ASEAN's Regulatory Reform Imperative and Future Prospects

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This paper explores the different experiences of countries with regulatory reform and the imperatives that drove regulatory reform in the Association of Southeast Asian Nations (ASEAN) and the wider region. It then explores the lessons learnt from different countries on their journeys to reform and their implications for the ASEAN Economic Community (AEC). It concludes with a discussion of the possible approaches to international regulatory cooperation (IRC) while the Appendices discuss the lessons about regulatory reform in the Philippines and Good Regulatory Practice principles.

Background: The Paths Taken So Far

The experiences of the ASEAN and ASEAN+ countries on the long and winding journey to high-performing regulatory systems highlight the different starting points and paths taken.

The different starting points reflect the diversity of the region in terms of levels of economic development, legal systems, ethnicity, and history. Table 1 illustrates these starting points using the World Bank's Worldwide Governance Indicators for regulatory quality.

* The opinions expressed in this paper are the sole responsibility of the authors.

Table 1 shows the scores and percentile ranking of the ASEAN+6 countries and some corresponding global averages from the early 2000s to the early 2010s. Singapore, New Zealand, and Australia rank amongst the highest in the world for regulatory quality, followed closely by Japan, the Republic of Korea (henceforth, Korea), Brunei Darussalam, and Malaysia. The rest trail behind, starting with Thailand and the Philippines and the Lao PDR and Myanmar at the end. As can be seen, progress on regulatory governance indicators is not linear: there are setbacks and apparent retrogressions, but also some noteworthy improvements in the percentile ranking during 2003–2013, in particular for Malaysia and Indonesia.

Table 1: Regulatory Quality Scores and Percentile Rankings

	2003		2008		2013	
Country	Score	Ranking	Score	Ranking	Score	Ranking
New Zealand	1.67	96.57	1.79	98.06	1.81	98.09
Australia	1.58	93.63	1.76	96.60	1.79	97.13
Japan	1.06	80.88	1.13	84.47	1.10	83.25
Republic of Korea	0.75	73.53	0.72	73.30	0.98	79.90
China	−0.34	42.65	−0.13	51.46	−0.31	42.58
India	−0.36	40.69	−0.36	40.78	−0.47	33.97
ASEAN						
Singapore	1.83	99.02	1.90	99.03	1.96	100.00
Brunei Darussalam	1.00	79.41	0.81	74.76	1.10	82.78
Malaysia	0.60	68.14	0.36	62.62	0.62	72.25
Thailand	0.37	64.22	0.24	58.25	0.21	57.89
Philippines	−0.03	52.45	−0.07	52.43	−0.07	51.67
Indonesia	−0.78	20.59	−0.32	43.20	−0.20	46.41
Cambodia	−0.46	36.76	−0.44	37.38	−0.35	39.23
Viet Nam	−0.56	29.41	−0.61	30.10	−0.65	28.23
Lao PDR	−1.47	6.37	−1.13	14.08	−0.85	22.49
Myanmar	−2.04	1.47	−2.20	0.97	−1.51	5.26

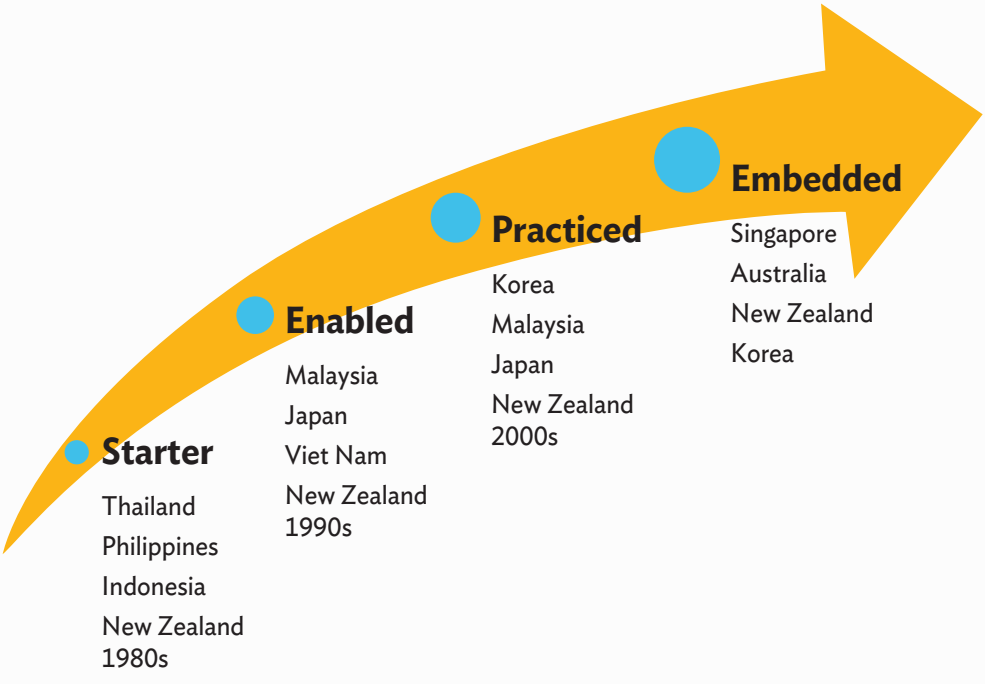
ASEAN = Association of Southeast Asian Nations; Lao PDR = Lao People's Democratic Republic.

Source: Intal and Gill (2016) based on Worldwide Governance Indicators dataset, 1996–2013. Adapted from http://info.worldbank.org/governance/wgi/index.aspx#home (accessed 15 September 2015).

