

Chapter 6

Key Recommendations Fostering ASEAN's Quiet Revolution and Concluding Remarks

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Chapter VI

Key Recommendations *Fostering ASEAN's Quiet Revolution* and Concluding Remarks

Regulations (regulatory policy), together with taxes/government expenditures (fiscal policy) and currency (monetary policy), comprise the three core levers of the state in managing the economy and society (OECD, 2010, p.11). The government uses its regulation lever to affect the behaviour of firms, institutions, and people, balancing out their competing interests, and addressing the failings of the market and institutions that can potentially adversely affect the society's health, environment, security, and stability. Thus, regulations are key instruments in the arsenal of the government to drive investment, innovation, market openness, and sustainable growth, and engender social cohesion and a healthy society and environment.

By affecting or forcing changes in behaviour, regulations necessarily impose a regulatory burden or cost on firms, people, and institutions. However, when regulations are ill designed or poorly implemented, then regulations can impose regulatory burdens on firms, institutions, and people that are greater than necessary. A poor regulatory environment undermines business and investment climate, hampers innovation, hurts competitiveness, and engenders corruption and people's scepticism about government.

Not surprisingly, the results of empirical studies on the impact of regulations on the economy such as those discussed in Chapter I indicate that improving the regulatory environment through better governance, improved regulatory management system (RMS), more streamlined administrative processes, and more transparent and participatory regulatory decision-making bring overall economic gains.

Thus, it is well worthwhile to invest in more streamlined administrative procedures, improved regulatory management, and better governance. Policymaking as well as rule-making is an inherently and intensely political process where various interests, objectives, and factors shape decisions and their

implementation so that good regulations do not come about serendipitously. Good and responsive regulations – those that are proportionate, targeted, transparent, non-discriminatory, pro-competitive, and consistent – are the product of a good and responsive regulatory regime, i.e. one that is accountable, actively adaptive, consultative, coordinative, and evaluative. They require adherence to good regulatory practices (GRP), well-performing institutions, competent people, efficient and transparent processes, and above all political will and public support. The achievement of such a system involves a dynamic and challenging journey as the experiences of the countries in the Project indicate.

There is urgency as well as great opportunities in investing in GRP and international regulatory cooperation (IRC) in light of greater economic uncertainty at present and emerging significant industrial restructuring in East Asia (such as the People’s Republic of China [PRC]). GRP and IRC improve the region’s investment attractiveness in the face of prevailing economic uncertainties in the region. GRP and IRC in developing ASEAN facilitate industrial restructuring in East Asia as the PRC shifts gears towards greater domestic consumption amid rising wages. As stated earlier, GRP and IRC help deepen regional production networks to more countries and sectors.

6.1. Committing to GRP and Quality Regulation Revolution

There has been a quiet revolution in governance during the past two decades, initiated primarily by Organisation for Economic Co-operation and Development (OECD) countries, the OECD, and the World Bank, centring on embedding GRP principles, the drive to reduce regulatory burdens, and on good quality regulations. Among the 10 countries in the Project, two (Australia and New Zealand) have been global front runners in this quiet revolution; two (Singapore and Korea) have been rapid and successful adapters and innovators; and two others (Malaysia and Viet Nam) have been having major recent successes in joining the revolution.

As indicated in **Figure 2.1** in Chapter II, the RMSs of the three other countries in the Project – Indonesia, the Philippines, and Thailand – are still in the ‘starter’ stage and starting the transition to the ‘enabled’ stage. In contrast to the other seven countries, the governments of these three countries display nascent political commitment to reducing regulatory burden and improving the quality of regulations, these being top national priority. Deepening such political

commitment, similar to Malaysia's National Policy on the Development and Implementation of Regulations (NPDIR) and its implementation, provides the impetus to establish the core institutions, processes, and changed mindsets necessary to implement GRP and to accelerate the drive for quality regulations and rule-making.

The country studies indicate that the three countries do have some of the elements of a formal RMS but that there are important gaps and/or the elements are not performing well and/or are individual silos, rather than an integrated RMS. This suggests that the three countries do have some of the foundation necessary to achieve an integrated, well-performing RMS. Indeed, there have been positive developments and success stories on the regulatory front in the three countries, such as the National Competitive Council (NCC) in the Philippines, the Competition Law in Indonesia, and the Law on the Protection of Car Accident Victims in Thailand. Also, the recent deregulation acts of the Government of Indonesia indicate that it is moving increasingly more vigorously towards substantial regulatory reform. Similarly, Thailand's Royal Decree on the Review of Laws and the Licensing Facilitation Act are indicative of Thailand's increased resolve at the highest political level towards substantial regulatory reform. The challenge in the next few years is to transform the increased policy resolve into effective regulatory reform in terms of processes, institutions, and systems.

[RECOMMENDATION]

In view of the above, the next step of **'Go for It'** may be what is appropriate.

