

# Chapter 1

## **The Importance of Investing in Good Regulatory Practice, Responsive Regulations, and a Well-Performing Regulatory Management System**

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## Chapter I

# The Importance of Investing in Good Regulatory Practice, Responsive Regulations, and a Well-Performing Regulatory Management System

### 1.1. Introduction

H.E. Ngurah Swajaya, Indonesia's ambassador to the Association of Southeast Asian Nations (ASEAN) and chair of the Committee of Permanent Representatives in 2013<sup>1</sup>, in his keynote speech during the inaugural East Asia Summit (EAS) Regulatory Roundtable held in Bangkok on 18 July 2013, recounted how he was enthused by the much-improved highways in Cambodia and set out on a land trip from Phnom Penh, Cambodia to Ho Chi Minh, Viet Nam. However, he got stuck for a few hours at the border of Cambodia and Viet Nam. That experience brings out, to him, the essence of the theme of the first EAS Regulatory Roundtable on regulatory coherence or connectivity, that:

*Good physical infrastructure does not guarantee a seamless connectivity if they are not supported by good institutional and people to people connectivity, particularly adequate regulatory coherence across the border (Swajaya, 2013, p.3).*

Ambassador Swajaya's speech highlights the complementarity among the three pillars of the Master Plan on ASEAN Connectivity that the ASEAN Connectivity Coordination Committee (ACCC) oversees – physical connectivity, institutional

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<sup>1</sup> The Economic Research Institute for ASEAN and East Asia (ERIA)–New Zealand Institute of Economic Research (NZIER) project 'Towards Responsive Regulations and Regulatory Coherence in East Asia: Deconstructing Efficient and Effective Regulatory Management System' had its beginning at the inaugural EAS Regulatory Roundtable. This Report draws preponderantly on the results of the ERIA–NZIER project.

connectivity, and people-to-people connectivity, as well as the importance of regulatory coherence across the border among ASEAN Member States (AMSs).

The call for adequate regulatory coherence for seamless connectivity was echoed by H.E. Rizal Affandi Lukman, Deputy Minister for International Economic Cooperation, Coordinating Ministry for Economic Affairs of the Republic of Indonesia, in his keynote address during the Second EAS Regulatory Roundtable held on 29 September 2015 in Jakarta. He said (Lukman, 2015, p.2):

*Seamless connectivity... necessitates that the domestic regulations within the ASEAN Member States are consistent with the regulations at their borders... Investment in good infrastructure for connectivity should be matched with investments in regulatory capacities to make seamless connectivity become a reality.*

At the same time, Amb. Dato' Hasnudin Hamzah, ambassador of Malaysia to ASEAN and chair of the ACCC for 2015, in his address at the Second EAS Regulatory Roundtable, emphasised the challenges facing the implementation of the Master Plan on ASEAN Connectivity (MPAC) agenda that include the difficulty of '...alignment of regional visions and initiatives and national priorities and regulations... [given] the varying structures of regulatory management, public sector governance and administration procedures' (Hamzah, 2015, p.3). In addition, '...the harmonization of domestic regulations and legislation to establish the necessary institutions or mechanisms to support implementation of regional commitments remain difficult and inadequate' (Ibid.).

Regulatory coherence 'across the border' can be construed to mean both regulatory coherence 'at the border' and regulatory coherence 'within the border.' 'Seamless connectivity,' which is the physical and logistical manifestation of the goal of 'single market and production base' under the ASEAN Economic Community (AEC), necessitates that the domestic regulations within an ASEAN Member State (AMS) are consistent with the regulations at its border(s), the domestic regulations within another AMS are consistent with the regulations at its (the other AMS) border(s), and the regulations at the border for the two AMSs do not impose unnecessary regulatory burden on the economic agents from both AMSs interacting (e.g. importing, exporting) with one another. The word 'adequate' in the phrase 'adequate regulatory coherence' in the above-

mentioned keynote speech can be construed to mean 'does not impose unnecessary regulatory burden' but does not necessarily call for uniform or harmonised regulations across AMSs.

The discussion on regulatory coherence above brings out, fundamentally, the issue of regulations and the regulatory environment in the context of ASEAN integration and, more broadly, in the context of economic performance and development of AMSs. In the context of ASEAN integration, the **ASEAN Good Regulatory Practice (GRP) Guide** puts it perfectly in its first paragraph (p.1):

*Differences in the regulatory requirements of individual Member States are among those which have the greatest impact on trade. In certain situations, regulatory requirements may actually impede gains from trade liberalization.*

While the GRP Guide is meant to be used in conjunction with the ASEAN Policy Guideline on Standards and Conformance, the above-mentioned statement from the GRP Guide is applicable to many areas of economic policy, and indeed amplifies very well the call for adequate regulatory coherence across borders in Amb. Swajaya's keynote speech.