The different country experiences shown in Table 1 lend support to the concept of equifinality, a notion that suggests that in open systems a goal or target can be reached by several means, taking rather different paths. Singapore's experience, for example, has been very different from that of Viet Nam, which, in turn, has been very different from that of Malaysia, and those of Myanmar and the Lao PDR have only just begun.

There is, however, some unity within the diversity of country experiences. A joint study by the Economic Research Institute for ASEAN and East Asia and the New Zealand Institute of Economic Research (Intal and Gill, 2016) looked at the development of regulatory management systems (RMS)[1] in 10 countries in the Asia–Pacific region. Appendix A contains the lessons about regulatory reform drawn from the Philippines experience but they seem much more widely applicable. Figure 1 presents a classification of the selected countries in the study.

Figure 1: Classification of Countries According to the RMS Stages



RMS = regulatory management system.
Source: Intal and Gill (2016: 36).

[1] A regulatory management system is the meta system that shapes how regulations are developed in each country. For a longer discussion, see Gill (2016a).

Figure 1 uses a typology of the stages or levels of the regulatory management system:

- Starter or Informal – ad hoc practices specific to the context, sector, organisation, and person undertaking the regulatory quality management function.
- Enabled – regulatory quality management processes have been put in place but, while the intention is there, regulatory quality management does not happen consistently.
- Practiced – enacted in some sectors and often reliant on a few key people in selected institutions.
- Embedded – practices are part of public sector culture and not reliant on key institutions.

As indicated in Figure 1, Singapore, New Zealand, and Australia are in the embedded RMS stage. Indonesia, the Philippines, and Thailand are still in the starter or informal stage while Viet Nam is in the enabled stage. Malaysia, Japan, and Korea are in the transition process, moving to the embedded stage. Note that, based on the experiences of New Zealand, Australia, Singapore, and Korea, development toward a well-performing RMS is a process that takes decades, as indicated in the figure.

A key implication of Table 1 and Figure 1 is that the future journeys of the countries will be similarly varied. However, to an increasing degree, there will be greater regulatory convergence as their economies become more highly integrated, both within the region and with the global economy. We turn now to a discussion of the imperatives for regulatory reform in ASEAN and the wider region, suggesting how those imperatives are likely to change.

Imperatives for Regulatory Reform

Domestic and international factors drive the focus on improving regulatory performance and vary across time and by country. For example, the country studies undertaken as part of the Economic Research Institute for ASEAN and East Asia/New Zealand Institute of Economic Research project identified a range of economic drivers for regulatory reform. They ranged from an economic crisis (e.g. Korea), a realisation of a secular loss of competitiveness (e.g. New Zealand), and a national drive at improving investment attractiveness consistent with deeper international linkages (e.g. Viet Nam), as well as competitiveness amidst rising wage rates (e.g. Malaysia, Singapore). These different drivers provided the impetus for sustained programmes aimed at improving regulatory policies.

The drivers of regulatory reform for ASEAN and its members fall into two broad groups: those that are largely common in nature, impacting upon all members, though to varying extents, over varying periods, and those that are more specific in nature and spring from the unique socio-economic and cultural circumstances of each member. In this paper, we focus primarily on those that are common and international in nature, what we describe as international regulatory cooperation.

The 1997 Asian financial crisis and the 2007–2008 global financial crisis, for example, experienced in common by all ASEAN members, were important drivers for both national and regional regulatory reform, as ASEAN and its member states attempted to remedy the impacts of the crises on their domestic economies. The 2007–2008 crisis similarly accelerated the development of ASEAN's mutual recognition agreements on professional services and added weight to the Organisation for Economic Co-operation and Development's (OECD) 1997 Policy Recommendations on Regulatory Reform, and ASEAN's Good Regulatory Practice Guide (2009). Appendix B discusses GRP principles in more detail. Similarly, the 2016 Trans-Pacific Partnership Agreement, which includes several ASEAN members, stresses the importance of good regulatory practices and regulatory cooperation, with its signatories committed to developing improved regulatory regimes with common characteristics, and establishing the Committee on Regulatory Coherence, an oversight body, to consider issues related to implementation and the setting of future priorities. At the time of writing the future of the agreement is in doubt, so the hope for improvement in regulatory quality might not eventuate.

Another common imperative is, of course, the ASEAN Economic Community Blueprint 2025 (AEC Blueprint 2025), the agreement that aims for a unified market and production area by 2025. While broader in intent than regulatory reform, it is a key driver of regulatory reform for ASEAN members. It represents an agreed goal to which each member is formally committed and will work to achieve, although at differing rates. It is a key driver of reform as its achievement will require the development of increasingly complementary sets of well-performing regulations and regulatory regimes with the capacity to enable a unified market and production area.

While regulatory reform is a key driver for the AEC Blueprint 2025, the emphasis on regulation is not new for ASEAN. ASEAN has previously recognised the importance of effective regulations and regulatory regimes with the ASEAN Policy Guideline on Standards and Conformance (2005) and the ASEAN Good Regulatory Practice Guide (2009), both aimed at improving the consistency and transparency of regulations. However, the AEC Blueprint 2025 adds greater weight and intensity to regulatory reform, with its focus on 'Effective, Efficient, Coherent and Responsive Regulations, and Good Regulatory Practice' (pp. 76–77) as a key element of ASEAN's drive for a

'Competitive, Innovative and Dynamic ASEAN' (p. 70). The AEC Blueprint 2025 also stresses the importance of firmly embedding good regulatory practice so as to reduce the costs of non-tariff measures.

