

Chapter 7

Responsive ASEAN

January 2014

This chapter should be cited as

Intal, Jr. P., Y. Fukunaga, F. Kimura, P. Han, P. Dee, D. Narjoko (2014), 'Responsive ASEAN', in *ASEAN Rising: ASEAN and AEC Beyond 2015*, Jakarta: ERIA, pp.321-346.

Chapter 7

Responsive ASEAN

Introduction

The chapter discusses Responsive ASEAN as a key foundation for the four pillars. Much of it is related to improving the business and investment environment in the region with a drive towards smart regulations and responsive regulatory regime. Responsive ASEAN emphasises that process, especially the greater participation of stakeholders, counts in the drive in improving the regulatory regime and in institution building in the region.

The private sector is the key motor of the sustained high and equitable growth envisioned in the previous chapters that underpin the “ASEAN Miracle”. Thus it is critical to create a conducive and attractive business and investment environment in the region. The initiatives and recommendations discussed and proposed in the previous chapters all contribute to improved business and investment environments in the region. Many AMSs have seen substantial improvements in their business and investment climates in recent years. Nonetheless, there is much more room for improvement especially in narrowing the gap between the best performing AMSs and the poor performing AMSs with respect to their business and investment regimes.

“Responsive ASEAN” is more than AMSs addressing the concerns of the business sector. More fundamentally, it is about having a responsive regulatory regime in both content and process. A responsive regulatory regime in terms of content means having good and smart regulations that are responsive to the private sector since the latter is uniquely placed to identify when and how things go wrong with respect to regulations. Moreover, a responsive regulatory regime is responsive to the changes in objectives, priorities and circumstances and thereby calls for informed regulatory conversations, which are mediated conversations between the regulators and various stakeholders. Thus,

responsive regulatory regime involves not only good and smart regulations but also, indeed equally so, a responsive process that involves wide consultations with stakeholders, coordination within the government and evaluation (ex ante and ex post) of the regulations.

Given that the imperatives and recommendations from the four pillars as discussed earlier call for regulatory, policy and possibly even institutional improvements in many AMSs, process counts in the drive in ASEAN to improve the regulatory regimes and strengthen institution building in the region. The chapter highlights the role of informed regulatory conversations among the concerned government institutions and various stakeholders, as mediated by more objective third party institutions like research and academic institutions, as a major mechanism of responsive regulatory regime in the region.

Business environment in ASEAN: progress and challenges

Chapter 2A of the Report emphasises that ASEAN needs to garner a higher share of foreign direct investments globally that flow into developing countries in order that the region attains sustained high economic growth rate. In order to do so, there is the need for a comparatively better investment and business environment in ASEAN. Specifically, this chapter suggests that all AMSs should belong to the top half, and most of the AMSs to the top third, of the global rankings in the popular indices of business and investment environments such as the Global Competitiveness Index, Ease of Doing Business and Logistics Performance Index.

The results of the Global Competitiveness Index, Logistics Performance Index, and the Ease of Doing Business, among others, show that a few AMSs belong to the world's best while a few other AMSs belong to the world's bottom third in terms of the regulatory and structural environments for business and investment. As **Table 2A.4** in Chapter 2A of the Report shows, there is a large gap between the front runners and the laggards among the AMSs with respect to the popular global indicators of business and investment environments. Thus, for example, the AMSs' ranks in the Global Competitiveness Index in 2013 range from 2 to 139; the AMSs' ranks in the Logistics Performance Index

in 2012 range from 1 to 129, and the AMSs' ranks in the Doing Business 2013 range from 1 to 163.

The Global Competitiveness Index (GCI) provides the broadest indicator of the attractiveness of a country for business and investments among the major known indices today. The rest of the discussion focuses on GCI as the indicators of business and investment environments.

The overall GC index is a composite of sub-indices for basic requirements, efficiency enhancers, and innovation and sophistication factors. The sub-index for basic requirements is a composite of four pillars, namely, institutions, infrastructure, macroeconomic environment, and health and primary education; each of the four pillars is a composite of a corresponding set of indicators. Similarly, the sub-index of efficiency enhancers is a composite of six pillars, namely, higher education and training, goods market efficiency, labour market efficiency, financial market development, technological readiness and market size; each of the six pillars is a composite of a corresponding set of indicators. The innovation and sophistication sub-index has two pillars, namely, business sophistication, and innovation. Like the other pillars, each of them is also a composite of a corresponding set of indicators. The GCI uses both perception data and hard data.

Table 7.1 presents the overall scores and ranking of AMSs, China and India for 2007-2008 and 2013-2014. For 2013-2014, five AMSs plus China are within the top third highlighted by the second global ranking of Singapore, four AMSs plus India are within the second third, and one AMS is in the last third. It is worth noting that a number of AMSs experienced substantial improvements in ranking from the 2007-2008 period, most notably Cambodia (from 110 to 88), Indonesia (from 54 to 38), the Philippines (from 71 to 59) and Singapore (from 7 to 2). Brunei Darussalam, which started being rated in 2008-2009, also improved its scores and ranking.¹ The improvement in ranking is underpinned by the rise in scores, most notably for Brunei Darussalam, Cambodia, and the Philippines across all the three sub-indices of basic requirements, efficiency enhancers, and innovation and sophistication factors, Singapore in basic requirements and efficiency enhancers, and Indonesia primarily in basic institutions.

¹ Lao PDR and Myanmar are rated in the latest 2013-2014 only.

Note that Viet Nam's overall score also increased during the period albeit much more modestly, but its rank slipped marginally indicating that other countries improved faster or newcomer countries (e.g., Brunei Darussalam) have higher scores. China increased its score and ranking while India's score and ranking slipped significantly. Similarly, Thailand's, and to much less extent Malaysia's, scores and ranking also slipped; nonetheless, both countries belong to the top quarter of all countries in the world.