Similarly, **'Go for it'** may well be the appropriate recommendation for the **implementation of the strategic measures under GRP and Responsive Regulations under items 35 to 39 under B.6 and B.7 of the ASEAN Economic Community (AEC) Blueprint 2025**. In effect, **All ASEAN Member States (AMSs) commit to the institutionalisation of GRP and to the development of a well-performing RMS**. Sections B.6 and B.7 are the strongest indication of the commitment ASEAN and the AMSs to good governance, GRP, and responsive regulations that would augur ASEAN's quiet revolution. To wit (pp. 76–77, italics supplied):

- i. Promote a more responsive ASEAN by strengthening governance through greater transparency in the public sector and in engaging with the private sector;*
- ii. Enhance engagement with the private sector as well as other stakeholders to improve the transparency and synergies of government policies and business actions across industries and sectors in the ASEAN region;*
- iii. Ensure that regulations are pro-competitive, commensurate with objectives and non-discriminatory;*
- iv. Undertake regular concerted regional programmes of review of existing regulatory implementation processes and procedures for further streamlining and, where necessary, recommendations for amendments and other appropriate measures, which may include termination;*
- v. Institutionalize GRP consultations and informed regulatory conversations with various stakeholders in order to identify problems, come up with technical solutions, and help build consensus for reform. Enhancing engagement with the private sector as well as other stakeholders contributes to regulatory coherence, increased transparency and greater synergies of government policies and business actions across industries and sectors in the ASEAN region;*

The regulatory agenda may include the setting of both targets and milestones in order to facilitate a regular assessment of the regulatory landscape, and periodic review of progress and impacts in the region.

The following recommendations from Llanto (2015) for the Philippines may also be relevant for other AMSs such as Cambodia, Indonesia, and Lao PDR, appropriately adapted to fit the countries' specific contexts, in conjunction with the implementation of Sections B.6 and B.7 of the AEC Blueprint 2025:

- **The government must exercise firm leadership and political will in reducing regulatory burden and improving regulatory quality. It can do this by establishing a formal and requisite... [i.e. ideal or well-performing] ...RMS. It can start by issuing an Executive Order**

announcing RIA as a whole-of-government policy, and not for sector regulators only.²⁰

- **The political leadership should identify or constitute a central oversight body that will oversee the implementation of a formal and requisite RMS.**
- **The role, mandate, and stock of regulations of regulatory agencies should be reviewed to reduce the regulatory burden.**
- **Regulatory agencies should build capacity for undertaking RIA and formulating regulatory impact statements.**
- **Government oversight agencies (e.g. National Economic Development Authority) should ensure a more intensive involvement of the private sector, civil society, academe, research institutions, and media in regulatory reform.**
- **Research institutions such as the Philippine Institute for Development Studies should intensify their efforts in conducting impact assessment studies, especially those bearing on regulations.**

6.2. GRP, RMS, and Level of Development

Figure 4.9 in Chapter IV showed that a positive relationship exists between the level of development of member economies of the Asia-Pacific Economic Cooperation (APEC) and the use of RMS instruments; that is, the more developed APEC economies display a greater propensity to use RMS instruments than the poorer and developing APEC countries.²¹ This trend might seem to suggest that GRP and RMS are only for the rich countries.

²⁰ Or a Royal Decree or a Law as in the case of Thailand.

²¹ Malaysia is way down in use of RMS instruments in the figure. This is likely to be the case because the figure uses data from the early to mid-2000s, whereas the major RMS initiatives of Malaysia happened in the late 2000s and after.

However, the experience of Viet Nam's Project 30 shows that this is very definitely NOT the case. Indeed, one of the key lessons of Viet Nam's experience is that '...even developing economies with limited resources can carry out regulatory reform' (Vo and Nguyen, 2015, p.12). The Viet Nam case, with its initial focus on a major programme of inventory and streamlining and simplification of administrative procedures, is especially relevant for countries such as Cambodia, Lao PDR, and Myanmar (CLM) whose Ease of Doing Business (EODB) scores and rankings are very low and where the private sector respondents to ERIA surveys have been complaining about burdensome permit and licensing processes and the need to pay informal fees in addition to inadequate infrastructure facilities. In short, regulatory reform starting with the development of an administrative procedures inventory, simplification, and streamlining would provide substantial societal and economic dividends for the CLM countries as well as for Indonesia and the Philippines.

Vo and Nguyen (Ibid.) listed two other important lessons from Viet Nam's Project 30 that would be relevant for the implementation of similar programmes in CLM (Cambodia, Lao PDR, Myanmar) countries and possibly even for Indonesia, the Philippines, and Thailand being:

1. Political commitment is especially important to the success of an administrative procedure reform project. In the case of Project 30, the Prime Minister showed his clear and strong commitment to administrative reform. In reality, the Prime Minister officially endorsed the Project and announced its key achievements personally. In addition, the Special Task Force can directly report to the Prime Minister. The high political determination is a key factor to overcome potential reluctance among ministerial and local officials. This is also a key factor to build confidence among stakeholders. In addition, with high political determination, the project was designed with ambitious quantitative goals which could themselves create a pressure for interested parties to push up the reform.

2. Carrying out the reform needs a sound institutional structure with sufficient capacity. For the case of Project 30, a coordinating body (the Special Task Force) at the center of government was set up. This Special Task Force was assigned sufficient power to deal

with and directly instruct other ministries and local government. In addition, the Special Task Force was equipped with competent staff(p.12).