Similar related drivers of regulatory reform are in the form of advice and support for policy transfer made available for several years to ASEAN (discussed in Box 1) and its members by major international organisations and groupings, such as the OECD (e.g. the 1997 OECD Policy Recommendations on Regulatory Reform, the 1995 OECD Recommendation on Improving the Quality of Government Regulation, and the joint ASEAN–OECD Southeast Asia Regional Policy Network on Good Regulatory Practice). A number of drivers have come from the Asia–Pacific Economic Cooperation (APEC), their weight and influence reinforced by the partially overlapping membership APEC has with ASEAN (e.g. the 1999 APEC Principles to Enhance Competition and Regulatory Reform and the joint APEC–OECD Co-operative Initiative on Regulatory Reform that provided a forum for the exchange of experiences on good regulatory concepts, policies, and practices). In some jurisdictions, the goal of attaining membership of the World Trade Organization and, subsequently, conformance with its disciplines and transparency requirements, has provided an imperative for regulatory reform.

Another driver is the slowly increasing number of mutual recognition agreements by ASEAN members that, for example, tend to result in a degree of increasing regulatory competition between them, in turn encouraging them to develop least-cost, more effective regulation to attract and retain businesses. The link between regulatory competition and mutual recognition is that the latter creates situations where regulatory competition can function without imposing upon firms and individuals the costs of having to satisfy more than one set of regulations, particularly where those regulations change as states engage in regulatory competition (Carroll, 2006; Nicolaidis, 1992; and Nicolaidis and Trachtman, 2000).

A final 'external' driver may be future trade agreements along the lines of the Trans-Pacific Partnership Agreement with commitments to regulatory coherence. For example, TPP requires each signatory, no later than one year after the date of entry into force of the agreement, to determine and make publicly available the scope of its covered regulatory measures, with the aim of achieving significant coverage. Four ASEAN members (Brunei Darussalam, Singapore, Malaysia, and Viet Nam) are signatories to the agreement and their leaders are well aware of the pressure from other members for them to produce acceptable evidence of their movement toward good regulatory practices as defined in the agreement. In turn, they may increase the pressure for regulatory reform on their fellow ASEAN colleagues, as did membership in APEC for Indonesia, the Philippines, and Thailand. In light of the likely impact of external factors

such as AEC, Trans-Pacific Partnership (TPP), and other TPAs and the lessons learnt from different countries on their journeys to regulatory reform, we now move to a discussion of insights as to the future of ASEAN regulatory reform.

Box 1: Regulatory Reform and ASEAN

ASEAN members have undertaken regulatory reform on a national basis as well as a wide range of activities and agreements related, in whole or in part, to regulatory reform. While space prevents a full listing of ASEAN's regulatory activities, the following provide an illustration of their type and extent, mindful of the fact that several fall into more than one category.

Activities aimed at improving specific types of regulation within member states
ASEAN Statement on Strengthening Forest Law Enforcement and Governance (2007)
ASEAN Corporate Governance Initiative (2011)

Activities aimed at assisting members in improving their regulatory management systems
ASEAN Policy Guideline on Standards and Conformance (2005)
ASEAN's Good Regulatory Practice Guide (2009)

Activities aimed primarily at the reform of cross-border impacts of regulation
ASEAN Trade in Goods Agreement (2009)
ASEAN Free Trade Area (1992)
ASEAN Mutual Recognition Agreements (various dates)
ASEAN Policy Guideline on Standards and Conformance (2005)

Activities aimed at the development of the ASEAN Economic Community
ASEAN Comprehensive Investment Agreement (2009)
ASEAN Capital Market Infrastructure (2014)
ASEAN Economic Community Blueprint (this specifies a wide range of regulatory reforms)

Agreements with non-member states having regulatory implications
ASEAN–China Free Trade Area (2002)
ASEAN–Japan Free Trade Area (2008)

Agreement Establishing the ASEAN–Australia–New Zealand Free Trade Area (2009)
ASEAN–India Free Trade Area (2009)
ASEAN–Republic of Korea Free Trade Area (2009)

ASEAN = Association of Southeast Asian Nations.

Implications for Regulatory Reform in ASEAN and the Wider Region

Some insights as to the future of ASEAN RMS can be gained by an examination of the lessons learnt from different countries on their journeys to regulatory reform.

The first is that, as noted above, the continuing journey will take time, most likely several decades, even for those countries with better-performing RMS. Early starters on regulatory reform such as Australia and New Zealand have by no means completed their journey, and for those such as Myanmar many challenges lie ahead as they introduce and modify regulatory instruments and institutions to suit their socio-economic environment (Intal and Gill, 2016, Chapter V). Hence, patience is needed and the immediate benefits of reform should not be 'oversold', or it can lead to a decline in the needed political support if benefits are slow to be achieved.

The second is that major regulatory reform is a political decision and one that, if it is to be successful, requires domestic credibility and substantial and ongoing commitment and support from a country's top leadership, not merely symbolic gestures. It involves, at least in total, significant change to processes, institutions, regulatory designs, and, importantly, the distribution of power and authority – changes not likely to be welcomed by those who will lose power and the ability to influence policy and administrative outcomes. In such a challenging context, it is important to foster and promote cultural change in the bureaucracy to achieve attitudes and actions supportive of regulatory change. Credibility can be enhanced by pointing to examples of regulatory success in other ASEAN countries, by the united commitment of its members, and by drawing on the evidence of the correlation between improved regulatory practices and socio-economic development.

The third is the need for embedded systems of consultation with key economic actors, notably those in the business sector, whose active and ongoing support will provide a very necessary basis for reform. In other words, the journey to high-performing regulatory systems should be collaborative, not simply imposed from above. This is not to suggest that large businesses should dominate or 'capture' the consultation and regulatory design process. Moreover, it can be useful to assist key economic actors such as business groups to also engage in the process of international regulatory cooperation, parallel to government actors.