Table 7.1: ASEAN Competitiveness Score Rank

Country/Economy	Brunei Darussalam		Cambodia		Indonesia		Malaysia		Philippines		Singapore		Thailand		Vietnam		Lao PDR	Myanmar	China		India		
Year	2008	2013	2006	2013	2006	2013	2006	2013	2006	2013	2006	2013	2006	2013	2006	2013	2013	2013	2006	2013	2006	2013	
GCI	Score	4.54	4.95	3.39	4.01	4.26	4.53	5.11	5.03	4	4.29	5.63	5.61	4.58	4.54	3.89	4.18	4.08	3.23	4.24	4.84	4.44	4.28
Basic requirements	Score	5.3	5.64	3.83	4.18	4.41	4.9	5.44	5.37	4.19	4.46	6.13	6.3	4.98	4.86	4.37	4.36	4.41	3.4	4.8	5.28	4.51	4.23
1st pillar: Institutions	Score	4.65	4.96	3.26	3.61	4.04	3.97	5.12	4.85	3.38	3.76	5.9	6.04	4.37	3.79	3.62	3.54	4	2.8	3.51	4.24	4.55	3.86
2nd pillar: Infrastructure	Score	4.45	4.29	2.48	3.26	2.72	4.17	5.09	5.19	2.73	3.4	6.16	6.41	4.36	4.53	2.79	3.69	3.66	2.01	3.54	4.51	3.5	3.65
3rd pillar: Macro economy	Score	6.33	7	3.87	4.53	4.52	5.75	4.97	5.35	4.45	5.34	5.67	6.01	5.1	5.61	4.63	4.44	4.41	3.74	5.72	6.29	4.12	4.1
4th pillar: Health and primary education	Score	5.79	6.33	5.71	5.32	6.35	5.71	6.58	6.1	6.2	5.33	6.81	6.72	6.09	5.52	6.43	5.78	5.56	5.05	6.44	6.06	5.9	5.3
Efficiency enhancers	Score	3.84	4.09	2.94	3.79	4.12	4.32	4.89	4.86	3.85	4.2	5.63	5.63	4.29	4.43	3.45	3.98	3.6	3.03	3.66	4.63	4.32	4.41
5th pillar: Higher education and training	Score	3.93	4.52	2.63	3.12	4.25	4.3	4.8	4.68	4.02	4.28	5.59	5.91	4.44	4.29	3.39	3.69	3.31	2.52	3.68	4.23	4.35	3.88
6th pillar: Market efficiency	Score	3.95	4.52	3.63	4.35	4.93	4.4	5.24	5.23	4.21	4.19	5.62	5.59	4.76	4.67	4.1	4.25	4.36	3.57	4.22	4.32	5.07	4.18
7th pillar: Technological readiness	Score	3.64	3.75	2.56	3.22	3.17	3.66	4.64	4.17	3.32	3.58	5.69	6.01	3.67	3.56	2.85	3.14	2.98	2.03	3.07	3.44	3.52	3.22
Innovation factors	Score	3.35	3.81	3.05	3.44	4.07	4.13	4.91	4.7	3.63	3.75	5.11	5.14	4.15	3.83	3.32	3.41	3.54	2.55	3.75	4.1	4.6	4
8th pillar: Business sophistication	Score	3.75	4.23	3.37	3.83	4.53	4.44	5.29	5.02	4.2	4.29	5.17	5.08	4.57	4.42	3.55	3.68	3.86	2.87	4.05	4.31	5.06	4.38
9th pillar: Innovation	Score	2.94	3.38	2.72	3.05	3.6	3.82	4.53	4.39	3.05	3.21	5.04	5.19	3.74	3.24	3.1	3.14	3.22	2.24	3.44	3.89	4.14	3.62

Country/Economy	Brunei Darussalam		Cambodia		Indonesia		Malaysia		Philippines		Singapore		Thailand		Vietnam		Lao PDR	Myanmar	China		India		
Year	2008	2013	2006	2013	2006	2013	2006	2013	2006	2013	2006	2013	2006	2013	2006	2013	2013	2013	2006	2013	2006	2013	
GCI	Rank	39	26	103	88	50	38	26	24	71	59	5	2	35	37	77	70	81	139	54	29	43	60
Basic requirements	Rank	29	18	100	99	68	45	24	27	84	78	2	1	38	49	71	86	83	135	44	31	60	96
1st pillar: Institutions	Rank	41	25	95	91	52	67	18	29	88	79	4	3	40	78	74	98	63	141	80	47	34	72
2nd pillar: Infrastructure	Rank	39	58	97	101	89	61	23	29	88	96	6	2	38	47	83	82	84	141	60	48	62	85
3rd pillar: Macro economy	Rank	2	1	101	83	57	26	31	38	62	40	8	18	28	31	53	87	93	125	6	10	88	110
4th pillar: Health and primary education	Rank	47	23	98	99	72	72	42	33	82	96	20	2	84	81	56	67	80	111	55	40	93	102
Efficiency enhancers	Rank	77	65	110	91	50	52	26	25	63	58	3	2	43	40	83	74	107	140	71	31	41	42
5th pillar: Higher education and training	Rank	69	55	110	116	53	64	32	46	63	67	10	2	42	66	90	95	111	139	77	70	49	91
6th pillar: Market efficiency	Rank	91	42	99	55	27	50	9	10	57	82	4	1	31	34	73	74	54	135	56	61	21	85
7th pillar: Technological readiness	Rank	54	71	105	97	72	75	28	51	61	77	2	7	48	78	85	102	113	148	75	85	55	98
Innovation factors	Rank	87	54	102	83	41	33	22	23	66	58	15	13	36	52	81	85	74	146	57	34	26	41
8th pillar: Business sophistication	Rank	89	56	100	86	42	37	20	20	59	49	23	17	40	40	86	98	78	146	65	45	25	42
9th pillar: Innovation	Rank	91	59	98	91	37	33	21	25	79	69	9	9	33	66	75	76	68	143	46	32	26	41

Source: The Global Competitiveness Report (2008-2013).