Hence, to jump-start the GRP agenda and implement AEC Blueprint 2025, it is recommended that:

[RECOMMENDATION]

- **Cambodia, Lao PDR, and Myanmar (and possibly, even Bandar Seri Begawan) should commit to developing GRP and to the Quality Regulation Revolution**
- **CLM countries should undertake an Inventory and Simplification/ Strengthening Administrative Procedures Programme to jump-start the road to GRP and a well-performing RMS**

6.3. Embedding the RIA/RIS Mindset Early On and Strengthening RIA/RIS Capacity

Regulatory Impact Analysis (RIA) and Regulatory Impact Statement (RIS) are essential features of a well-performing or requisite RMS and sound rule-making. Ideally, an RIS specifies (i) what is the problem or issue that needs action and why there is a need for government action; (ii) the examination of a range of regulatory and non-regulatory options; (iii) the assessment of the costs and benefits of each option; (iv) a list of those who were consulted and how; (v) a recommended option; and (vi) a strategy for implementing and reviewing the recommended option (MPC, 2013, p.11; Australia Department of Prime Minister and Cabinet, 2014, p.1). It is apparent from the above elements of an RIS that a good RIS is not easy to prepare; considerable technical skills are required to prepare a quality RIA/RIS.

The quality of many regulatory reviews under the RIA/RIS system in many of the countries in the Project has been highly mixed, often unsatisfactory. This suggests that such systems have not been very useful and have had little impact on

polycymaking. In Viet Nam, for example, the quality of RIA ‘...normally is not as good as expected, and the capacity to review and access RIAs is limited either’ (Vo and Nguyen, p.10). In Indonesia, the academic paper that is required to accompany proposed bills ‘...that provide assessment on the impact of the bill including how it relates with other existing legislation...focuses more on legal assessment of the new regulatory bill, rather than providing expected economic, social and environmental benefits...’ (Damuri and Silalahi, 2014, p.11). In Thailand, ‘most RIA reports are...only 3–4 pages and the quality of the RIA reports were not useful in the legislation process...[the] RIA process [is] started when the draft bill was finalized; therefore, RIA seem to be an obstacle rather than an improvement mechanism’ (Ongkittikul and Thongphat, 2015, p.29). In Japan, ‘RIA is not used in the actual process of establishing a regulation, but after the basic framework of the regulation is made...there are not enough quantitative costs and benefits analysis on the effects of regulation....no uniform method for evaluation of the social costs of regulations’ (Yashiro, 2015, p.12). Even in Australia where RIS is mandatory for all Cabinet submissions, with a long history of RIA development and practice, and there is an official guide on preparing RIS, there is ‘...a varying, but often very limited commitment to, and respect for, the RIA process and the resulting RIS by ministers’ (Carroll and Bounds, 2016, p.32).

It is suggested that the ‘ideal type standards’, mandated by many RIA systems, although of considerable value for the systematic assessment of the quality of proposed regulations, may initially be too demanding for countries at the onset or in the early stages of their drive to attaining a good quality RMS, especially those with limited staff capacity and technical expertise. Hence, it may be of value to commence with a less demanding RIA system that can be made more rigorous over time.

Deighton-Smith and Carroll suggest that a more limited, less demanding RIA system be introduced, as follows (29 May 2015, personal communication):

[RECOMMENDATIONS]

- **Apply a ‘proto-RIA’ (or ‘skeleton RIA’ or ‘framework RIA’) to laws because the major regulatory burdens tend to be caused by laws.** A proto-RIA/framework or RIA/skeleton does not demand detailed quantification of the specific effects of the legislation (where the technical

skills requirement would be more substantial) and instead focuses on answering the key questions regarding the necessity for the proposed regulation and assessing the best available alternatives. In essence, a systematic qualitative consideration about the costs and benefits of a proposed regulation is suggested. Where the 'proto-RIA' suggests that there will be major costs and benefits, then a quantitative analysis should be undertaken only for such cases. Proto-RIA needs to be done at the earliest possible stage of the regulatory decision process for it to be useful.

- **Use extensive consultation with concerned stakeholders in developing the proto-RIA** to get feedback on the rationale and realism for the proposed regulation and to ensure whether there is an accurate understanding of the problem being addressed by the proposed regulation or legislation.
- **Or create a standing Business Panel as a sounding board and consultation mechanism for the proposed legislation.** The business panel can change membership as necessary to deal with the specific regulation under examination.
- **If one does not already exist, start developing a Productivity Commission-type institution with high-level analytical skills, capacity building, and skills training functions.**

As the national capacity for regulatory review and assessment grows, so should the demands of the RIA system for the increased quality of regulatory proposals from all departments and agencies. In essence, the 'proto-RIA' should develop into a sophisticated and demanding system. Smaller departments and agencies may continue to lack the full range of skills necessary for high-quality RIA, and responsibilities in such cases can rest with a credible central body such as the Australian Productivity Corporation. Similarly, the most complex, nation-wide regulatory proposals could be reserved for such a commission or a research institution such as the Central Institute for Economic Management in Viet Nam.

The shortage of RIA/RIS skills, especially related to cost–benefit analysis in ASEAN and East Asia countries, suggests that it is worthwhile to:

[RECOMMENDATION]

- **Develop a regional cooperation programme on RIA/RIS training, research, and innovation, in tandem with regional institutions’ (e.g. Asian Development Bank [ADB]) capacity building programmes on RIA/RIS at the national level.**

It is worth noting that Singapore does not for the most part use a formal RIA/RIS process with an oversight agency that is responsible for the quality of RIAs/RISs, except for major projects. Instead it relies on continuous linkage and feedback with the stakeholders on the regulatory changes, which together with the civil service’s high-level technical skills and the pressure from the market and global competition help provide the anchor for its regulatory decisions (see Lim, 2015).