The fourth is the need to carefully consider the type of reform processes to be instituted. Typically, it is politically more sensible to focus on areas of reform that aim at the greatest, relatively rapid financial and economic return – a sectoral approach – for these

will not only increase income and wealth but provide an important 'demonstration' effect that will increase the credibility of reform-minded governments, garnering support for later efforts. Similarly, the occasional opportunities for broader, system-wide reform need to be seized rapidly, as proved to be the case, for example, in Korea with the Asian financial crisis, leading to an acceleration of microeconomic and macroeconomic reforms that might not otherwise have been possible.

The fifth is the growth in the share of services in the economy, discussed in the accompanying paper by Christopher Finlay, on bringing ASEAN into the global services network. If countries are to participate in the services revolution, regulatory reform will have an important role to play in removing the behind-the-border regulatory barriers.

The sixth is that regulatory regimes will need to respond to the greater economic integration within ASEAN associated with continued globalisation. As an example, the growth in global supply chains limits the ability of individual states to regulate across whole chains because the reach of powers of the regulators often do not extend beyond one country's borders. This makes it difficult to design, monitor, and enforce compliance with a regime in another country with the domestic powers that regulators have. Moreover, with global chains, there is increased potential for regulatory failures to spread across national boundaries, although such failures can provide an incentive to cross-national improvements in regulatory coherence. In the concluding section of the paper, therefore, we explore the role for international regulatory cooperation in shaping regulatory reform in ASEAN+ countries.

In Appendix B, we present a proposed consolidated set of GRP principles for ASEAN that draws on the lessons learnt by its members and others.

The Role of International Regulatory Cooperation[2]

The aim of international regulatory cooperation is to improve regulatory coherence and connectivity by improving the design and execution of the operation of regulations on goods or services as they cross national boundaries. It is an approach that emphasises how greater regulatory connectivity can be used to achieve a range of goals including reduced technical barriers to trade, improved regulatory quality, or wider geo-political integration. IRC is being driven, in particular, by concerns about non-tariff barriers to

[2] This section of the discussion draws upon Gill (2016b).

trade generally[3] as well as the specific inclusion of technical barriers to trade provisions in bilateral Free Trade Agreements (FTAs) and Regional Free Trade Agreements (RTAs), aimed at overcoming regulatory barriers and decreasing their costs. IRC has become very topical in recent years with TPP and various bilateral and regional initiatives that include IRC provisions.

Driven forward by initiatives such as AEC and TPP, practice is leading theory in the field of IRC. Theory is lagging as frameworks are still being developed to adequately characterise the dimensions of IRC and the possible approaches it can entail. These frameworks are an important foundation for organising the evidence about what works and the balance of risks with each approach. As Correia de Brito et al. (2016: 13) observed, at present 'the choice among various cooperation approaches is not informed by a clear understanding of benefits, cost and success factors of diverse IRC options'.

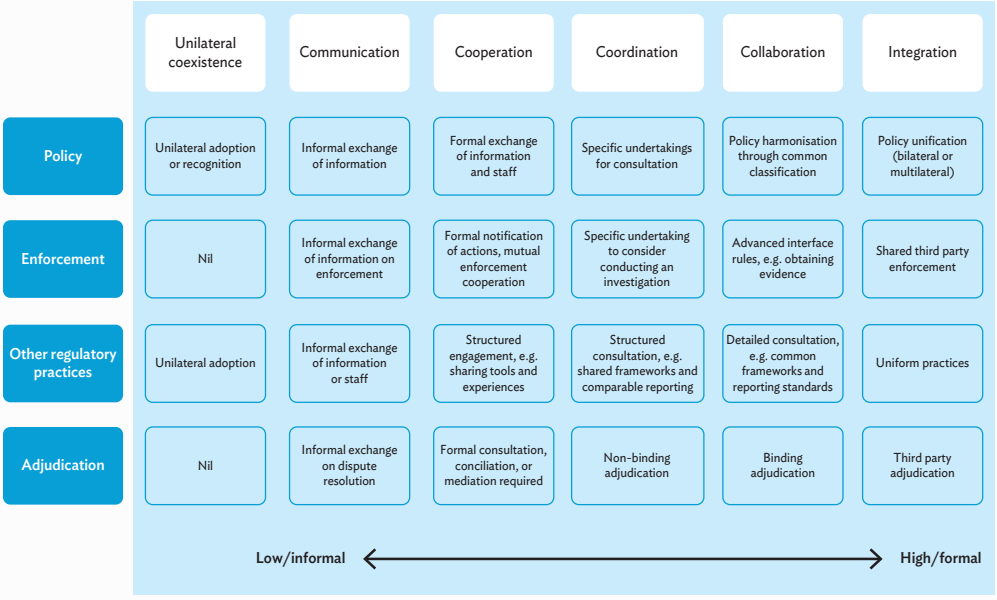
The implication for ASEAN countries is that they will need to consider the full range of regulatory cooperation options, rather than assuming that the only options are a conformity assessment-type MRA or full harmonisation. This section outlines the IRC choice set facing ASEAN+ countries and some of the factors that will need to be taken into consideration in making these choices.

IRC can be seen as a continuum with full autonomy at one end, through informal cooperation, then through formal cooperation (such as mutual recognition), to full harmonisation and integration at the other end. It can occur at a number of levels: that of policies, the practices of regulatory agencies (apart from enforcement), and judicial and quasi-judicial enforcement and adjudication.

At each level in Figure 2 is a continuum in the range of levels of intensity of integration. At the informal end of the spectrum is the creation of communities of practice whereby regulators from a range of jurisdictions discuss emerging practices and share lessons learnt, sometimes resulting in greater regulatory convergence. Over time, this can evolve into more formal cooperation arrangements such as exchanges of staff and information and explicit coordination in the development of regulatory policies and practices.

