I IMPLEMENTING GOOD REGULATORY PRACTICES See Annex 4, Rules of Decree 8220 of 2002; see also, SICOPRE website available at http://controlprevio.meic.go.cr/sicopre11g/listarFormRespuestaExterno.html.
6.	Respond to Stakeholder Input	<ul> <li>In Costa Rica, regulators are not legally required to respond to stakeholder input regarding proposed regulations of general applicability.</li> <li>Regarding domestic RTs, once the domestic comment period ends, the regulator reviews and analyzes all of the comments. If the agency agrees with the comment, it incorporates the comment into the proposed RT. If the agency does not agree with the comment, it must justify why it rejected the comment. All responses are organized in a matrix that includes all comments and their corresponding responses, as follows: <ol> <li>Source of the comment;</li> <li>Date when the comment (translations may be also included);</li> <li>Response to the comment (whether the comment was accepted or rejected); and</li> <li>Justification for rejecting the comment.</li> </ol> </li> <li>The same process applies after the international comment period ends. The response matrices are made available on the ReglaTec website.</li> <li>See Sections 2.6.2 and 2.7.2, Domestic RT Development Guide of 2015; see also, Annex E, Domestic RT Development Guide of 2015.</li> </ul>
7.	Reasonable period for entry into force	Costa Rica does not require a reasonable period of time before a final regulation, including RTs, enters into force. Once the regulation is adopted and published in Costa Rica's Official Gazette, it enters into force immediately. However, there is an administrative custom of establishing six months for the RT to take effect, based on the WTO's recommended practices.

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	There are two procedural avenues for challenging a regulation in Costa Rica, one judicial and one intra-agency. A judicial challenge is initiated by filing an ordinary motion for replacement or an ordinary motion for appeal with the court or tribunal having jurisdiction over the regulatory agency that issued the regulation. An intra-agency challenge is initiated by filing an extraordinary motion for review with the head of the agency.
	See Articles 342 through 355, Law 6227 of 1978.
	In Costa Rica, the following courts and tribunals have jurisdiction to review administrative acts, including regulations:
	<ol> <li>The "Contencioso-Administrativo y Civil de Hacienda" courts;</li> <li>The "Contencioso-Administrativo y Civil de Hacienda" tribunals;</li> <li>The "Casacion de lo Contencioso-Administrativo y Civil de Hacienda" tribunal; and</li> <li>La "Sala Primera" of the Supreme Court of Justice.</li> </ol>
8. Opportunity for Judicial Review	The jurisdiction of each tribunal and court to review administrative acts is set by statute and, where two tribunals have concurrent jurisdiction, the tribunal that first addresses the administrative act being challenged has jurisdiction.
	See Article 6 and 7, Law 8508 of 2006.
	The tribunal or court may, among other remedies:
	<ol> <li>Declare the administrative act unlawful;</li> <li>Totally or partially annul the administrative act;</li> <li>Modify or adapt the administrative act to comply with Costa Rican law; or</li> <li>Order the regulator to refrain from adopting or executing the administrative act;</li> </ol>
	See id. at Article 122.
	Law 8508 of 2006 sets out the process to challenge a regulation through ordinary or extraordinary motions in court.

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	According to DMR, judicial review of regulations in Costa Rica is rare and, when there is a challenge, courts are very deferential to the agency's determination.
	All regulations must adhere to the principles of clarity and objectivity.
	See Article 3, Rules of Decree 8220 of 2002.
9. Clearly Written and Understandable Regulations/ Directives	<ul> <li>Additionally, RTs must be:</li> <li>1) Written clearly and precisely, and to be consistent with other regulations;</li> <li>2) Consistent in structure, terminology, writing style, and defined terms; and</li> <li>3) Accurate (referring to numerical values and chemical formulas).</li> <li>See Article 3, Decree 36214 of 2010.</li> <li>There is no additional guidance on how these requirements are enforced.</li> </ul>
10. Use of Valid and Reliable Data & Sound Science	<ul> <li>There is no requirement to this effect in Costa Rica.</li> <li>When performing an analysis of a proposed RT's impact, the regulator is encouraged, but is not legally required, to consider the quality of the data it relies upon. For example, the regulator is encouraged to consider: <ol> <li>The source of the information and data used;</li> <li>Any deficiencies in the information and data used; and</li> <li>Any possible distortions or estimates in the information and data used.</li> </ol> </li> <li>See Section 5.3, Domestic RT Development Guide of 2015.</li> </ul>

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	If a technical standard is international or was developed by a recognized agency, it is presumed to have solid scientific support.
11. Risk-Based Approach	Costa Rica does not require use of a risk-based approach when developing a regulation of general applicability. Although not binding on regulators, MEIC provides guidance on the tools that agencies should use when analyzing the potential impact of a proposed RT, one of which is the use of a risk analysis. The guidance defines a risk analysis as a combination of the probability of the risk occurring with the consequence of the risk occurring. The guidance also provides that the use of a risk-based approach is especially important when health, safety, and the environment are at stake. See Section 5.4.3, Domestic RT Development Guide of 2015.
12. Regulatory Impact Assessment (RIA)	As noted above in Section 5, Costa Rica requires the preparation of a Regulatory Impact Assessment ("RIA") only for draft regulations (including RTs) that add or modify an administrative burden. The review of an RIA, also known in Costa Rica as a Cost-Benefit Assessment (Evaluación Costo-Beneficio), is conducted by the DMR. The RIA form is divided into two sections:
	a. A description of the problem that the draft regulation intends to solve;