Equally important, the issue of regulations and the regulatory environment in the context of economic performance and development looms increasingly large in each AMS. The 10th Malaysia Plan chapter on modernising business provides an example of the increasing policy focus on the role of regulations and the impact of the regulatory environment on economic performance (MPC, n.d., p.1):

*The regulatory environment has a substantial effect on the behaviour and performance of companies. Private sector participation in the economy and innovation require a regulatory environment that provides the necessary protections and guidelines, while promoting competition. Too often, Malaysian firms face a tangle of regulations that have accumulated over the years and now constrain growth. At the same time, regulations that would promote competition and innovation are absent or insufficiently powerful.*

Additionally, Malaysia's National Policy on the Development and Implementation of Regulations (NPDIR) states (MPC, n.d., p.2):

*There is increasing recognition that over-regulation, poorly designed regulations or in some cases under-regulation lead to regulatory failures which undermine the intentions of good policies. Global competition, social, economic and technological changes require the government to consider the inter-related impacts of regulatory regimes, to ensure that regulatory structures and processes continue to be relevant, robust, transparent, accountable and forward-looking.*

Arguably the statement above culled from Malaysia's 10th Plan is a good reflection of the experience in many AMSs. Arguably also, Malaysia (together with Singapore) counts among the first in ASEAN to develop, adopt, and (increasingly) implement a comprehensive and cohesive national policy and strategy to modernise the regulatory regime and institutionalise GRP within the whole government. A number of other AMSs also have significant regulatory regime initiatives, although not yet as comprehensive, as cohesive, as systematic, and involving the whole bureaucracy as in the case of Singapore and (increasingly) Malaysia. Arguably even further, the development and implementation of modernising the regulatory regime, institutionalising GRP, and the associated changes in institutions, mindsets, and people involve a long and dynamic process, rather than a one-off thing. This is especially the case in a region like ASEAN with member states of widely differing levels of economic, institutional, and bureaucratic development and capabilities.

Yet, precisely given the varied levels of economic, institutional, and bureaucratic development and capabilities in ASEAN, investing in GRP, responsive regulations, and a well-performing Regulatory Management System (RMS) in each AMS in a concerted manner may well be one key means by which all AMSs can grow individually and as a group. It is also a possible key means by which ASEAN integrates better. This is because the implementation of the AEC agreements and the drive towards adequate regulatory coherence across borders could be furthered by the pursuit of coherence, transparency, responsiveness, non-discrimination, effectiveness, efficiency, coordination, and accountability that are the key goals of GRP, responsive regulations, and a well-performing RMS.

Thus, to some extent, this is the complementary path towards deeper economic integration in ASEAN (that is, complementary to ASEAN regional agreements on facilitation, liberalisation, and cooperation) through concerted efforts among AMSs to improving domestic regulatory regimes and processes and reducing unnecessary regulatory burdens on firms and people within the context of an integrating ASEAN. This would be some kind of an **ASEAN ‘quiet revolution’ on regulation and integration.**

In the ERIA book *ASEAN Rising: ASEAN and AEC Beyond 2015* (Intal et al., 2014), the proposed framework for moving AEC forward post 2015 includes ‘responsive regulation’ as a foundation of four pillars towards the AEC which are similar (but modified) to the current four pillars in the current AEC Blueprint 2009–2015. ‘Responsive regulation’ in the book focuses on ‘process’ (emphasis on wide consultations with stakeholders, coordination among government agencies, and monitoring) as well as ‘content’ (pro-competitive, commensurate, non-discriminatory regulations).

## The Project

As a follow-up to the ASEAN Rising book, the Project ‘Towards Responsive Regulations and Regulatory Coherence in East Asia: Deconstructing Efficient and Effective Regulatory Systems’ expands and deepens further the responsive regulations’ perspective towards well-performing RMS and, implicit in that, good regulatory practice. A wide range of countries has introduced systems of regulatory management to improve the quality of the stock and flow of regulation. Many countries in the Asia-Pacific region have been reviewing the role of regulatory management regimes as a means of reducing the costs of doing business, facilitating international trade and investment, and improving regulatory outcomes in areas such as health, safety, and environmental protection.

In understanding the evolution, and deconstructing the elements, of regulatory management in 10 countries in the East Asia and Pacific region, the Project focuses on ‘what works’ to make regulatory management regimes successful. The primary research question was:

Which elements of RMSs generate the most value?