[3] A classic example of a non-tariff barrier for fresh products are delays in border clearance procedures. Non-tariff barriers include technical barriers to trade such as technical regulations, mandatory standards, and related conformity assessment procedures as well as the divergence in countries' regulatory policies and practices. The lack of regulatory coherence arising from the interaction of regulations within and between countries can combine to produce unintended and unnecessary barriers to trade.

Figure 2: The IRC Continuum



IRC = international regulatory cooperation.

Source: Gill based on Petrie (2014).

The important point is that IRC does not imply that the goal is full harmonisation as there are a number of potential stopping points along the way. Moreover, separate decisions are needed on the degree of integration at each level of policy integration, regulatory practices, enforcement, and adjudication, resulting in a wide range of possible approaches and no simple 'silver bullet' solutions. IRC thus offers opportunities because it encompasses a wide range of alternative approaches, with a key challenge for governments being the choice of the right approach to achieve the desired objective in their particular circumstances. The key policy choices that countries engaged in IRC need to address include decisions on:

- Objectives – Be clear about what the specific goals are, for example, reducing particular non-tariff barriers, improving regulatory quality, augmenting regulatory capability, or managing international spill-overs.
- Focus – Work on coordination of new policies rather than existing provisions, as the existing practices of regulators are harder to change once embedded, although successful cooperation on new policies can encourage later changes to existing policies through a process of emulation.
- Locus – Look to work on regulatory practices as well as policies to avoid unintended barriers (see Marshall School of Business, 2008).

- Parties involved – Start with private codes such as coordinated standards developed by private standards organisations, which in some cases then can be incorporated into law by reference. Also, where possible, harmonise to international not bilateral rules and standards, working with international standard-setting bodies.
- Breadth – Focus on sectors where the gains are highest, such as international value chains, and avoid long-standing trade irritants where positions are too entrenched to make cooperation possible in the short or medium term.
- Reach – Use the least demanding form of IRC required to achieve the objectives rather 'than shoot for the moon'.

The best approach will vary, depending on the goals, the contexts in the respective countries, and the balance of risks with each approach. The key policy implication is that countries should consider the full range of regulatory cooperation approaches, and use the least demanding form of IRC required to achieve their objectives. More ambitious cooperation will follow as mutual trust and understanding of the positions of partners grow over time.

Unilateral action to achieve regulatory convergence is an important tool for countries to consider first as it is technically the easiest option to implement, often based on the informal transfer of policy ideas and instruments from other sources. IRC is, in this sense, only a part of the suite of approaches to achieving regulatory coherence. Strengthening domestic regulatory management systems by commitment to greater transparency and good regulatory practice will also contribute to greater regulatory connectivity.

The experience of New Zealand and Australia with the development of 'Closer Economic Relations' discussed in Box 2 suggests the potential for countries to move over time beyond traditional free trade agreements to more intensive, specific, international regulatory cooperation arrangements. Free trade agreements, for example, often create informal regulatory cooperation bodies, which can lead to deeper relationships and promote greater understanding and trust. As a result, more informal cooperation provides the foundation for deeper cooperation arrangements over time.

A key issue in the drive to regulatory reform in ASEAN is the importance of a platform of trust and adequate levels of capability to support deeper levels of integration. The New Zealand and Australian joint experience highlights the difficulties of achieving a single economic market even with a shared history, similar culture and institutions, and high political commitment. As the extent of successful integration (Figure 2) increases, the costs increase as the additional benefits at the margin are more limited.

Box 2: Australia and New Zealand: From a Limited Free Trade Area to a Single Economic Market?

Australia and New Zealand have a shared history, language, and values; a similar culture, political, legal, and economic institutions; and a high political commitment to greater integration. This has provided a solid platform of mutual understanding and trust on which to build a closer economic relationship. The free trade area established by a closer economic relations agreement in 1983 led over time to further integration under a goal of the single economic market. In some areas, integration has advanced well. The intergovernmental arrangement relating to Trans-Tasman Mutual Recognition includes recognition of respective regulatory regimes as well as conformity assessment procedures. The European Union is the only other jurisdiction with mutual recognition of regulatory regimes.

However, progress in other areas has been slower. In a joint study by the Australian Productivity Commission and the New Zealand Productivity Commission, it was observed (2012) that '[i]mplementing agreements to reduce behind the border barriers typically regulatory in nature is more complicated than reducing tariffs'. While work on strengthening trans-Tasman economic relations has occurred over a number of years, in some cases integration has not proceeded at all. In relation to competition policy and consumer protection regimes, the decision not to integrate more deeply reflected the results of an analysis that the costs of doing so would outweigh the benefits (APC, 2004). A joint therapeutic products regulatory agency was first agreed in 2000, a Treaty was signed in 2003, and the detailed design work was completed in 2015, but the concept has been abandoned. As a result, there are no joint regulators to cover the full spectrum of policies, practices, and enforcement.

However, in food safety standards, New Zealand has essentially joined the Australian body with minor modifications to the governance arrangements. In the case of the Joint Accreditation System of Australia and New Zealand, a separate (international) body was created to provide for a joint accreditation system for conformity assessment bodies. However, the actual administration and enforcement of any joint standards remain with the respective domestic agencies.

New Zealand and Australia show what can be achieved through a combination of political commitment and sustained bureaucratic effort when built on a foundation of trust, but 'It should be acknowledged that it will be exceedingly difficult for other countries to imitate this model of mutual recognition due to the context as well as its ambition' (Correia de Brito et al., 2016: 68).

Similarly, the more diverse the countries seeking to cooperate and the more disparate the level of capability are, the higher the cost of collective action and the shallower the level of integration within the club will be.