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	b. A description of the draft regulation's objectives;
	c. The regulator's legal authority to regulate in the area;
	d. The alternatives to the draft regulation that were considered and the cost-benefit analysis for each alternative;
	e. The justification for the draft regulation as the best option to solve the identified problem;
	f. The details of the draft regulation's administrative burden (for example, whether it adds or modifies an administrative burden, whether the administrative burden involves another regulator, the cost on the public for the administrative burden);
	g. The regulatory agency's budget to implement the administrative burden;
	h. A description of how the effectiveness of the draft regulation will be evaluated;
	i. A discussion of if/how interested stakeholders were consulted during the development of the draft regulation; and
	j. A description of the results of the cost-benefit analysis for the draft regulation.
	<i>See</i> Article 12, Law 8220 of 2002; Annex 4, Rules of Decree 8220 of 2002; <i>see also</i> , SICOPRE website available at <a href="http://controlprevio.meic.go.cr/sicoprel1g/listarFormRespuestaExterno.html">http://controlprevio.meic.go.cr/sicoprel1g/listarFormRespuestaExterno.html</a> .
	A regulator must eliminate all unnecessary procedures and administrative burdens identified by the cost-benefit assessment, or it must justify the retention of the procedures or administrative burdens that it decides to keep.
	See Article 4, Law 7472 of 1994.
	DMR is developing an RIA form specific to RTs, which may be divided into two sections: 1) Section I (same as above), and 2) Section II, a Problem, Objective, and Risk Analysis section. The purpose of the second section is to define the problem the proposed RT will solve, identify the proposed RT's objective, and identify the costs and benefits (by performing a risk analysis) of the proposed RT.

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13. Pro-Competitive Analysis	<ul> <li>Costa Rica does not require an analysis of a draft regulation's impact on competition.</li> <li>Although not legally required, the DMR sends draft regulations to MEIC's competition office for a competition analysis and opinion. The competition office must return its non-binding opinion to the DMR within five (5) business days.</li> <li>DMR also sends draft regulations to MEIC's small business office (Pequeñas y Medianas Empresas or "PYME") for an opinion regarding the effects on small and medium-sized businesses. PYME must return its non-binding opinion to the DMR within five (5) business days.</li> </ul>
14. Assessment of International Impact	Costa Rica does not require an assessment of a proposed regulation's international impact. Although not legally required, the DMR sends a proposed regulation to ST ORT for its opinion on whether the proposed regulation is an RT and for a review of possible international commitments. If the proposed regulation is an RT, ST ORT begins the notification process with the WTO. ST ORT must provide its opinion to the DMR within five (5) business days.
15. Leverage Private Sector in the Development of Standards & Conformity Assessment	Costa Rican RT development guidance encourages the regulator to select a standard that has been internationally accepted – for example, standards developed by:         1) Codex Alimentarius;         2) The World Organization for Animal Health (OIE);         3) The International Plant Protection Convention (IPPC); and         4) Other organizations where Costa Rica is a member.         For all proposed RTs, the regulator must prepare a study to determine whether a standard should be adopted in whole or in part.

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	<ol> <li>If the standard is adopted in whole, it is unnecessary to find technical and scientific support for the proposed RT, and the proposed RT must only comply with the rules of Decree 36214-MEIC.</li> </ol>
	2) If the standard is partially adopted, the regulator must identify the technical and scientific support that
	justifies and explains why the international standard is not an adequate solution to the problem identified
	by the proposed RT. In these cases, the regulator must: a. Analyze scientific studies regarding the product that will be regulated with an eye towards using the studies as the basis for the proposed RT;
	b. Research the market (for instance, by visiting producers); and
	c. Perform a statistical analysis of market studies to determine their reliability.
	The hierarchy of standards in Costa Rica is as follows:
	1) International Standards: e.g., ISO, CODEX, and IEC;
	2) Regional Standards: e.g., COPANT, CEN, and CENELEC;
	3) National Standards: e.g., INTECO, BSI, DIN, and AFNOR;
	<ul><li>4) Association Standards: e.g., ASME, ASTM, API, and SAE; and</li><li>5) Private Sector Standards.</li></ul>
	See Section 2.4.1 and Figure 1, Section 2.3.2, Domestic RT Development Guide of 2015.
16. Ex-Post Assessments of Regulatory Impacts	Costa Rican law requires regulators to analyze, revise, and eliminate any administrative burdens that impede or distort transactions in the domestic and international marketplace, unless such revisions would affect the central government's obligation to protect health, security, and the environment. To this end, the Regulatory Improvement Commission (Comisión de Mejora Regulatoria or "CMR") <sup>5</sup> must continuously monitor regulations, although there is no formal process for ex post assessment of regulation.
	See Article 3, Law 7472 of 1994.