Arguably, Singapore is a special and atypical case. However, the Singapore case highlights the importance of investing in capacity building for the regulators and the bureaucracy as discussed in the previous chapter. It is likely easier to learn and enact rules and regulations than to find able and competent people who can apply and implement them well. Arguably, even if the RMS is not perfect, having people who are competent and with integrity implement the rules and regulations could still produce good regulatory results. Thus, investing in the capacity of the bureaucracy would need to be emphasised. In addition, the drive to embed GRP and develop a well-performing RMS can be expected to be boosted by efforts to instil and cultivate a good public governance culture, e.g. integrity, excellence, dedication, etc. Thus, it is proposed to:

[RECOMMENDATION]

- **Establish a regional cooperation programme among civil service and regulatory institutions strengthening the capacity of the regulators and the bureaucracy, especially with respect to regulations.**

6.4. GRP, International Regulatory Cooperation, Regulatory Coherence, and Seamless Connectivity in ASEAN

Amb. Swajaya's keynote speech during the inaugural East Asia Summit (EAS) Regulatory Roundtable is particularly salient in the current world of global and regional value and supply chains and production networks. He called for 'adequate regulatory coherence across the border' towards 'seamless connectivity' in ASEAN. This was echoed in the keynote speech of Deputy Minister Rizal Lukman during the second roundtable. In this world of 'unbundled production', seamless connectivity provides the ideal environment that allows for the efficient expansion of production over a wider geographic area, both domestically and across borders within ASEAN, thereby deepening the production networks and value chains in the region and allowing more ASEAN countries to participate more deeply in those networks. The result is a more inclusive ASEAN as the poorer AMSs become more deeply connected in the regional production networks. ASEAN would also be a more attractive investment destination and a more competitive production platform because the varying factor and human capital complementarities and advantages of various ASEAN countries are maximised.

At the same time, the description of the elements of responsive regulation in this Report states that 'responsive regulation as content' means regulations that are pro-competitive, commensurate, and non-discriminatory. Pro-competitive implies pro-trade because trade, especially import, enhances the competitive environment in a country. Similarly, non-discriminatory regulation implies one that does not discriminate among domestic and imported products that meet the social, health, environment, and other objectives of the regulation as well as among domestic and foreign firms. Thus, the pursuit of GRP and good regulations is expected to facilitate trade and investment in the context of globalising economies and the integrating region.

The discussion above indicates that the pursuit of GRP and a well-performing RMS and the implementation of the AEC Blueprint and the Master Plan on ASEAN Connectivity are complementary. Implementing them would bring about the 'adequate regulatory coherence across the border' that Amb. Swajaya called for.

Regulatory coherence has historically referred to policy coherence wherein domestic agencies and laws are aligned or consistent with a national regulatory reform agenda and are vertically coherent between multiples of government in federal states (Mumford, 2014, p.4). This is one key goal of GRP and a well-performing RMS on the domestic front. Thus, the implementation of GRP and having a well-performing RMS engender domestic regulatory coherence. In recent years, regulatory coherence has been discussed in terms of international trade and, logically, regional integration. The growing interdependence of countries and the growth of international production networks inevitably raise the issue of cross-border regulatory coherence as exemplified by Amb. Swajaya's keynote speech.

In enhancing cross-border regulatory coherence, Mumford (2014, p.5) presents three interrelated elements of a multidimensional strategy:

- ***Coherence between domestic and international policy goals.*** The impact on trade and investment is taken into account as part of the policy process in the making of a new domestic regulation.
- ***Coherence between domestic laws and agencies.*** The number of domestic agencies that all deal with the same trade or investment transaction take a consistent and efficient approach.
- ***Coherence between the laws and the agencies of two or more economies,*** or generally called ***International Regulatory Cooperation (IRC)***. Cooperation between economies aimed at reducing the regulatory barriers to trade and investment arising from different laws in different countries.

The first two are the province of GRP and RMS. For the third, Mak and Nind (2015) argue that IRC can

- lower barriers to trade and investment;
- enhance regulatory capacity and capability, and build confidence and trust; and
- increase policy and regulatory effectiveness.

Further, it can involve unilateral action (primarily the unilateral adoption or recognition of, say, global standards or the regulatory standards of another country); informal cooperation (information sharing, policy coordination, cross-agency appointment); and formal cooperation through enforcement cooperation, mutual recognition agreement (MRA), and harmonisation (see Mak and Nind, 2015). ASEAN is already undertaking a number of IRC initiatives such as the MRAs and harmonisation activities in standards and conformance and the MRAs on professional services.

[RECOMMENDATION on GRP]

To jump-start the GRP agenda, each AMS agrees to draw up an inventory of all national government's existing regulations, together with their administrative measures, and develop and implement a plan for their simplification, modification, or termination.

It is worth repeating at this juncture what H.E. Deputy Minister Rizal Lukman emphasised that, given each AMS is unique, it is not possible to have a 'one size fits all' regulatory framework for the whole region. As such, there is need for '...flexibility for each country to implement their regulatory framework and regulatory reforms based on their respective state developments and characteristics' (Lukman, 2015, p.7).