IRC is sometimes criticised for the loss of autonomy that can result from the exercise of regulatory sovereignty on a cooperative basis, a potentially valid concern particularly as the degree of cooperation becomes more intensive. However, the critical question is: Does the proposed initiative adversely impact on the effective exercise of sovereignty?

IRC offers the scope for more effective exercise of national regulatory sovereignty through the adoption of international standards and norms backed by support from regulators in other jurisdictions. It is a voluntary exercise of sovereignty that, where successful, increases the regulatory capacity of those cooperating while they retain the authority to press for changes to what has been agreed.

Conclusion

The key conclusion from this discussion of IRC is that ASEAN+ countries should consider the full range of regulatory cooperation options and, consistent with Occam's razor, use the least demanding form of IRC required to achieve their objectives. Deeper integration is hard to achieve and sustain. Broadening IRC through softer, more informal cooperation between countries is easier to achieve and support, particularly when countries vary greatly in their socio-economic characteristics. Improving IRC takes time as it is a long game that involves a series of small steps along the road.

More intensive regulatory cooperation arrangements could enable regulatory reform to become a factor for improving ASEAN's competitiveness with other economies in the region. Future regulatory cooperation by ASEAN and ASEAN+ needs to take account of the varying context of each of the members. There is a range of models to draw from in addition to the European Union's approach of developing common regulatory regimes. Examples include the Australasian model of a single economic market and the United States–Mexico High Level Economic Dialogue introduced as part of the North American Free Trade Agreement. As cooperation is a long game, AEC has an opportunity to identify the first initial steps that need to be taken. Softer, more informal cooperation between countries is easier to achieve and support.

In summary, AEC can play an important role by strengthening national regulatory policy frameworks, advancing international regulatory cooperation through selected initiatives, and addressing the risk of trade diversion and regulatory exclusion. As the range of possible approaches to IRC is wide, it is important to be clear about the objectives sought, the potential gains from international regulatory cooperation, and be realistic about the capability to implement the desired approach.

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Appendix A

As part of the ERIA/NZIER Regulatory Management, Gilberto Llanto, the author of the Philippines country case study, offered the following lessons about regulatory reform that are also relevant to other countries (pp. 47–48):

'1. **Transparency leads to competitiveness.** In 2011 and 2012, public infrastructure spending went down as the new administration wanted to review all infrastructure projects and procurement procedures. Public infrastructure spending picked up in the subsequent periods under better governance and some control over corruption. Investor confidence rose in response to better governance and transparency.
'2. **Work in progress is not good enough… [and] it's all about execution and delivery.** In competitiveness, the country is only ranked and scored when the job is completed and implemented.
'3. **Teamwork is important; avoid silos.** Not one government agency can solve interconnected problems. Coordination and commitment to reform are crucial.
'4. **Focus on multiple fronts and not just one single variable.** There is no single bullet, single solution to complex problems. Coordination is important to deal with multiple, complex issues.
'5. **The competition never sleeps.** For instance, Singapore, one of the highest-ranking countries in the world, is always on a continuous improvement program.
'6. **The bar always rises.** A competitive world raises the bar all the time, and the country should be ready for it.
'7. **Speed-to-reform should be the new mantra.** Action plans more than feasibility studies.
'8. **Maintain momentum.** The Philippines cannot afford to slow down the pace of reform. In fact, it should accelerate the reform process.
'9. **Embed and institutionalize change.** Executive orders, legislations, laws are necessary for institutionalization. But more important are actual practice, reform mindset, and culture of the country.
10. **Public–private collaboration is important and effective.** The public and private sector have their respective strengths and it is important to harness these for regulatory reform.'

Appendix B

ASEAN Good Regulatory Practice (GRP) Principles

Regulations are essential for the proper functioning of society and economy. However, when they are poorly designed, are inconsistent with other regulations, or are not administered and enforced well, regulations can impose greater burdens on companies and the citizenry than necessary, especially on small enterprises which comprise the bulk of ASEAN businesses, and thereby inhibit productivity (MPC, 2014: 12).

The challenge for ASEAN Member States is to ensure that the regulations effectively address the identified problems while minimising the cost of compliance with, and preventing unwarranted distortions and inconsistency arising from, the regulations in each member. In addition, differences in regulatory requirements amongst ASEAN Member States that impose substantial and unnecessary barriers to intra-ASEAN movement of goods, services, investment, capital, and skilled labour would need to be addressed.

Indeed, the drive towards a competitive, dynamic, innovative, and robustly growing ASEAN requires that the regulations and the regulatory regimes involved are non-discriminatory, pro-competitive, cost-effective, coherent, relevant, transparent, responsive, and accountable. In the process, robust entrepreneurship, innovation, trade, investment, and job creation is engendered in the region. In equal measure, social security, inclusive prosperity, rule of law, and citizen's well-being will also be enhanced.

Good Regulatory Practices (GRPs) powerfully address the regulatory concerns raised above and promote good governance. ASEAN has recognised the importance of GRP in the ASEAN Policy Guideline on Standards and Conformance (2005), and the ASEAN Good Regulatory Practice (GRP) Guide (2009) aimed at improving the consistency and transparency of technical regulations. More forcefully, the AEC Blueprint 2025 includes 'Effective, Efficient, Coherent and Responsive Regulations, and Good Regulatory Practice' (pp. 76–77) as a key element of ASEAN's drive for a 'Competitive, Innovative and Dynamic ASEAN' (p. 70). In addition, the AEC Blueprint 2025 emphasises embedding GRP to minimise compliance cost of meeting non-tariff measure requirements and in the preparation, adoption, and implementation of standards and conformance rules, regulations, and procedures (p. 63).