A close look at the time series data on the specific indicators that underpin the pillars and the sub-indices shows significant improvements in a number of areas during the past 7-8 years. Among the noteworthy improvements, primarily in Brunei, Cambodia, the Philippines and Viet Nam (and also sometimes, Indonesia), are in the reduction of the burden of government regulations, quality of infrastructure, quality of primary education, tertiary education enrolment, effectiveness of anti-monopoly policy, reduction in redundancy costs, ease of access to credit, availability of latest technologies, state of cluster development, and intellectual property protection.

Despite the significant increase in scores, however, and as noted earlier, the gap between CLMV and the Philippines with the best performing AMSs is still large. Singapore is closest to the best practice in many areas given its ranking and scores; hence, the gap between them and the best practice is still large in many areas for a number of AMSs. To a large extent, this represents the regulatory, policy and institutional improvement challenges that a number of AMSs face moving forward beyond 2015.

The Ease of Doing Business indicators focus specifically on selected areas of business related regulations which are especially important for small and medium enterprises (SMEs). These areas are starting a business, dealing with construction permits, getting electricity, registering property, getting credit, protecting investors, paying taxes, trading across borders, enforcing contracts and resolving insolvency. As in the Global Competitiveness Index, there is a wide gap among the front runner AMSs and the tail-enders among the AMSs, from the global number one to the 8th from the lowest (182nd) rank. Singapore and Malaysia are in the top ten, Thailand in the top twenty while Lao PDR and Myanmar are in the bottom 20 percent.

The Ease of Doing Business indicators also indicate some areas where each AMS is particularly lagging and needs to give more focus. The indicators also show areas where AMSs are doing comparatively better vis-à-vis other countries given their overall ratings and rankings. Thus, for example, despite its high overall ranking, Thailand lags particularly behind in starting a business and in getting credit. Most AMSs are in fact lagging behind in starting a business, e.g., Brunei Darussalam, Cambodia, Indonesia, and the Philippines, with Myanmar ranking the lowest globally. Thailand also lags well behind with

respect to getting credit. However, for most of the AMSs, it is comparatively easier compared to their overall ranking, best exemplified by Cambodia, the Philippines, Viet Nam, Indonesia and even Malaysia which ranks number one globally. This is similarly the case for many AMSs with respect to trading across borders. The Doing Business 2014 report states that the Philippines is one of the ten most improved countries for 2013 globally in terms of business friendliness. However, it is also apparent that the country needs to do a lot more and even better in order to narrow the “regulatory gap”, i.e., the gap from the best practice “frontier”. The wide regulatory gap in many AMSs provides the pressure and impetus for regulatory improvement and reform to move substantially towards best practice.

The results of the survey of multinationals operating in Southeast Asia provide another indicator of the perception on the business environment in the region. For example, the results of the ASEAN Business Outlook Survey 2014 show that for the American multinationals, corruption is a significant concern in virtually all the AMSs (except Brunei Darussalam and Singapore), followed by laws and regulations and infrastructure. The other area which is a significant concern in five AMSs is the availability of trained personnel although this is a factor where both the Philippines and Singapore have strengths. The survey shows that, perhaps not surprisingly, Singapore has the largest number of areas of strength, followed by the Philippines and Thailand (see **Table 7.2**).

The 2014 survey also shows that for the period 2008 to 2013, there has been some improvement in infrastructure as a region primarily from marked improvement in Malaysia and to some extent the Philippines, improvement in the state of corruption primarily from marked improvement in the Philippines, and improvement in tax structure again primarily due to improvements in the Philippines. The survey shows the Philippines as the AMS that registered the marked improvement in the business environment during the past five years. (There is no information on the changes for Brunei Darussalam, Cambodia, Lao PDR and Myanmar because the countries were included in the survey later than 2008.) The results of the ASEAN Business Outlook Survey appear to be generally consistent with those of the Global Competitiveness Index, e.g., concern on infrastructure, customs, and corruption at the individual country level for AMSs, and significant improvement in the standing of the Philippines.

Table 7.2: Current Local Business Environment

Factors	Regional	BN	KH	ID	LA	MY	MM	PH	SG	TH	VN
Availability of Low Cost Labour	WS	N	S	S	N	N	WS	S	C	N	S
Availability of Raw Materials	N	N	N	N	WS	WS	WS	WS	N	WS	WC
Availability of trained Personnel	WS	C	C	WC	C	WS	C	S	S	C	N
Corruption (or Lack of)	C	S	C	C	C	C	C	C	S	C	C
Ease of Moving Your Product Through Customs	WS	WC	N	C	C	S	C	C	S	WC	C
Free Movement of Goods within the Region	WS	WS	N	WC	C	WS	C	WS	S	WS	N
Housing Cost	WC	WS	S	N	N	N	C	S	C	S	C
Infrastructure	WS	WS	C	C	C	S	C	C	S	S	C
Laws and Regulation	WC	N	C	C	C	WS	C	C	S	C	C
Local Protectionism (or lack of)	N	N	N	N	C	N	C	N	S	N	N
New Business Incentives offered by the government	WS	N	N	C	WC	WS	C	S	S	N	C
Office lease cost	N	WS	N	N	N	S	C	S	C	S	WC
Personal Security	S	S	S	WS	S	WS	S	S	S	S	S
Sentiment Towards the US	S	S	S	S	WS	S	S	S	S	S	S
Stable Government and Political System	S	S	N	WS	WS	WS	N	S	S	N	N
Tax Structure	WS	WS	N	N	C	C	N	C	S	N	C



Strength: 50% or greater satisfaction rate
 Concern: 40% or greater dissatisfaction rate
 neutral the plurality is neutral or the factor is inapplicable
 Weak Strength: Plurality is satisfied but satisfaction rate is less than 50%
 Weak Concern: Plurality is dissatisfied but dissatisfaction rate is less than 40%

Source: AMCHAM Singapore, 2013.