The subsidiary questions were:

- i. What are the common elements of RMSs/regimes?
- ii. What do the different countries' experiences teach us about the sequencing of the different regulatory management elements, recognising the staged approach that governments commonly take in introducing regulatory management, e.g. should they start with programmes that have comprehensive coverage, or should they 'start small' with particular tools that focus on a particular sector or area?
- iii. How are various stages in the regulatory management journey influenced by the individual country context and circumstances, including the level of regulatory capability and overall level of economic development?

**Approach.** The Project relied primarily on (1) studies of countries' RMSs, and (2) case studies for each country that generally focused on a successful regulatory change and contrasted that with previous or other regulatory change that did not achieve the stated goal. The studies used an analytic framework and a set of guiding questions for semi-structured interviews. The countries in the study included Australia, Indonesia, Japan, Malaysia, New Zealand, the Philippines, Singapore, the Republic of Korea (henceforth, Korea), Thailand, and Viet Nam. This meant that there was a mixture of ASEAN and OECD (Organisation for Economic Co-operation and Development) member countries from the Asia-Pacific region. Cambodia, Lao PDR, and Myanmar participated in the workshops as observers.

The research drew extensively on the judgment of the country experts. For example, once the researchers had completed their country and case studies they were asked to make a judgment about the significance of each individual element in influencing the overall outcome of the case studies and the effectiveness of the overall national system. The answers were based on a four-point Likert scale, with each respondent asked to rate each element as very significant, significant, not very significant, no significance.

The country studies and case studies are available from the ERIA website [http://www.eria.org/publications/discussion\\_papers/](http://www.eria.org/publications/discussion_papers/) as ERIA discussion papers.

The studies for Australia, New Zealand, Korea, Japan, Thailand, the Philippines, Viet Nam, and Malaysia and Singapore (joint study) are available with this publication; the other country studies are forthcoming.

A key potential limitation of cross-country studies of this type is the lack of validity of inter-country comparisons because of different researchers' perspectives. To gain greater inter-country reliability, a variety of techniques were used. These included the convening of two workshops in which draft material was presented and then commented on by reviewers from other jurisdictions; and the provision of feedback, on an iterative basis, from the lead researchers on each of the draft country chapters.

This Report presents the key research findings and policy recommendations of the Project. The rest of Chapter I discusses (i) the importance of GRP, responsive regulation, and well-performing RMS to AMSs and the AEC, and (ii) major challenges towards efficient trade facilitation, non-protective non-tariff practice, responsive regulations and a well-performing RMS. Chapter II presents the GRP principles and responsive regulation and a typology of stages or levels of RMS development. Chapter III discusses the evolution and current status of RMS in selected AMSs and East Asian countries. Chapter IV presents the results of the analysis of the elements of the RMSs in East Asia; Chapter V is on lessons and insights from the country studies in the Project. The last chapter, Chapter VI, briefly concludes and presents key recommendations on engendering GRP, responsive regulation, and a well-performing RMS, and on regional regulatory cooperation towards greater regional regulatory coherence.

## **1.2. Importance of Institutions, Good Regulatory Practice, and a Well-Performing Regulatory Management System**

Both theoretical and empirical studies have shown that institutional and governance factors play a critical role in the economic performance of nations, best exemplified by the pioneering work of Douglas North, on the one hand, and the proliferation of empirical studies in recent years on the impact of quality of institutions and governance on foreign direct investment among other things, on the other. For the most part, the studies show that good governance and institutional environment leads to positive economic performance. Conversely,



institutional and/or governance failings tend to raise uncertainty and transactions cost, which thereby hurts investment and growth performance.

Similarly, there is a growing recognition that the improvement of the quality of public administration and regulatory agencies are an important component of the 'second generation reforms' that emerging economies need to undertake for productivity-based growth and escape the 'middle income trap' (Sally, 2013). The 'middle income trap' is at its heart a 'governance failure; an inability to take a long-term view of the best way forward for society as a whole' (Kharas, 2013, p.2). Forming 'fair, transparent and accountable public institutions' and building 'rule of law', with 'institutional structures that produce predictable and sound decisions', though hard to accomplish, are important means of avoiding the middle-income trap (see Kharas, 2013, p.2). GRP, responsive regulations, and a well-performing RMS exemplify the improved quality of public administration and the formation of fair, transparent, and accountable public institutions that, in the above discourse, are considered important elements of the way forward in avoiding the so-called middle-income trap.