In addition, ASEAN can use the wide spectrum of IRC initiatives (including more of those it has already developed) to help facilitate the implementation of IRC in support of deeper economic integration in ASEAN, including the following:²²

[RECOMMENDATION on IRC]

- **Creation of a High-Level Task Force or 'tasking' the High Level Task Force on Economic Integration (HLTF-EI) to guide and coordinate work on and IRC in ASEAN. Given the apparent policy of ASEAN against creating more committees, working groups, and task forces,**

²² All the recommendations except for the first one are based on the results of an APEC workshop on regulatory cooperation held in Cebu, Philippines on 31 August 2015. Although the discussion in the workshop was in terms of APEC economies, the recommendations are equally relevant for ASEAN and the AMSs.

this function of guiding and coordinating ASEAN work on GRP and IRC could be delegated to the current HLTF–EI. In effect, HLTF–EI’s work programme post 2015 would be focused more on engendering GRP and overseeing IRC in ASEAN.

- **Regular ‘horizontal exchanges of experiences’ between members on regulatory policy in support of GRP, thus building up a ‘better understanding of different regulatory systems and approaches...and build confidence between interested parties’ (Aranda Girard).**
- **The encouragement of informal bilateral and multilateral cooperation of policy coordination, including agency appointments and work sharing (Mak and Nind).**
- **Widening and deepening of AMSs’ ‘familiarity’ with existing international conventions which are public goods that can then be the basis for more efficient regional international private transactions; Apostille Convention (Ian Govey).**
- **Encouragement of the unilateral adoption of GRP and regulations from abroad.**
- **Encouragement of the concerted unilateral and voluntary adoption of international standards.**
- **Encouragement of innovative regulatory initiatives; e.g. Asian Region Funds Passport (Sim, 2015).**
- **The provision of capacity building and technical assistance on GRP and IRC to the poorer AMSs. It is important to note that effective regulation is due in part to the role, structure, and expertise of regulators (Bounds, 2014); hence, the importance of capacity building.**

The AEC Blueprint 2025 has indeed some provisions on IRC, primarily with respect to capacity building:

Undertake targeted capacity building programmes with knowledge partners such as the Organisation for Economic Co-operation and Development (OECD) and ERIA to assist ASEAN Member States in the regulatory reform initiatives, which takes into account the different development levels, development needs, and regulatory policy space of each ASEAN Member State.

Similarly, Amb. Hamzah recommends that '...the **Heads of National Planning Agencies of ASEAN Member States to engage with the National Coordinators on ASEAN Connectivity** with participation from [the] private sector and relevant stakeholders to discuss and synchronize regulatory reforms' (Hamzah, 2015, p.4).

In addition, it is worth noting that there exists an ASEAN–OECD Good Regulatory Practice Network. This network can be upgraded to an **ASEAN GRP Network** that can support the ASEAN High Level Task Force in implementing GRP in ASEAN. It may also be worthwhile to consider the establishment of a **pool of experts and trainers on GRP in ASEAN** to help with capacity building and with the analysis of regulatory and IRC and cooperation issues in ASEAN.

6.5 Putting It All Together and Moving Forward Fostering ASEAN'S Quiet Revolution²³

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

²³ This section benefited from inputs from Faisal Naru of OECD and Mark Steel of the New Zealand Ministry of Business, Innovation and Employment.

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

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

The common pursuit of GRP and a well-performing RMS, together with IRC, by ASEAN and East Asia members will go a long way in engendering greater regional regulatory coherence. In the process, **ASEAN's Quiet Revolution** of GRP, RMS, IRC, and regulatory coherence will be fostered.

6.5.1 Core Good Regulatory Practice Principles

An important initial step towards the realisation of ASEAN's Quiet Revolution is for ASEAN to adopt the core GRP principles. GRP principles in the design and implementation of regulations 'are a useful toolkit for measuring and improving the quality of regulation and its enforcement, setting the context for dialogue between stakeholders and government' (UK Better Regulation Task Force, p.1). Regulations are construed in this paper to be all written legal and quasi-legal instruments including laws, decrees, secondary regulations, guidelines, circulars, codes, standards, and others. The principles help identify where unnecessary regulatory burdens on business could be reduced (Ibid, p.5).

There is no clear and agreed complete set of GRPs that has been used by governments and analysts. Nonetheless, a number of commonly emphasised principles can be considered core GRP principles. The following core GRP principles draw from or are taken from the GRP principles of Malaysia, APEC, OECD, ASEAN GRP Guide, Australia, New Zealand, and the United Kingdom.

Principle No. 1: Have a proportionate and effective response to the risk being addressed

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

Thus, the proportionality principle means regulatory agencies (and other government bodies including the legislature) intervene only when it is necessary and socially beneficial. This implies the importance of a clear empirical understanding of the risk(s) to be addressed and the corresponding appropriate risk management regulatory approach to undertake. That is, the nature of the regulation is commensurate with the severity of the risk, considering the various regulatory and non-regulatory options. Generally, this means a greater reliance on outcome-based (or performance-based) regulatory and non-regulatory measures rather than prescriptive regulations except where risks are severe. Proportionate response also implies that greater attention be given to the impact of regulations on small and medium-sized businesses, which tend to be disproportionately burdened by the regulations compared with large firms. Finally, this implies that a range of feasible options (regulatory, non-regulatory, co-regulatory) are considered, and the benefits and costs are taken into account (Council of Australian Governments, 2007, p.4).