In summary, in virtually all the surveys, there has been significant progress in a number of areas for many of the AMSs. Nonetheless, much remains to be done in order for all AMSs to be in the top half of the world rankings and for most of them to be in the top third of the world rankings by the early 2020s.

Responsive regulatory regime: A framework²

Moving up the global rankings would call for improvement in regulatory environment in the AMSs considering that many other countries in the rest of the world are busily doing so. This means the need for smart regulations and responsive regulatory regime.

Good regulation requires good content and process. It also requires regulation to be responsive to the private sector (**Figure 7.1**). Regulators and government officials need to have clear regulatory objectives and to understand the characteristics of good regulation, but the business community is uniquely placed to identify when and how things go wrong.

Figure 7.1: The Essence of Good Regulation



Source: Dee (2013c).

Ideally, the *content* of regulatory interventions should be:

- pro-competitive
- commensurate with objectives
- non-discriminatory

Markets by themselves do not always produce the most economically efficient outcomes. But where interventions are required to deal with market failures, they should generally do so in a way that does least damage to competition. This requires interventions to be targeted only at the particular markets where problems occur. It also requires that if competition in regulated markets is constrained by policy choice, anti-competitive behaviour is not able to spill over to neighbouring markets.

² This section, with the exception of a few paragraphs, is taken from Dee (2013c).

The World Bank *Doing Business* presents good regulation in terms of what it calls “smart regulation” which amplifies the characteristics of a good regulation discussed above. Smart regulation is as follows (World Bank, 2013, p.21):

S for streamlined: that is, regulations that accomplish the desired outcome in the most efficient way

M for meaningful: that is, regulations that have a measurable positive impact in facilitating interactions in the marketplace

A for adaptable: that is, regulations that adapt to changes in the environment

R for relevant: that is, regulations that are proportionate to the problem they are designed to solve; and

T for transparent: that is, regulations that are clear and accessible to anyone who needs to use them.

Governments often have additional objectives besides economic efficiency. Where interventions are designed to achieve other objectives, it is important that they do not unduly compromise economic efficiency. Multiple objectives require multiple regulatory instruments, so it is important that the appropriate *number* and *type* of regulatory instruments are chosen. And once chosen, it is important that the interventions are no more burdensome than they need to be to achieve their objectives.

As much as possible, interventions should not prejudge either the *number* or the *identity* of players in a market. And they should not create an uneven playing field. They should not advantage government-owned enterprises relative to private enterprises. They should not advantage domestic enterprises relative to foreign-owned enterprises. They should not advantage incumbent enterprises relative to new entrants.

Ideally, such regulatory interventions should be devised using *processes* that involve:

- consultation (with all stakeholders)
- coordination (within government)
- evaluation (ex- ante and ex post)

Broad consultation with all stakeholders can help to disclose who gains and who loses from an intervention, and the likely magnitudes of those gains and losses. This information is vital in establishing the case that the intervention will produce a net gain to the community as a whole. Accordingly, it is important that the consultation be with all stakeholders, not just those whose privileged position might be threatened by the intervention. Such consultation provides an opportunity for the special pleading of these special interests to be set against the broader benefits to other stakeholders.

The scope of desirable economic interventions may not line up neatly with the portfolio responsibility of a single government department. Ministries themselves are often stakeholders, whose bureaucratic position may be affected positively or negatively by an economic reform. And successful implementation may require the cooperation of more than one ministry. The views of ministries as stakeholders need to be heard and understood, and their cooperation needs to be secured. This requires coordination.

New interventions need to be evaluated before they are implemented to ensure that they have the best chance of generating a net gain to the community. New interventions can also be evaluated after they have been in place for a time, to ensure that they are operating as intended. And long-standing interventions also need to be evaluated, to ensure that they have not outlived their usefulness. Such evaluations require consultation, but they also require a careful analysis of the costs and benefits to various groups, and careful judgment as to where the balance of net benefit to the community lies.

The literature on *responsive regulation* stresses that consultative processes are not only critical in the design phase, for example, through formal processes such as Regulatory Impact Assessments (RIAs) but also critical on an ongoing

basis to ensure compliance with regulation, and to learn when current interventions are not working or have outlived their usefulness.

Braithwaite (2011) argues that regulation needs to be responsive to the moves that regulated actors make, to industry context and to the environment. While responsive regulation is sometimes identified narrowly with the concept of a sanctions pyramid (that is, try the least coercive enforcement methods first, and escalate up the pyramid only as necessary), Braithwaite (2011) identifies broader principles that are relevant here (**Figure 7.2**).

Thinking in context means pre-testing theories ‘on the ground’ with real participants. *Listening actively* gives a voice to stakeholders. *Engaging those who resist* shows them respect by allowing their resistance to be used as an opportunity to learn how to improve regulatory design. *Support and education* can be used to build a common understanding of the rationale for regulation, and to build the capacity and motivation to comply. In resource poor countries, it can be particularly useful to *engage wider networks of partners*, such as industry associations and NGOs, and co-opt them into the design and enforcement of regulation (e.g., development of industry-based accreditation programs and industry-based training). Drahos (2004) makes this argument on resource grounds, but Braithwaite (2006) also notes that it can be useful to guard against regulatory capture. Finally, it is critical to *learn* — to evaluate how well and at what cost outcomes have been achieved, and to communicate the lessons learned.

Figure 7.2: Responsive Regulation



Source: Dee (2013c).