Investing in improving governance and quality of public institutions can yield significant dividends. Thus, for example, Kaufmann et al. (1999) showed large increases in per capita income, significant declines in infant mortality, and marked increases in literacy arising from improved quality in six governance indicators. Similarly, using the governance indicators developed by Kaufmann et al. and currently publicly available through *govindicators.com*, B. Anghel (2004) showed the significant impact on foreign direct investment inflow of a one point increase in the score for government effectiveness, regulatory quality, and control of corruption, other things being equal. It must be noted that a one-point increase in the governance scoring is a large improvement because the experience of many countries show that the scores barely move over a decade. The positive impact on investments arising from improved performance in institutional factors has been shown in other studies. For example, Karim et al. (2012) showed that the quality of institutions affected the inflow of foreign direct investment to Malaysia. Parker and Kirkpatrick (2012) reviewed the empirical studies on the impact of regulatory policy (general regulatory governance indicators) and better regulation processes (e.g. administrative simplification, ex ante and ex post Regulatory Impact Analysis [RIA]). Their findings are consistent with the view that better regulation and regulatory processes contribute positively to economic welfare, even if regulations and their impact are context specific and the empirical

estimates are necessarily partial in view of data and modelling constraints.

Among the noteworthy studies are the following (see Parker and Kirkpatrick, 2012, for a detailed summary and evaluation of the studies):

- Simulation results of the impact of reduction in administrative burden on the whole economy in the European Union (EU), using a general equilibrium model (called WorldScan) by both the CPB Netherlands Bureau for Economic Policy Analysis (Centraal Planbureau, CPB) and by Gelauff and Lejour showed that there is a significant increase in gross domestic product (GDP). The impact on GDP is greater if all the EU countries undertake concurrent reductions in administrative burden. In addition, the longer-term impact is greater when the dynamic effects of research and development (R&D) are also taken into consideration. In the Gelauff and Lejour simulations, the magnitude of the GDP impact varies among EU countries.
- An econometric study by Djankov et al. suggested that more regulations are associated with worse corruption scores and that as the number of procedures to start a business increases, compliance with international standards such as on pollution declines.
- An econometric study by Jacobzone et al. indicated that improvements in the quality of RMS lead to better outcomes in GDP, total employment, employment in the business sector, and labour productivity.
- An econometric study by Loayza et al. shows that regulatory burden is inversely related with economic growth, although the negative effect becomes smaller when the quality of regulatory governance and the institutional framework is higher. This seems to suggest that the adverse effect of high regulatory burden is stronger and compelling for those countries with a relatively low quality of regulatory governance and institutional framework. Or conversely, reducing regulatory burden through improving regulatory governance and the regulatory framework would have greater economic growth impact in those countries with comparatively poor regulatory governance and a poorer institutional framework.
- The studies on the impact of RIA in Victoria, Australia by Abusah and Pingario and in Viet Nam by the Ministry of Justice of Viet Nam suggest that the adoption of RIA positively impacts on economic welfare, especially where the internal RIA processes are subject to external and independent scrutiny.

Similarly, improved ease of doing business (EODB) indicators is also shown to be positively related to improved economic and business performance, other things being equal. The Ease of Doing Business Report for 2015 highlights studies that show that (i) an improvement of 10 points in the overall distance-to-frontier (DTF) score would lead to new firm density (number of new firms in a year per 1,000 adult population) of around 0.5; (ii) such improvement in the DTF score benefits the sales and employment performance of small firms more than that of large firms; (iii) there is a positive relationship between entrepreneurial activity and indicators of the quality of the legal and regulatory environment and governance; (iv) a marked improvement from the lowest quartile to the highest quartile in the EODB ranking would lead to a higher per capita growth rate of about 0.8 percentage points; (v) simplifying business registration leads to more firm creation; etc. (EODB, 2015, pp.11–12). The upshot is that it is well worth investing in improving the business regulatory environment given the significant economic benefits.

An ERIA study (Narjoko, Dee, and Fukunaga, 2013) shows that domestic competition and government efficiency leads to greater intra-ASEAN trade than pure customs facilitation per se. Specifically, a 1 percent rise in domestic competition and the government efficiency index would lead to a 2.4 percent increase in intra-ASEAN trade. In contrast, a 1 percent rise in the customs clearance plus logistics competence index would lead to only a 1.5 percent increase in intra-ASEAN trade. Arguably, GRP and a well-performing RMS engender government efficiency and enhance domestic competition (via its integration with competition policy and market openness policies). Thus, investing in GRP and in a well-performing RMS in AMSs potentially enhances intra-ASEAN trade.