Principle 2: Minimise adverse side effects and market distortions

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

Minimising the adverse side effects may entail that regulations and their implementation are targeted and focused on the regulatory problem of concern, and that the regulators are more concerned with activities that give rise to the most serious risks (UK Better Regulation Task Force, p.6). Similarly, regulations need to be as little trade restrictive as possible to meet the desired objectives (ASEAN GRP Guide, p.2).

Principle 3: Consistency and coherence of regulations and predictability of implementation of regulations

Consistency and coherence of regulations means no conflicting or duplication of regulations. This calls for, among others (OECD, 2012b, p.17):

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

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

Consistency and coherence of regulation are central to a genuine whole-of-government ownership of GRP, making appropriate coordination mechanisms among concerned agencies and regulatory institutions critically important. In all

of our bureaucracies, vertical accountability incentives and disciplines are so powerful that making GRP a reality requires a very strong countervailing commitment to looking and working across agency silos. The predilection of bureaucracies for working in silos that are largely isolated from each other is one of the main obstacles to regulatory practices creating a better experience for the regulated (Mark Steel, personal communication). For example, ensuring seamless regulatory facilitation, or efficient multi-channel government–customer interface, for a business enterprise faced with multiple licences, permits, and approvals from various agencies in its operations, would require effective coordination agencies together with streamlined regulatory requirements and simplified systems and work procedures (Seman and Bahari, 2016, p.7). This approach of reviewing regulations from the perspective of the operations of a business enterprise animates the initiatives of Malaysia's PEMUDAH Task Force, for example.

Of importance for the AEC is the minimisation of regulatory differences among countries in ASEAN, both in terms of the regulations themselves and in the implementation of the regulations. This is because such regulatory differences can become significant barriers to trade, investment, and labour flows within the region. That is why, for example, the ASEAN GRP Guide calls for regulations '...to be based on international standards, or on national standards that are harmonised to international standards, except where legitimate reasons for deviations exist' (ASEAN GRP Guide, p.2).

Regional efforts towards greater regulatory coherence in the region, which can be categorised under the broad rubric of IRC include MRAs in selected priority sectors and professional services, integrated harmonised systems like the ASEAN Single Window, and harmonisation of technical regulations or processes such as the ASEAN Cosmetics Directive. The drive towards minimal regulatory differences and greater regulatory coherence among AMSs would also call for, as the ASEAN GRP Guide emphasises, equal treatment of products of national origin and like products imported from other AMSs.

Predictability of the implementation of regulations engenders a greater sense of certainty to regulated entities about regulatory compliance risks now and in the future, and thereby provide a more conducive environment for investment. The greater predictability and certainty of the regulatory regime are enhanced by clear decision-making criteria that are publicly known as well as by considering

the design of regulatory regimes that firms need to take long-term investment decisions (Mumford, 2011, p.38).

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

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

Transparency measures include the following:

- Public access to information on regulations and quasi-regulations such as laws, policies, circulars, rules, guidelines, decisions, and procedures together with, where appropriate, expected service standards (e.g. duration of processing of licence application), and where practicable, make such information available online. Preferably, the information includes guidance to regulated parties on expected compliance requirements and how to comply with legal requirements or how regulators will assess applications (MPC, 2014, p.40).
- Regulations, rules, and procedures are clear, simple, well organised, and in plain language, ‘...recognizing that some measures address technical issues and that relevant expertise may be needed to understand and apply them’ (Trans-Pacific Partnership Agreement, Chapter 25, p.7).
- As in the case of Thailand’s Royal Decree on Review of Law, transparency is also enhanced with the requirement that the regulations are translated into English and are easily available or accessible, thereby reaching out to the foreign stakeholders.

Effective consultation and stakeholder participation involves a continuous process of engagement and communication with affected stakeholders from a wide variety of perspectives and interests at all stages of the regulatory cycle. Moreover, the stakeholders are provided reasonable time to give considered responses and provide feedback on how the results of the consultation process have been taken into account in the decisions on the design, implementation, and revision of regulations and quasi-regulations. Effective consultation with and engagement of various stakeholders can be expected to help ensure that those who are affected by the concerned regulation have a good understanding of what the regulation is and how it addresses the problem of interest, help provide suggestions on alternative options, allow regulators to assess competing interests, identify interactions between different types of regulations, provide a check on regulator's cost assessment, and may enhance voluntary compliance with the regulation (Council of Australian Governments, 2007, p. 6).

Principle 5: Robust review mechanism to ensure the continuing effectiveness of regulations in a changing economic and social environment

Given dynamic markets, technological and other developments globally, regionally, and nationally, regulations can over time become redundant (which may call for termination) or require revisions, or non-regulatory options may have become preferable. Thus, it is important to have a robust review mechanism that ensures that existing regulations remain relevant and effective. The review and evaluation of regulations and the regulatory regime also aim to '...improve the performance of regulatory quality tools and institutions – measured in terms of their ultimate goal of increasing the effectiveness and efficiency of regulation over time' (APEC, 2010, p. 6).