Responsive regulation may involve relatively ‘soft’ styles of control that may be difficult to put through an RIA process. Arguably, however, the approach may lead to less red tape than would be produced by RIAs:

‘Any proponent of a new regulatory system who knows that a RIA process has to be negotiated will have a huge disincentive to put forward a smart regime and an almost irresistible imperative to opt for something closer to an old-fashioned command and control system.’ (Baldwin 2006, p. 205)

A responsive approach is also likely to pick up on new risks and risk creators, thereby avoiding one of the criticisms of purely risk-based regulation — that while seeking greater efficiency, it tends to focus on known and familiar risks. Finally, a responsive approach is likely to be sensitive to industry differences, and therefore not to take, for example, the same approach to controlling SMEs as to multinationals (Grabosky 1995).

Baldwin and Black (2008) agree that to be *really* responsive, regulators have to be responsive not only to the compliance performance of the regulatee but also in five further ways:

- to the firms' own operating and cognitive frameworks (their 'attitudinal settings');
- to the broader institutional environment of the regulatory regime;
- to the different logics of regulatory tools and strategies;
- to the regime's own performance; and
- to changes in each of these elements.

Thus responsive regulation is mindful of how the firm-regulator relationship can itself affect the motivation to comply. It recognises the constraints and opportunities of the regulator, as well as the regulatee. It is careful in how it combines different regulatory logics, for example, carrots versus sticks. Performance sensitivity requires assessing performance against objectives, and modifying tools and strategies accordingly (and perhaps even radically).

Finally, responsive regulation needs to be responsive to *changes* in objectives, priorities and circumstances. Baldwin and Black (2008, p. 75) recognise that this involves a challenge:

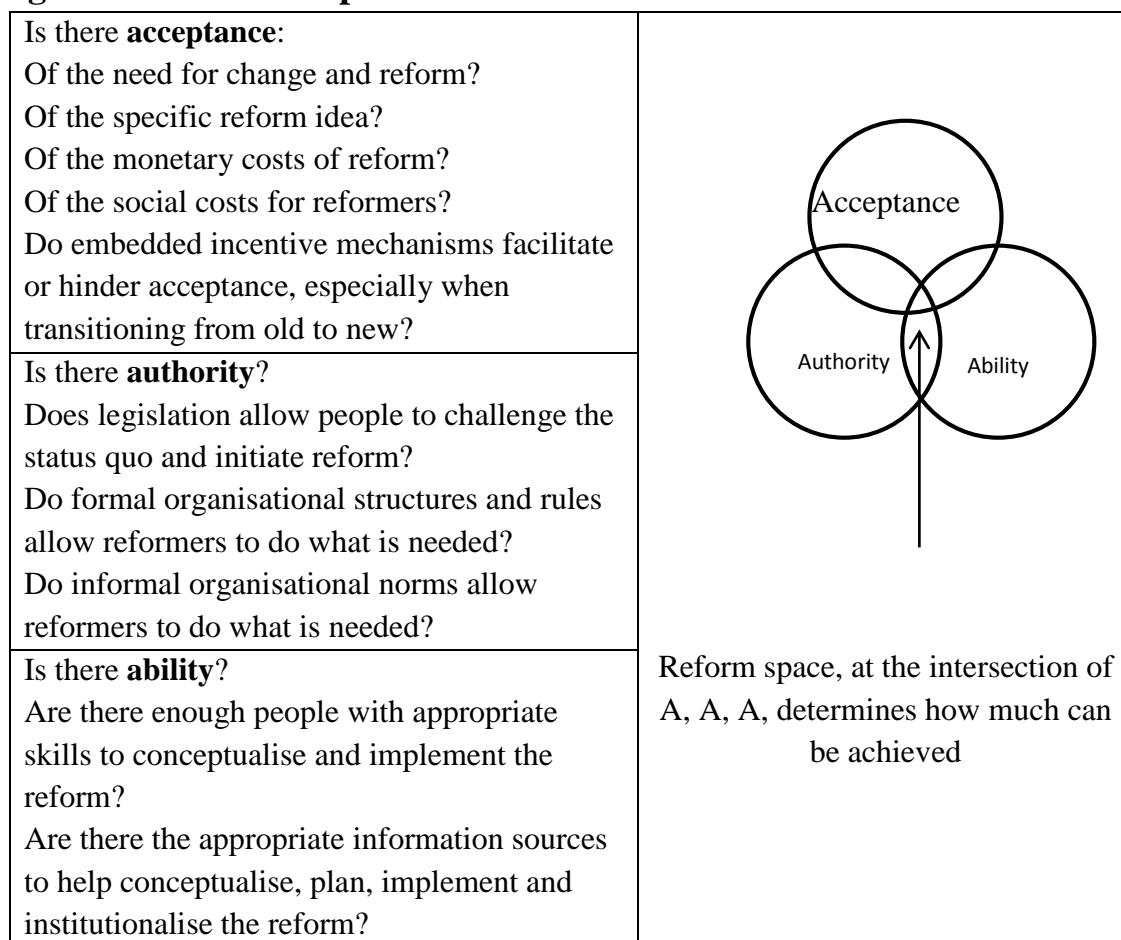
'There are real dangers that networked, smart, regulatory regimes lock their involved actors into agreed positions and approaches so that salutary reforms cannot be brought into effect. In an ideal world, conversations between networked regulatory actors might be expected to produce regulatory adjustments. In a less than ideal world, such conversations may lead to confusions, entrenched positions, and inability to respond to regulatory failures and blame shifting. What may be needed are strategies for encouraging appropriate programmes of modification'.

One such strategy is to hold *informed regulatory conversations*, which are *mediated* conversations between networked regulatory actors. The presence of a mediator who can act as an 'honest broker' can help to break through entrenched positions, not just to identify better options, but to build a consensus in favor of reform.

Informed regulatory conversations³

Andrews (2008) describes the type of environment in which reform can actually take place. He talks about ‘reform space’ as an environment in which there is *acceptance* of the need for reform, and the *authority* and *ability* to carry it out. These concepts are spelled out in **Figure 7.3**.