**Tables 1.1a to 1.1c** present the governance scores and percentile ranking of the ASEAN + 6 countries and some corresponding global averages from the early 2000s to the early 2010s; the governance scores are in regulatory quality, government effectiveness, and control of corruption. As the tables indicate, Singapore, New Zealand, and Australia rank the highest in the ASEAN + 6 countries, and indeed, among the highest in the world, followed closely by Japan, and then Korea, Brunei Darussalam, and Malaysia. The rest trail behind, starting with Thailand and the Philippines and ending up at the rear with Lao PDR and Myanmar. The values of the governance indicators do not change drastically over a short period because of the nature of the indicators and the methodology of

estimation of the indices. Nonetheless, there are noteworthy improvements in the percentile rank during the 2003–2013 period, as thus:

- Indonesia – in regulatory quality, control of corruption, and government effectiveness
- Lao PDR – in regulatory quality, control of corruption, and government effectiveness
- Japan – in government effectiveness, control of corruption, and regulatory quality
- Korea – in regulatory quality and government effectiveness
- Philippines – in control of corruption, especially during 2008–2013
- PRC – in control of corruption especially during 2008–2013
- Malaysia – in regulatory quality

**Table 1.1a: Regulatory Quality Scores and Percentile Rankings**

Country/Territory	2003		2008		2013	
	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
Korea, Republic of	0.75	73.53	0.72	73.30	0.98	79.90
PRC	-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
<b>ASEAN</b>						
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
The 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; PRC = People's Republic of China.

Source: World Governance Indicators dataset, 1996–2013. Adapted from

<http://info.worldbank.org/governance/wgi/index.aspx#home>, accessed on 15 September 2015. Copyright 2014 by The World Bank.

**Table 1.1b: Government Effectiveness Scores and Percentile Rankings**

Country/Territory	2003		2008		2013	
	Score	Ranking	Score	Ranking	Score	Ranking
New Zealand	1.82	93.66	1.67	93.69	1.75	96.17
Australia	1.81	93.17	1.78	95.63	1.62	94.74
Japan	1.22	86.34	1.46	88.35	1.59	93.78
Korea, Republic of	0.93	78.54	1.05	81.55	1.12	82.30
PRC	-0.04	57.07	0.15	59.22	-0.03	54.07
India	-0.07	55.12	-0.03	54.37	-0.19	47.37
<b>ASEAN</b>						
Singapore	1.96	96.59	2.43	100.00	2.07	99.52
Malaysia	1.17	84.88	1.16	83.50	1.10	81.82
Brunei Darussalam	0.67	73.17	0.91	78.64	0.86	74.16
Thailand	0.38	66.34	0.25	63.11	0.21	61.24
The Philippines	-0.04	56.59	0.03	56.80	0.06	56.94
Indonesia	-0.45	37.56	-0.24	46.60	-0.24	45.45
Viet Nam	-0.43	39.02	-0.20	47.09	-0.30	44.02
Lao PDR	-1.06	13.17	-0.87	18.45	-0.76	24.88
Cambodia	-0.88	17.56	-0.95	16.02	-0.92	18.66
Myanmar	-1.24	8.29	-1.52	2.91	-1.51	4.31

ASEAN = Association of Southeast Asian Nations; PRC = People's Republic of China.

Source: World Governance Indicators dataset, 1996–2013. Adapted from

<http://info.worldbank.org/governance/wgi/index.aspx#home>, accessed on 15 September 2015. Copyright 2014 by The World Bank.

As indicated in the tables, progress in governance indicators is not linear: there are setbacks and apparent retrogressions. Among the more noteworthy are India and Thailand for all the three governance indicators as well as the People's Republic of China (PRC) and the Philippines on control of corruption during the 2003–2008 period.

**Table 1.1c: Control of Corruption Scores and Percentile Rankings**

Country/Territory	2003		2008		2013	
	Score	Ranking	Score	Ranking	Score	Ranking
New Zealand	2.38	99.02	2.33	98.54	2.35	99.52
Australia	1.94	94.15	2.07	96.12	1.76	93.78
Japan	1.18	84.88	1.31	85.92	1.65	92.82
Korea, Republic of	0.48	71.71	0.37	67.96	0.55	70.33
PRC	-0.41	43.41	-0.54	35.44	-0.35	46.89
India	-0.44	42.93	-0.36	43.69	-0.56	35.89
<b>ASEAN</b>						
Singapore	2.26	98.05	2.25	98.06	2.08	96.65
Brunei Darussalam	0.29	64.39	0.54	72.82	0.72	74.16
Malaysia	0.39	68.78	0.02	59.22	0.41	68.42
Thailand	-0.15	52.68	-0.42	42.23	-0.33	49.28
The Philippines	-0.53	38.54	-0.75	25.24	-0.40	43.54
Viet Nam	-0.55	37.07	-0.73	25.73	-0.53	36.84
Indonesia	-0.96	14.63	-0.56	33.98	-0.62	31.58
Lao PDR	-1.16	8.78	-1.21	6.31	-0.90	19.62
Cambodia	-0.94	15.61	-1.20	6.80	-1.01	16.27
Myanmar	-1.46	2.44	-1.56	1.94	-1.07	12.44

ASEAN = Association of Southeast Asian Nations; PRC = People's Republic of China.