A more systematic and systemic review mechanism is to build in a review requirement in each regulation or a blanket policy or law on sunset clause or regular review of regulations, e.g. every 7 years under Malaysia's NPDIR and every 5 years under Thailand's Royal Decree on Review of Law. This approach favours the establishment of a central oversight institution monitoring the performance of regulations and the review process, e.g. Malaysia's NDPC supported by the MPC and Thailand's Council of Ministers supported by the Law Review Commission.

Two popular methods that have been used in the review of regulations are (i) Reducing Unnecessary Regulatory Burden (RURB), focused on the review of

existing regulations, which has been implemented systematically in Malaysia; and (ii) RIA, which tends to be used primarily on proposed new regulations, where a number of AMSs have been undertaking capacity building with the support of ADB. In both, consultation with and engagement of affected and concerned stakeholders is critical. And in both, some quantitative or qualitative estimation of costs (burdens, especially under RURB) and benefits both direct and, in the more sophisticated RIAs, economy-wide (especially under RIA) is important to aid in the prioritisation and decision-making on actual regulations and alternative regulatory options and refinements.

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

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

A responsive or incentivised approach to enforcement of regulations means calibrating the tools of enforcement depending on the behaviour of the regulated entities or individuals. For example, regulators would go easy on and help facilitate the compliance of those who are willing, but sometimes unable, to comply. But they would use the full force of the law against entities and individuals who do not want to comply (Ibid, pp. 27–28). Accountability demands that the enforcement of regulations by regulators is not arbitrary and there are recourse and appeal mechanisms in cases where regulators unfairly penalise a business. Probity of regulators help address corruption in implementing regulations.

Regulatory agencies would need to have clear lines of accountability to Ministers, the Parliament, and to the public. Accountability is enhanced when regulators establish clear standards of judging them and explain how and why final

decisions are made. It is also enhanced by an accessible, fair, and effective complaints and appeals process (UK Better Regulation Task Force, p.4). Robust governance mechanisms on the regulators need to protect regulatory agencies from undue influence and regulatory capture.

6.5.2. Towards institutionalising GRP and RMS in ASEAN

The GRP principles listed above are meant to be 'benchmarks' against which actual regulations and regulatory regime are evaluated. It is apparent from the above that they are not easy to be implemented. It will take much time, a change in mindsets, capacity building, and, above all, continuous political commitment and support at the highest level.

GRP Strategic Measures. The 'Nay Pyi Taw Declaration on the ASEAN Community's Post-2015 Vision' issued on 12 November 2014 makes specific reference to '[promoting] the principles of good governance, transparency and responsive regulations and regulatory regimes through active engagement with the private sector, community based organisations and other stakeholders of ASEAN'.

ASEAN and ASEAN-focused initiatives had been undertaken or launched to address GRP in ASEAN. These include the ASEAN Good Regulatory Practice Guide (2009, Bangkok); ASEAN–OECD workshop on regulatory reform (2010, Ha Noi); ASEAN Regulatory Reform Dialogue (2011); ASEAN Regulatory Reform Symposium (2012, Manila); East Asia Summit Regulatory Roundtables I and II (2013 and 2015, Bangkok and Jakarta, respectively); ASEAN–OECD Good Regulatory Practice Conference (2015, Kuala Lumpur); ERIA–Reducing Unnecessary Regulatory Burden (RURB) project (2015–2016); and the ASEAN–OECD Good Regulatory Practice Network.

Moving forward, the AEC Blueprint 2025 lists the following strategic measures for GRP implementation and institutionalisation in ASEAN in 2016–2025 (ASEC, 2016, p. 77):

- *Ensure that regulations are pro-competitive, commensurate with objectives, and non-discriminatory;*

- *Undertake regular concerted regional programmes of review of existing regulatory implementation processes and procedures for further streamlining and, where necessary, recommendations for amendments and other appropriate measures which may include termination;*
- *Institutionalise GRP consultations and informed regulatory conversations with various stakeholders in order to identify problems, come up with technical solutions, and help build consensus for reform;*
- *The regulatory agenda may include the setting of both targets and milestones in order to facilitate a regular assessment of the regulatory landscape, and periodic review of progress and impacts in the region; and*
- *Undertake targeted capacity building programmes with knowledge partners such as OECD and ERIA to assist ASEAN Member States in the regulatory reform initiatives which takes into account the different development levels, development needs and regulatory policy space of each ASEAN Member State.*

Moving Forward: Towards Institutionalising GRP in ASEAN. The key elements towards the institutionalisation of GRP in ASEAN are as follows:

1. Continuous political commitment at the highest level of the government and administration. The implementation of GRP involves most especially the government bureaucracy and the government rule-making process. Thus, political commitment at the highest level is essential to institutionalise GRP in each AMS and the whole region. At the same time, the commitment of the top leadership in the bureaucracy is critical for embedding GRP into the bureaucracy and thereby help shape the bureaucracy's culture despite changes in the political leadership.

A number of AMSs have already done so. Malaysia has its NPDIR, which institutionalises GRP in the whole government. Viet Nam's Project 30, its initial key whole-of-government GRP initiative of streamlining administrative procedures and regulations involving administrative procedures across all levels of government, was overseen and coordinated by the Prime Minister and the Prime Minister's Office. In 2015, Thailand enacted the Royal Decree on the Review of Law and the Licensing Facilitation Law, which mandates whole-of-government

review of regulations and streamlining of licensing procedures, respectively. Singapore has been embedding GRP in the whole bureaucracy since 2000 with its 'Cut Red Tape' initiative and the efforts of the Rules Review Panel (later, Smart Regulation Committee [SRC]), so much so that Singapore's RMS is arguably one of the best in the world at present.