Figure 7.3: Reform Space



Source: Adapted from Andrews (2008), in Dee (2013c)

A series of recent studies of reform experiences in East and South Asia has shown that there is a useful role for informed regulatory conversations as a strategy to help create these conditions. Such conversations help to overcome two key impediments that can get in the way of better regulations and procedures being adopted — ignorance about better solutions, or vested interests (including those inside government).

³ This section draws on Dee (2013b).

If the problem is one of identifying better policies, then a policy review process that involves conversations with stakeholders can provide a *technical solution*, by identifying better options. This is the conventional understanding of the role of a policy review mechanism (e.g., as in a RIA). An ‘ideal’ review process is set out in **Figure 7.4**.

Figure 7.4: Elements of a Policy Review

A policy review may set out

- The problem or circumstances which give rise to the need for action
- The desired objective(s)
- The policy options (regulatory and non-regulatory) that may constitute viable means for achieving the desired objective(s)
- An assessment of the impact (costs and benefits) on consumers, business, government and the community of each option
- A consultation statement (the process and results of consultation with all stakeholders)
- A recommended option
- A strategy to implement (including consideration of appropriate enforcement mechanisms) and review the preferred option

Source: Dee (2013c).

But conducting informed regulatory conversations along these lines can also be a *strategy* for managing vested interests (including those within government) and building a coalition in favor of reform. The strategy can be helpful in a number of ways.

First, informed regulatory conversations can help set the agenda — policy change will not happen if nobody talks about it. Second, informed regulatory conversations led by an independent facilitator can also set the parameters of the debate. Vested interests typically highlight the effects of policy changes on themselves alone. Informed regulatory conversations can examine the costs and benefits of current policy settings to other stakeholders. Third, when taken out of the political arena and led by an independent facilitator, informed regulatory conversations can sometimes help to depoliticise a debate. Fourth, they can lead to at least some convergence in opinions about best ways forward, and help to build a coalition in favour of reform. A process that invites input from all interested parties can help reform champions to self-select. It also provides a forum for all groups to identify their common interests, and to agree

to cooperate in pro-reform strategies. Finally, review processes with a sufficiently broad purview can help to identify policy *combinations* under which no one is made worse off, and thus help to build a *grand coalition* in favour of reform. If such an outcome is not possible, they can at least reveal how the costs and benefits to vested interests weigh up against the costs and benefits to other stakeholders.

It is important that the conversations be facilitated by an *independent* agent. This means not only one sufficiently independent of private stakeholders. There also needs to be a certain degree of distance from government. The facilitator should not be bound by current government policy, as members of line government departments often are. In fact, line government departments are often stakeholders in their own right. Equally, the facilitator should not have an implicit stake in the regulatory *status quo*, as members from the regulatory authorities in charge of implementing current economic policy often do.

It is also important that the facilitator be able to take an *economy-wide view*. He/she needs to be able to look beyond narrow sectional interests, and be able to elicit information about the costs and benefits to all stakeholders, thereby helping to form a view about the *net* gains to the economy as a whole. It can require analytical capacity to be able to take such a broad view.

Finally, the facilitator needs to ensure that the informed regulatory conversations are conducted under conditions of *transparency*. It is not necessary for all the stakeholders to be in the same room at once. But it is important that each set of stakeholders be made aware of the views and arguments of others, so that they can give considered responses. Only under conditions of such transparency can an iterative process allow stakeholders to learn from each other, understand each other better, and converge on a common understanding about best ways forward.

Recent studies of reform experiences in East and South Asia (Dee 2010 and 2012) confirm that informed regulatory conversations have often played a role in reform success. Dee (2010) examined eight case studies of structural reforms in the East Asian region. Two case studies were from developed democracies in Japan and Australia. Four were from developing democracies in the Philippines, Indonesia, Malaysia and Thailand. Two were in developing

countries, Viet Nam and China, the central governments of which also have to manage a variety of vested interests and maintain a mandate for reform. The volume found that in each case, the reform process had been supported to a greater or lesser extent by indigenous institutions that undertook formal policy reviews or conducted informed regulatory conversations.

It is useful to look at the characteristics of those indigenous institutions in the ASEAN member countries.

Some planning agencies in the region have the attributes, skills and even the mandate to carry out policy reviews and conduct informed regulatory conversations, although it appears that none has yet exercised that mandate on a sustained basis. For example, the National Economic and Development Authority (NEDA) in the Philippines is the national and regional development plan and program coordinator among the various branches of government. The NEDA Board is a cabinet level board composed of the major government departments and is chaired by the President of the Philippines. The NEDA Secretariat provides technical and secretariat services to the various NEDA committees. It has comprehensive information on the implementation of government policies and has the capacity to comment on policies issued by government. According to Llanto (2010), NEDA has latent powers to lead the policy development process, but has not exercised these to date. Similarly, Indonesia's BAPPENAS is a traditional planning agency with the technical expertise to undertake detailed policy reviews and informed regulatory conversations. However, according to Soesastro, Aswicahyono and Narjoko (2010), it has not yet taken on a more pro-active policy review role. Malaysia is yet another economy in which the planning process could potentially be transformed into a process of *ex ante* and *ex post* policy review. In countries without formal planning mechanisms, central government agencies (such as Treasury or Finance, as opposed to line agencies such as Customs or Transport) have sometimes been successful conveners of policy review mechanisms.