Source: World Governance Indicators dataset, 1996–2013. Adapted from

<http://info.worldbank.org/governance/wgi/index.aspx#home>, accessed on 15 September 2015. Copyright 2014 by The World Bank.

Similarly, **Tables 1.2a to 1.2c** provide some EODB indicators. As the tables show, Singapore and New Zealand are the world's best in terms of the overall DTF score. Among the ASEAN + 6 countries, the next best are Korea, Australia, and Malaysia; the lowest scoring among them are India, Lao PDR, and Myanmar. The tables also indicate significant improvements in a number of AMSs, most notably Malaysia, the Philippines, Viet Nam, and Thailand.

The range of the governance percentile ranks among the ASEAN + 6 countries must be the widest among regional groupings in the world, ranging from virtually 100 percent down to a low single-digit percentage. The variation among the ASEAN + 6 countries on the EODB indicators is also wide, from the world's best two countries to one of the lowest.

**Table 1.2a: Overall Scores for Distance-to-Frontier (DTF) and Starting a Business**

Country/Territory	Overall DTF		Starting a Business			
	2010	2015	2006	2007	2010	2015
New Zealand	88.83	86.91	95.62	95.62	99.95	99.96
Korea, Republic of	81.74	83.40	61.36	61.61	84.47	94.36
Australia	80.87	80.66	96.19	96.20	96.46	96.47
Japan	78.42	74.80	71.84	83.36	83.37	86.21
PRC	57.79	62.58	50.97	59.20	62.67	77.43
India	49.46	53.97	38.07	47.42	53.75	68.42
<b>ASEAN</b>						
Singapore	91.85	88.27	91.15	91.16	96.46	96.48
Malaysia	74.37	78.83	74.26	74.46	80.41	94.90
Thailand	76.43	75.27	80.53	80.58	82.30	87.98
Viet Nam	59.44	64.42	71.41	70.57	74.46	77.68
The Philippines	54.31	62.08	61.68	61.90	61.53	67.23
Brunei Darussalam	58.99	61.26	NA	48.90	48.77	53.12
Indonesia	57.18	59.15	43.05	46.14	62.98	68.84
Cambodia	48.40	55.33	34.99	36.14	42.28	41.23
Lao PDR	44.55	51.45	62.54	64.20	66.73	68.95
Myanmar	NA	43.55	NA	NA	NA	22.85

ASEAN = Association of Southeast Asian Nations; PRC = People's Republic of China.

Source: Distance to Frontier dataset, 2004–2015. Adapted from

<http://www.doingbusiness.org/data/distance-to-frontier>, accessed on 16 September 2015.

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Such wide variation in governance and EODB indicators, while challenging, can also be an opportunity for learning and adaptation, especially for the countries in the region as they step up further their efforts in improving their regulatory regimes and RMSs.

The need for improved regulatory regimes and RMS in a number of countries in the region is well encapsulated in the concerns and complaints raised by respondent firms in an ERIA study on supply chain connectivity of agricultural products in ASEAN in 2013 (Intal, 2013).

Among the significant concerns and complaints of the private sector are the following, many of which could be addressed to a large extent by the implementation of GRP and improvement in the RMSs in the countries concerned:

Table 1.2b: Dealing with Construction Scores

Country/Territory	Dealing with Construction			
	2006	2007	2010	2015
Korea, Republic of	85.60	87.15	87.28	85.89
New Zealand	85.77	85.70	85.82	85.67
Australia	81.38	81.40	84.47	84.30
Japan	74.49	74.49	73.63	73.30
PRC	9.14	16.37	24.40	43.75
India	21.29	21.29	21.29	30.89
<b>ASEAN</b>				
Singapore	89.21	89.28	92.69	92.84
Thailand	86.08	86.09	86.07	88.77
Viet Nam	81.38	82.55	83.12	83.66
Malaysia	54.93	54.95	57.38	82.49
Brunei Darussalam	NA	59.33	59.32	77.93
Cambodia	62.15	63.57	75.20	76.45
Lao PDR	65.09	66.81	67.75	68.50
The Philippines	57.69	58.20	59.30	66.08
Myanmar	NA	NA	NA	64.93
Indonesia	58.06	59.39	62.68	59.03

ASEAN = Association of Southeast Asian Nations; PRC = People's Republic of China.

Source: Distance to Frontier dataset, 2004–2015. Adapted from

<http://www.doingbusiness.org/data/distance-to-frontier>, accessed on 16 September 2015.

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### Customs clearance

- **Disputes on classification and valuation** – a major source of delay and key concern for stakeholders in at least three AMSs
- **Problems of coordination with other government agencies** – an often occurrence in at least three AMSs
- National Single Window is perceived to have reduced customs clearance time and corruption
- **In border posts, congestion in the terminal and on access road**, the need to **transfer cargo** between vehicles and the need for physical inspection and security checks are the major sources of delay. **Lack of border crossing coordination** with regional neighbours is a serious concern in at least three AMSs.