Good Regulatory Practice (GRP) Principles

GRP principles in the design and implementation of regulations 'are a useful toolkit for measuring and improving the quality of regulation and its enforcement, setting the context for dialogue between stakeholders and government' (UK Better Regulation Task Force: 1). Regulations are construed as all written legal and quasi-legal instruments including laws, decrees, secondary regulations, guidelines, circulars, codes, standards, and others (MPC, 2014: 2).The principles help identify where unnecessary regulatory burdens on business could be reduced (MPC, 2014: 5).

No clear and agreed complete set of good regulatory practices has been used by governments and analysts. Nonetheless, a number of commonly emphasised principles can be considered as the core GRP principles. The following list of core GRP principles draws from or are taken from the GRP principles of Malaysia, APEC, OECD, ASEAN GRP Guide, Australia, New Zealand, and the United Kingdom.

Principle No. 1: Ensure regulations have a proportionate and effective response to the risk being addressed

This proportionality principle highlights the fact that most regulations address risks to society, economy, and the environment that are not adequately addressed by individuals or the market; e.g. environmental pollution, food borne illnesses, fraud, fire, etc. (MPC, 2014: 17). At the same time, as the ASEAN GRP Guide puts it, the regulatory response '... produces benefits that justify costs [imposed on firms and citizens],... serves clearly defined policy objectives, and be effective in achieving those objectives.' (ASEAN GRP Guide, 2009: 1) In effect, the problem should be clearly stated and the regulatory response justifiable and appropriate (APEC, 2010: 3).

The proportionality principle means regulatory agencies (and other government bodies including the legislature) intervene only when it is necessary and socially beneficial. This implies the importance of a clear empirical understanding of the risk(s) to be addressed and the corresponding appropriate risk management regulatory approach to undertake. That is, the nature of the regulation is commensurate to the severity of the risk, taking into consideration the various regulatory and non-regulatory options. Generally, this means a greater reliance on outcome-based (or performance based) regulatory and non-regulatory measures rather than prescriptive regulations except where risks are severe. Proportionate response also implies that greater attention be given to the impact of regulations on small and medium businesses, which tend to be disproportionately burdened by the regulations compared

with large firms. Finally, this implies that a range of feasible options (regulatory, non-regulatory, co-regulatory) as well as the benefits and costs are considered (Council of Australian Governments, 2007: 4).

Principle 2: Minimise adverse side effects and market distortions

Under GRP, a regulation and its implementation needs to minimise adverse side effects to only what is necessary to achieve regulatory objectives at least cost (MPC, 2014: 6) and does not lead to market distortions by unnecessarily limiting competition and by being discriminatory against other domestic and foreign firms. The exception to the introduction of regulations that limit competition is when '...the benefits of the restrictions to the community as a whole outweigh the costs, and the objectives of the regulation can only be achieved by restricting competition.' (Council of Australian Governments, 2007: 4)

Minimising the adverse side effects requires that regulations and their implementation are targeted and focused on the regulatory problem of concern, and that the regulators are more concerned with activities that give rise to the most serious risks (UK Better Regulation Task Force: 6). Similarly, regulations need to be as least trade restrictive a possible in meeting the desired objectives (ASEAN, 2009: 2).

Principle 3: Aim for consistency and coherence of regulations and predictability of implementation of regulations

Consistency and coherence of regulations mean no conflicting or duplication of regulations. This calls for, amongst other actions: (OECD, 2012: 17)

- appropriate coordination mechanisms among concerned agencies or regulatory institutions, as well as between levels of government on regulatory policies and practices;
- information sharing and greater transparency between levels of government to address asymmetric information and promote complementarities among regulations;
- identification and reform of overlapping regulations in regulatory issues that cut across levels of government.

Consistency also implies that enforcement agencies apply regulations consistently across the country (UK Better Regulation Task Force: 5).

Consistency and coherence of regulation is central to a genuine whole of government ownership of GRP. Thus, the critical importance of appropriate coordination mechanisms amongst concerned agencies and regulatory institutions. In all of our bureaucracies, vertical accountability incentives and disciplines are so powerful that making GRP a reality requires a very strong countervailing commitment to looking and working across agency silos. The predilection of bureaucracies for working in silos that are largely isolated from each other is one of the main obstacles to regulatory practices that create a better experience for the regulated.[1] Indeed, a business enterprise faced with multiple licenses, permits, and approvals from various agencies in its operations requires effective coordination amongst agencies together with streamlined regulatory requirements and simplified systems and work procedures if it is to be efficient and if society is to reap the benefits (Seman and Bahari, 2016: 7). Hence, it is important that regulations be reviewed from the perspective of the operations of a business enterprise, a process that animates the initiatives of Malaysia's PEMUDAH Task Force.

Of importance for the ASEAN Economic Community is the minimisation of regulatory differences amongst members, both in terms of the regulations themselves and in the implementation of the regulations. This is because regulatory differences can become significant barriers to trade, investment, and labour flows within the region. That is why, for example, the ASEAN GRP guide calls for regulations '...to be based on international standards, or on national standards that are harmonized to international standards, except where legitimate reasons for deviations exist' (ASEAN, 2009: 2). The drive towards minimised regulatory differences and greater regulatory coherence amongst members also calls for, as the ASEAN GRP Guide emphasises, equal treatment for products of national origin and like products imported from other members.

The predictability of the implementation of regulations engenders a greater sense of certainty to regulated entities about regulatory compliance risks, both now and in the future, and thereby provides a more conducive environment for investment. The predictability and certainty of the regulatory regime is enhanced by clear decision-making criteria that are publicly known as well as by taking into consideration in the design of regulatory regimes the fact that firms need predictability and certainty to take long-term investment decisions (Mumford, 2011: 38).