<sup>&</sup>lt;sup>5</sup> CMR, which sits within MEIC, is an advisory agency to the central level of government in Costa Rica whose role is to lead Costa Rica's regulatory improvement efforts. CMR is comprised of 15 members selected by the President from both the public and private sectors (including members of unions). *See* Articles 18 and 19, Law 7472 of 1994.

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17. Located Close to Important Government Decision Makers	<ul> <li>In Costa Rica, MEIC, through the DMR, is the agency responsible for implementing Costa Rica's regulatory improvement policies and objectives. MEIC is part of the executive branch.</li> <li>Additionally, each regulatory agency is legally required to designate an official (Oficial de Simplificación de Trámites) that is responsible for the agency's regulatory improvement policies. The official also serves as a liaison between the regulator and the DMR.</li> <li>See Articles 10 and 14, Rules of Law 8220 of 2002; see also, Law 8220 of 2002.</li> </ul>
18. Given Formal Authority of Regulatory Oversight	Costa Rican law explicitly limits the DMR's reviewing authority to proposed regulations (or amendments to regulations) that add or modify an administrative burden. See Article 11, Rules of Law 8220 of 2002. If the proposed regulation adds or modifies an administrative burden and the regulator is not an independent agency (Institución Autónoma"/"Entidad Decentralizada), then the DMR's opinion and recommendation about the proposed regulation is binding. If the proposed regulation adds or modifies an administrative burden and the regulator is an independent agency (Institución Autónoma"/"Entidad Decentralizada), then the DMR's opinion and recommendation about the proposed regulation is binding. If the proposed regulation adds or modifies an administrative burden and the regulator is an independent agency (Institución Autónoma"/"Entidad Decentralizada), then the DMR's opinion and recommendation about the proposed regulation is non-binding. See id. The DMR must provide its opinion within five (5) business days after the close of the comment period.

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19. Staffed with Experts and Given Independence	The DMR is staffed by five lawyers, three economists, and three support staff. The lawyers and economists are experts in regulatory improvement and on the effects of adding or modifying administrative burdens.
20. Given the Necessary Scope of Review to be Effective	The DMR has reviewing authority only with respect to proposed regulations that add or modify an administrative burden. Its opinion regarding the proposed regulation's administrative burdens is binding on all regulators except the independent agencies. See Article 11, Rules of Law 8220 of 2002.
21. Establish and Foster Good Regulatory Practices and Principles of Regulation	MEIC, through the DMR, coordinates the development of regulatory agencies' Regulatory Improvement Plans and posts them on the MEIC website. The Plans must also be made available by each regulator on its website. Each agency is required to create a Regulatory Improvement Plan that includes its regulatory improvement objectives, activities, timelines, and administrative burden improvement plans. Each agency must prepare its plan each October, make it available for public comment in November, and publish the final version of the plan by December 10th. <i>See</i> Article 19, Rules of Law 8220 of 2002; <i>see also</i> , Planes de Mejora Regulatoria y Cartas de Compromiso con la Cuidadanía Guide, MEIC (2014).
22. Ensure Forward Planning of Regulatory Activity	As explained in Section 1 above, Costa Rica does not require its regulators to prepare an annual regulatory agenda for regulations of general applicability. However, regulators that are part of Costa Rica's ORT draft a regulatory agenda for RTs. Based on the regulators' draft regulatory agendas for RTs, MEIC's Technical Regulation Department (Departamento de Reglamentacion Tecnica y Codex) drafts a four-year National Plan of Technical Regulations. See Planes de Reglamentación Técnica Institucionales available at <u>https://www.reglatec.go.cr/reglatec/principal.jsp</u> .

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23. Review Proposed and Final Regulatory Measures before they are Published	<ul><li>MEIC, through the DMR, only reviews proposed regulations that add or modify an administrative burden.</li><li><i>See</i> Law 8220 of 2002.</li><li>If the regulation requires the signature of the President (a Decree), the regulation is sent to the Legal Department of the Office of the President after DMR reviews and provides its opinion. If the regulation does not require the signature of the President (e.g., a Rule), then it is sent back to the regulator after DMR reviews and provides its opinion.</li></ul>
24. Coordinate International Regulatory Cooperation	<ul> <li>MEIC, through the DMR, coordinates international regulatory cooperation with:</li> <li>1) COFEMER/Mexico – DMR and COFEMER maintain agreements for the exchange of experiences and training on regulatory improvement.</li> <li>2) CENTRAL AMERICAN COMMUNITY (Unión Aduanera Centroamericana) – Costa Rica participates in the development of regional/Central American RTs.</li> <li>3) ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT ("OECD") – Costa Rica is in the process of becoming a member of OECD. As such, it is following the OECD's recommendations regarding regulatory improvement and attending trainings conducted by OECD.</li> <li>4) INTERAMERICAN DEVELOPMENT BANK – MEIC participates in the Latin American and Caribbean Network on Good Regulatory Practices.</li> </ul>