Table 1.2c: Trading Across Borders

Country/Territory	Trading Across Borders			
	2006	2007	2010	2015
Australia	79.57	79.89	80.50	80.53
PRC	70.53	71.92	72.97	71.68
India	53.23	53.74	65.85	65.47
Japan	87.47	87.39	87.19	87.23
Korea, Republic of	78.60	78.64	92.51	93.45
New Zealand	84.84	84.97	84.85	85.41
<b>ASEAN</b>				
Indonesia	70.54	71.66	74.91	77.46
Malaysia	88.58	88.88	89.18	89.94
Philippines	72.61	73.01	74.73	77.23
Singapore	96.73	96.79	96.62	96.47
Thailand	57.44	57.79	82.73	83.57
Viet Nam	68.79	69.56	72.62	75.56
Brunei Darussalam	NA	77.52	77.66	80.87
Cambodia	49.80	50.38	61.23	65.92
Lao PDR	18.43	19.84	41.65	52.96
Myanmar	n.a.	n.a.	n.a.	70.02

ASEAN = Association of Southeast Asian Nations; n.a. = not available;

PRC = People's Republic of China.

Source: Distance to Frontier dataset, 2004–2015. Adapted from

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## Transparency

- **Access to and quality of information** on regulations, licences, standards, and certification, etc. are a serious concern in at least three AMSs
- **Inconsistent interpretation of rules** – a serious-to-critical issue for four AMSs
- **Irregular enforcement** and allowance for discretionary behaviour – a serious concern in at least four AMSs
- Problems of **informal payment, excessive fees, and/or corruption** is a serious-to-critical concern in at least four AMSs

## Infrastructure, Transport, and Logistics services

- Domestic roads, ports, trucking, domestic logistics providers, and cold chain are rated **unsatisfactory** in at least three AMSs

- Inter-island shipping is deemed *inadequate* in at least two AMSs and *very unsatisfactory* in adequacy, cost, and quality in one AMS.
- Additional serious constraints to efficient logistics service provision raised by logistics service providers, road transport firms, and maritime transport services providers in at least four AMSs include:
  - limited hours of operation at customs facilities, improper penalties, repeated handling, limitations on vehicle fleet size and hours of operation, and limitations on foreign equity in logistics services
- Road transport service providers also complain about
  - informal checkpoints and costs as well as road capacity and quality, high toll fees, and poor quality of bridges
- Shipping firms in a number of AMSs also have serious concerns about
  - Congestion, high port charges, poor port conditions, monopolised handling of cargo, and absence of adequate warehousing and specialised storage facilities in main port and subsidiary ports

The usefulness of good regulatory processes is also highlighted in the results of an ERIA study on the implementation of AEC Blueprint measures (see Intal, et al., 2014). Specifically, the results of the study's limited survey of firms in ASEAN concerning non-tariff measures (NTMs) suggest that the respondent firms that find it relatively burdensome to meet the requirements of NTMs (that are largely technical barriers trade in the respondent firms) are those where there are

- complicated and burdensome procedures;
- excessive and redundant documentation requirements (highlighted especially by firms in the Philippines);
- high permit fees; and
- lack of in-country testing facilities (highlighted especially by firms in Myanmar).

It is worth noting that in one AMS that has a comparatively high incidence of NTMs among AMSs, the majority of the respondent firms in the country do not consider the requirements burdensome or they do not have substantial cost and time effects on them because of

- fast clearance; and
- efficient, consistent, and transparent procedures and practices (Intal, 2015).

The stark difference in the impact on firms of NTMs has led the study to recommend that the best way to address the non-tariff barrier effect of NTMs is through the implementation of GRP domestically and not solely through trade negotiations.

Finally, it is worth emphasising that in the current world of production fragmentation and production networks and regional and global value chains, the implementation of GRP, responsive regulations, and development of a well-performing RMS contribute substantially to a country's deepening engagement in regional and global production networks by reducing set-up and operations cost in the country. In addition, if the country's regulations and practices are more in line with those of partner countries and/or with global practices and standards, then the country's 'service link costs' (ERIA, 2010) with other production blocks in other countries would be lower. As such it would likely lead to the country's even deeper engagement in the regional and global production networks and value chains. As a result, the country's production network-driven trade, investment, and industrial development would be enhanced.

**AEC Blueprint and TPP.** Both the AEC Blueprint 2025 and the Trans-Pacific Partnership (TPP) highlight the importance of GRP and, for the TPP Agreement, even regulatory coherence; as such, both have a bearing on the system of regulatory management.