[1] Mark Steel, personal communication.

Principle 4: Ensure transparency and stakeholder participation in the design, implementation, monitoring, and review of regulations

Transparency '...addresses many of the causes of regulatory failures, such as regulatory capture and bias toward concentrated benefits, inadequate information in the public sector, rigidity... and lack of accountability. [It] encourages the development of better policy options, and helps reduce the incidence and impact of arbitrary decisions in regulatory implementation. Transparency is also rightfully considered to be the sharpest sword in the war against corruption.' (OECD, 2002: 65–66).

Transparency measures include the following:

- Public access to information on the regulations and quasi-regulations such as laws, policies, circulars, rules, guidelines, decisions, and procedures together with, where appropriate, expected service standards (e.g. duration of processing of license applications), and where practicable, such information should be available online. Preferably, the information should include guidance to regulated parties on their expected compliance requirements, how to comply with legal requirements and how regulators will assess applications (MPC, 2014: 40).
- Regulations, rules, and procedures should be clear, simple, well organised, and written in plain language, '...recognizing that some measures address technical issues and that relevant expertise may be needed to understand and apply them.'[2]
- As in the case of Thailand's Royal Decree on Review of Law, transparency is also enhanced by the requirement that regulations are translated into English so that they are easily available to foreign stakeholders.

Effective consultation and stakeholder participation involves a continuous process of engagement and communication with affected stakeholders from a wide variety of perspectives and interests at all the stages of the regulatory cycle. In addition, the stakeholders should be provided with reasonable time to make considered responses and on how the results of the consultation process have been taken into account in the decisions on the design, implementation, and revision of regulations and quasi-regulations. Effective consultation with, and engagement by, stakeholders can be expected to: help ensure that those who are affected by the concerned regulation have a good understanding of what the regulation is and how it addresses the problem

[2] Trans-Pacific Partnership Agreement, Chapter 25 on Regulatory Coherence, p. 7.

of interest; help provide suggestions on alternative options, allowing regulators to assess competing interests; help identify interactions between different types of regulations; help provide a means to check on regulator's cost assessment; and may enhance voluntary compliance with the regulation (Council of Australian Governments, 2007: 6).

Principle 5: Ensure that there is a robust review mechanism to ensure the continuing effectiveness of the regulations in a changing economic and social environment

Given dynamic market, technological, and other developments globally, regionally, and nationally, regulations over time can become wholly or partly redundant, which may call for their termination or, more commonly, their revision or, if possible, their replacement by non-regulatory options. Thus, it is important to have a robust review mechanism that ensures that existing regulations remain relevant and effective. The review and evaluation of regulations and the regulatory regime also aims to '…improve the performance of regulatory quality tools and institutions – measured in terms of their ultimate goal of increasing the effectiveness and efficiency of regulation over time' (APEC, 2010: 6).

A more systematic and systemic review mechanism is to build in a review requirement to each regulation, or even to introduce a 'blanket' policy or law that requires the regular review of all or most regulations, e.g. as is required every 7 years under Malaysia's National Policy on the Development and Implementation of Regulations, and every 5 years by Thailand's Royal Decree on Review of Law. This approach suggests the establishment of a central oversight institution charged with monitoring the performance of regulations and the review process, e.g. Malaysia's National Development Planning Committee supported by the Malaysian Productivity Corporation, and Thailand's Council of Ministers supported by the Law Review Commission.

Several ASEAN Member States, some with the assistance of the Asian Development Bank, have focused on both: one, reviews of **existing** regulation, e.g. RURB (Reducing Unnecessary Regulatory Burden), which has been implemented systematically in Malaysia; and two, RIA (Regulatory Impact Assessment), which focuses primarily on **proposed** new regulations. In both, consultation with, and engagement of, affected and concerned stakeholders is critical. In both, some estimation, either quantitatively or qualitatively, of costs and benefits is vital and, at least for more sophisticated RIAs, this should be on an economy-wide basis to aid in the prioritisation of decision-making on actual regulations and alternative regulatory options and refinements.

Principle 6: Accountability, probity, and responsiveness in the enforcement of regulations by regulators

The quality of enforcement of the regulations by, and indeed the overall compliance strategy of, the regulators can affect the willingness of affected entities and individuals to comply voluntarily with the regulations. A critical concern for regulators is how to deploy limited resources in the most efficient way such that regulations are effectively administered to meet the objectives of the regulations at least cost to business and citizens (APEC, 2010: 27). A responsive and 'incentivised' compliance strategy and enforcement of regulations together with accountability and probity of the regulators contribute towards good enforcement of the regulations.

A responsive approach to enforcement of regulations means ensuring that the tools or instruments to be used in enforcement are aligned with the likely or actual behaviour of the regulated entities or individuals. For example, regulators should help facilitate compliance by those who are willing to comply but sometimes unable to comply, while, in contrast, use the full force of the law against entities and individuals who do not want to comply (APEC, 2010: 28–29). Accountability demands that the enforcement of regulations by regulators is not arbitrary and there are recourse and appeal mechanisms in cases when regulators unfairly penalise a business. The probity of regulators will also help address corruption in the implementation of regulations.

Regulatory agencies need to have clear lines of accountability to Ministers, the Parliament, and to the public. Accountability is enhanced when there are clear standards for judging the performance of regulators, and means for explaining how and why final decisions have been made. It is also enhanced with an accessible, fair, and effective complaints and appeals process (UK Better Regulation Task Force: 4). Similarly, strong governance mechanisms need to be put in place to help protect regulatory agencies from any undue or improper influence, as well as from 'regulatory capture', by firms or industries.

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