Similarly, think-tanks around the region have often played an influential though indirect role in promoting structural reforms. For example, the Philippine Institute for Development Studies has produced independent policy reviews, research and analysis, which are turned over to the public domain by way of publications, seminars, workshops, and testimony on hearings arranged

by various Congressional committees, although it is currently not resourced for conducting significant public consultations. Other regional examples are the Centre for Strategic and International Studies in Indonesia, the Thailand Development Research Institute, the Fiscal Policy Research Institute in Thailand, the Malaysian Institute of Economic Research, and the Central Institute for Economic Management in Viet Nam. These organisations vary in the extent to which they sit inside or outside formal government structures and in the extent to which their contributions are used in the policy development process. But all have at least some of the characteristics of independent policy review institutions, and have performed at least some of those functions.

Additional case studies of South Asian reforms in the 1990s and early 2000s show that the strategies of holding policy reviews and conducting informed regulatory conversations can be helpful, even in difficult political circumstances. Dee (2012) concludes that only through a process of policy review and analysis, involvement of stakeholders and coalition building, were South Asian governments able to sustain any reform efforts within coalition governments that lacked a strong political base. A weakness was sometimes in the formulation and analysis of policy proposals themselves, and academics and think-tanks have sometimes been ‘missing in action’ in providing objective, independent reviews and helping to manage vested interests. But reforms nevertheless took place.

A reform program that makes provision for policy reviews and ongoing informed regulatory conversations may be relatively slow, but it is more likely to be sustainable in the longer term. This is because these strategies do not just identify reform options; they help to forge a consensus on ways forward.

Is it worth the trouble?

The economic gains from regulatory reforms are potentially huge. This can be gleaned from the results of a recent ERIA study on logistics and trade facilitation in ASEAN member countries.

Good regulation in logistics and trade facilitation requires two things. First, it requires regulations and procedures governing cross-border trade to be

efficient and *coherent*. Efficient regulation is no more burdensome than it needs to be to achieve its desired objective. Coherence requires that different regulations and procedures do not duplicate each other or work at cross purposes. Second, good performance requires those providing the various links in the logistics chain to operate efficiently. In most cases, this can be assured by making these services *contestable*.

When regulation in logistics and trade facilitation imposes an undue burden, it has adverse effects on the time cost and dollar cost of importing and exporting. The ASEAN business community is uniquely placed to identify the burdens imposed by inefficient or incoherent regulations, and has already provided ample evidence of which regulations are unduly burdensome in logistics and trade facilitation.

In the 2012 Enabling Trade report of the World Economic Forum, the CEOs of major corporations operating in ASEAN countries were asked to identify which factors were most problematic for trade. In addition to market factors (e.g., identifying potential markets) and explicit trade barriers (e.g., tariffs, NTBs, technical standards), they also identified regulatory factors in broad terms. ‘Burdensome’ import procedures were the most important factor, with 20.6 percent of respondents identifying these as problematic. Other significant burdens were high cost of delays caused by international transport (14.9%), corruption at the border (12.9%) and high cost of delays caused by domestic transport (11.7%). Note that poor regulation can also add to domestic and international transport costs, either directly, or by discouraging necessary investments in infrastructure.

ASEAN logistics services providers (LSPs) are more intimately involved in importing and exporting, and can help to ‘unpack’ the problems identified by the CEOs. In 2007, the ASEAN Secretariat supported a survey of ASEAN LSPs, in which they (a) identified a number of regulatory problems and (b) gave them a ranking of relative importance. Key items on their list are shown in **Figure 7.5** while more details are available in Dee (2013).

Figure 7.5: ‘Burden’ Defined by ASEAN Logistics Services Providers

Burdensome import procedures	Contestability of links in transport chain
<ul style="list-style-type: none"> • No customs EDI • No de minimis level • Import licensing • Rate of physical inspection • No customs appeal • Customs clearance times • Customs operating hours • Discriminatory fees or inspection practices in customs • Local language used on customs documents • Etc etc 	<ul style="list-style-type: none"> • Restrictions on hours of truck operation • Restrictions on equity participation in logistics • Licensing restrictions in logistics • Cabotage restrictions in air transport • Restrictions on foreign aviation firms in cargo handling and warehousing • Difficulty of firing • Restrictions on customs brokerage services • Monopolised handling of port-related services • Etc etc

Source: De Souza, et al. (2007).

In the ERIA study, the negative impact of these burdensome procedures on economic performance was measured in a two-stage process. The first stage involved calculating a ‘restrictiveness’ index measuring the prevalence of these burdensome regulations, with weights reflecting the relative rankings of importance provided by the ASEAN LSPs. Econometric techniques were used to estimate the effects of this restrictiveness index on the behind-the-border dollar costs and time costs of importing and exporting, while controlling for the effects of other factors such as the availability and quality of infrastructure, trade finance, and security. The second stage of the analysis involved estimating the effects on bilateral trade volumes of behind-the-border dollar costs and time costs at both ends of the trade transaction, while controlling for other factors such as the size of the respective countries and the distance between them.

The results showed that better regulation of logistics and trade facilitation can lower the behind-the-border time and dollar costs of trade, and hence boost trade volumes. *The estimates suggested that 10 percent better customs procedures and 10 percent more contestability in the logistics chain could increase ASEAN trade volumes by just over 40 percent or about US\$ 120 billion.* The results also suggested that contestability was just as important as customs procedures, if not more so — the improvement in contestability

contributed a 25 percent gain while the improvement in customs contributed to a 15 percent gain. Thus, both dimensions of regulatory improvement are important.

Can it be done?

As part of ERIA's AEC Scorecard Phase III project, the ERIA Research Institutes Network (RIN) was asked to facilitate a series of informed regulatory conversations on a topic of their choice in the area of logistics and trade facilitation. These think-tanks have the necessary independence and analytical capacity to be effective facilitators, though they do not have the same levels of access within government that planning agencies would have. Perhaps the ideal team to undertake such exercises in the future would be think-tanks acting in cooperation with planning agencies or central government agencies.