The AEC Blueprint 2025 (2015) has Section B.7 on 'Effective, Efficient, Coherent and Responsive Regulations, and Good Regulatory Practice' and Section B.6 on 'Good Governance.' The section on good governance emphasises greater transparency in the public sector and enhanced engagement with the private sector and other stakeholders. The section on responsive regulations and GRP emphasises the minimisation of compliance cost to, and the prevention of, unwarranted distortions and inconsistency arising from the regulations; at the same time such regulations effectively address the identified problem(s). As the Blueprint points out: '(t)he drive towards a competitive, dynamic, innovative and robustly growing ASEAN entails that the regulations are non-discriminatory, pro-competitive, effective, coherent and enabling of entrepreneurship, and the regulatory regime responsive and accountable whereby GRP is embedded' (p.76). The strategic measures include regular review of regulatory implementation processes and procedures for streamlining, institutionalising GRP consultations and informed regulatory consultations, and capacity building.

The TPP Chapter 25 on regulatory coherence is also fundamentally about GRPs'... in the process of planning, designing, issuing, implementing and reviewing regulatory measures in order to facilitate achievement of domestic policy objectives, and in efforts across governments to enhance regulatory cooperation in order to further those objectives and promote international trade and investment, economic growth and employment.' The use of GRP involves the use of regulatory management requirements such as RIA for the assessment of proposed regulatory measures, a coordination mechanism or institution to promote interagency consultation and coordination, transparency through public access to information on new regulatory measures and grounds for selection of the new measures, and regular review of the stock of regulations to determine whether they remain effective. Of the 12 countries that are members of TPP, six are included in the Project: Australia, Japan, Malaysia, New Zealand, Singapore, and Viet Nam.

The importance of GRP for the region, implied in the agreements on the AEC Blueprint 2025 and TPP, is echoed by a number of ASEAN officials and officials of AMSs. For example, H.E. Ong Keng Yong, former ASEAN Secretary General, in his remarks during the Second EAS Regulatory Roundtable, emphasised the fundamental challenges facing ASEAN post 2015:

- Make the ASEAN Community ...'more real, more felt, more present, and more obvious to the ASEAN peoples...[and] make the benefits from integration more real to the people.'
- ASEAN community building will be based more on rules and regulations. The benefits of a rules-based community include making AMSs more competitive through decreasing corruption and increasing transparency and inspiring the public service to be more professional, among others.

According to him, GRP contributes to addressing those two fundamental challenges. For example, GRP encourages cooperative government–private sector engagement as well as innovations in government mechanisms and operations. In addition, with 'Southeast Asia witnessing a connectivity and infrastructure boom and many big countries [wanting] to do more infrastructure development in this region; ...if we put our ASEAN bodies and our governments to do more systematic GRP, we could obtain more benefits and profits from the infrastructure and connectivity boom' (Ong, 2015).

Similarly, H.E. Ambassador Dato' Hasnudin bin Hamzah, Malaysia's permanent representative to ASEAN and head of CPR, also emphasised the potential benefits of GRP to AMSs, as follows (2015, pp.2, 4):

*Good regulatory practices [have] potential to induce a more efficient market environment for ASEAN Member States with a fair business regime to be more globally competitive, to induce greater economic growth, and to jumpstart our aspiration to achieve a more equitable reach of development among our Member States. Good regulatory practices are a seal of good housekeeping of our intention to improve our institutional structure.*

*Good regulatory reforms serve as important social safeguard against market failures and inefficiencies on the ground. This would facilitate the meaningful participation of all stakeholders as well as to ensure smooth implementation of projects. This is especially important in emerging markets with a huge gap in efficiency, competition and quality delivery of services.*

*Good regulatory reforms could ...improve competitiveness by reducing the cost structure of exporting sectors in regional and global markets; and it could create new job opportunities.*

Additionally, H.E. Deputy Minister Rizal Lukman of Indonesia highlighted (2015, pp.2, 7):

*The emergence of the ASEAN Economic Community is putting the pressure on [the AMSs] to accelerate the bureaucratic, administrative and regulatory reforms needed to ensure its competitiveness both in Southeast Asia and globally.... With such a massive economic potential [in ASEAN as the 7th largest economy in the world if it were a single economy]...developing good regulatory practices and regulatory coherence both at the border and within the individual country is essential to generate significant growth that is also inclusive and equally distributed.*

*Additionally, as the characteristics of each country are unique, it is impossible to implement a 'one size fits all' regulatory framework that encompasses the entire region. Therefore, while pushing forward regulatory coherence, there should also remain flexibility for each country to implement their regulatory framework and regulatory reforms based on their respective state developments and characteristics.*