The RIN was asked to:

- pick a service or activity;
- identify all the players involved in that activity;
- identify all the regulations affecting those players;
- for each regulation, ask the key questions in Figure 4: what problem is this regulation supposed to solve, what is the objective, is the current regulation actually delivering that objective, is there a better way (given the country's current state of development); and
- facilitate a conversation with stakeholders about these questions (often carried out in sequential fashion).

The results of these exercises are reported in detail in the country reports for the AEC Scorecard Phase III project. The country case studies demonstrated the kinds of **processes** that could begin to generate convergence among stakeholders in recognising problems and developing solutions. And they provided insights into the **content** of successful reforms. There were ten key insights of each type.

Key messages on process

1. Informed regulatory conversations can indeed generate consensus on ways forward.
2. Informed regulatory conversations can generate acknowledgement of a problem.
3. Informed regulatory conversations can identify a problem, thereby alerting it to other stakeholders.
4. On some issues, where the time available to the RIN was too short (especially when conversations were conducted sequentially), further conversations would be required to bridge the gaps.
5. On some issues, analytical capacity is required to recognise that the conversation would need to be broadened in order to deal with the fundamental causes of current problems.
6. On some issues, informed regulatory conversations would need to be conducted across different (national and local) levels of government
7. On some issues, informed regulatory conversations reveal areas where institutional mechanisms are required so that consultations can take place on an ongoing basis.
8. Informed regulatory conversations can certainly provide a forum for special pleading by vested interests, but the critical thing is that other voices are also heard.
9. Informed regulatory conversations can reveal new business opportunities for vested interests, thus easing the adjustment process.
10. Informed regulatory conversations can identify other forms of adjustment assistance that could ease the reform process.

Key messages on content

1. For reforms to be implemented, there needs to be a reform champion within government. Statutory Boards are one option for performing this function.
2. There may be the opportunity to co-opt an existing institution into a reform champion.
3. A coordinating agency is not the same thing as a champion agency, if it does not have the authority and the accountability for implementation.
4. If there is no champion agency, then there is no 'go to' place for stakeholders.

5. Strategic plans are all very well, but implementation is the key.
6. There is good news.
7. Customs is not always to blame.
8. For efficient clearance processes, Customs needs to act as a trade facilitation agency rather than as a revenue generating agency.
9. Computerisation is not always beneficial, especially if only partially implemented.
10. Poor regulation can prevent necessary infrastructure investment.

The key message for ASEAN post-2015 is that informed regulatory conversations conducted under conditions of transparency provide a forum in which stakeholders can learn from each other, understand each other better, and converge on a common understanding about best ways forward. An ASEAN forward work program on regulatory issues could therefore usefully include informed regulatory conversations. Perhaps the ideal team to undertake such exercises in the future would be think-tanks acting in cooperation with planning agencies or central government agencies.

Ways forward

Regulatory reform is primarily a domestic issue, so concerted unilateralism is a better approach than negotiation. Regulation is about the best ways of achieving domestic objectives and priorities, given domestic circumstances. In most cases, the key players are domestic — incumbent producers, potential new entrants, upstream and downstream producers, consumers, disadvantaged groups, and government ministries. The politics of resolving conflicting interests among these groups is deeply domestic. The ASEAN experience with services trade reform shows that negotiated trade commitments have tended to lag domestic reforms, rather than lead them. This is not surprising — the domestic political impediments to reform need to be removed first. The ASEAN approach to regulatory reform should recognise this reality.

The AEC Blueprint approach of setting targets and milestones has served ASEAN well in promoting concerted unilateralism, as the Mid-Term Review of the Implementation of the AEC Blueprint indicates (ERIA, 2012a). The imperative is not that each member country should do something because other member countries have requested it; the logic instead is that each member

country should show some improvement over time. APEC followed a similar approach to target-setting by having the Bogor goals. However, ASEAN has gone further than APEC by setting milestones as well as targets. This has created additional reform momentum.

A post-2015 regulatory agenda should include both targets and milestones. The key target is to have **efficient** and **coherent** regulation. Efficiency can be met by ensuring that regulation is pro-competitive, commensurate with objectives, and non-discriminatory.

Targets could also be set in numerical terms. As the ERIA empirical work on regulation in logistics and trade facilitation illustrates, there are measures of regulatory burden appropriate to any particular area of the economy, as well as measures of economic performance. Numerical targets could be specified as target measures of burden, or target measures of performance. But it needs to be remembered that efficient and coherent regulation is a moving target, because objectives, priorities and circumstances change. So any numerical target would have to be provisional.

Process matters as well as content, so the post-2015 agenda should include commitments on process. In an important sense, this is the critical milestone, because it offers a built-in action agenda by which the target can be achieved. The process should include a regular audit of the regulatory landscape, and periodic assessment of progress and impacts, but it should include more than just this desk research. The process should also include a regular series of informed regulatory conversations — to identify problems, come up with technical solutions, and help to build a consensus in favor of reform.

Milestones could also be set in numerical terms. Just as targets could be specified for particular measures of burden or performance, milestones could be specified as regular improvements in these measures over time. However, the same provisos apply to numerical milestones as to numerical targets. Further, numerical milestones do not imply an action agenda, whereas process-oriented milestones do.

With targets and milestones specified in this way, a regular (e.g, annual or biennial) report on regulatory reform would cover the results of periodic

performance assessments. Such assessments would provide guidance on where future informed regulatory conversations could usefully take place. The report would also cover the conduct and results of the informed regulatory conversations. The sectoral coverage of the audits and conversations could rotate over time.

The purpose of these reports is not for peer review by other AMSs. Rather, the key purpose is to involve the private sector in identifying and rectifying problems with the current regulatory regime, and to bridge perception gaps among national stakeholders about best ways forward. So the transparent conduct of the informed regulatory conversations and the subsequent publication of the activity report is itself the key part of the process. Being responsive to private sector views and bridging perception gaps is the best way of ensuring that progress is made towards the ultimate regulatory goals.