Towards the implementation and institutionalisation of GRP in **all AMSs and the whole ASEAN region**, the following measures are to be implemented at the regional and national levels, respectively:

Regional Level:

- ***ASEAN Leaders sign a declaration for the adoption of the core ASEAN GRP principles and the key implementation measures for the institutionalisation of GRP in the whole ASEAN.***
- ***Create a regional body to coordinate and review the implementation of the ASEAN GRP Agenda (or mandate an existing ASEAN body, such as the High Level Task Force on Economic Integration [HLTF-EI]).*** The focus of the regional body is on the border and behind-the-border regulations and administrative procedures that have direct bearing on the movement of goods, services, investment, capital, and skilled labour within ASEAN, which can be termed the 'covered regulations and procedures'.

National Level:

- ***National policy and programme for the implementation and institutionalisation of GRP in the country.*** The national policy and programme may include presidential orders or laws on the review of administrative procedures for streamlining and EODB similar to Viet Nam's Project 30, Thailand's Licensing Facilitation Act, and Malaysia's modernisation of business regulations primarily under PEMUDAH. It may also include a mandate for regular review of regulations (similar to Thailand's Royal Decree on Review of Law) and a capacity building programme. The national policy and programme can be expected to be at least a medium-term agenda. The national policy and agenda aim for implementation in the whole government over time, and not only sectoral or limited to selected agencies.

- ***Create or assign a suitable national central body at the heart of the government with appropriate powers and a capable secretariat to oversee the national implementation and institutionalisation of GRP over time in the country.*** An example is Malaysia's central body that implements the NPDIR, i.e. National Development Planning Committee (NDPC), supported by the MPC and the National Institute of Public Administration (INTAN). Similarly, Viet Nam's Project 30 was coordinated by the Prime Minister's Special Task Force under the Office of the Government of the Prime Minister.

2. Inventory and publish all regulations and administrative procedures, so these are accessible to the public. Set out a streamlining programme on all administrative procedures to reduce unnecessary regulatory burdens on regulated entities and individuals. For the 'covered regulations and procedures' directly related to the implementation of AEC Blueprint measures, the review and publication are undertaken concertedly at the regional level to implement strategy number 2 for GRP in the AEC Blueprint 2025. Viet Nam's Project 30 provides a very good example of a comprehensive inventory of administrative procedures and regulations with administrative procedures, which are available online and accessible to the public. Project 30 aimed to streamline the administrative procedures, with an indicative target of reducing or refining regulations by at least 30 percent. The inventory and streamlining of the administrative procedures (as in Viet Nam) or similarly licensing procedures (Thailand) or modernising business regulations (Malaysia) has been a good way to jump-start the GRP agenda because these procedures and business regulations impact directly on people; as such, streamlined procedures bring in people's support for the more difficult components of the regulatory reform programme.

3. Set out a programme of regular review of regulations at the national level, and concertedly at the regional level, on the covered regulations and procedures, e.g. every 5 years. Set targets and milestones. For example, at the national level, the mandate for a review of regulations every 5 years is in Thailand's Royal Decree on Review of Law. Factors considered in the review include justifying the need for such law in the current context; strengthening national competitiveness and sustainable development in light of changing economic, social, technological, and other environments; meeting international obligations; reducing the burden on people arising from the law; reducing corruption arising from the implementation of the law; and engendering efficient

and effective one-stop service (Nilrapunt, 2015a, pp.3–4). In the case of Malaysia, the 10th Malaysia Plan mandated the MPC to review existing regulations to remove unnecessary rules and compliance costs, undertake cost-benefit analysis on new policies and regulations, provide sectoral productivity estimates, and undertake productivity research to make recommendations on policy and regulatory changes that enhance productivity (OECD, 2015, p.32).

The reviews can be done in a strategic way, such as doing sectoral reviews, which are also less burdensome on regulators doing the reviews. The reviews should preferably look at the cumulative impact of the regulatory regime instead of individual regulations only. At the regional level, the regional body coordinating GRP implementation mentioned may start the review across countries on a sectoral or specific policy basis.

4. At the national level, set out a medium-term and long-term programme of institutionalisation of stakeholder engagement and of institutional development and capacity building for the regulators. Deep and continuing engagement with stakeholders, especially the business sector, is a characteristic of relatively successful cases of regulatory reform in ASEAN. Malaysia's PEMUDAH Task Force, composed of both government officials and private sector leaders, has been the driver of business regulations and processes streamlining in Malaysia. The Philippines' NCC of both government and business officials has been in the forefront of regulatory process reforms in the country in recent years. In Viet Nam's Project 30, the Advisory Council of Administrative Procedures Reform (ACAPR), composed of representatives from the Vietnamese and foreign business chambers and the academic sector, provided the strategic advice, factual evidence, and analyses to the Prime Minister's Special Task Force. Singapore's Pro-Enterprise, composed mainly of the private business sector but led by the head of the civil service, proactively solicits suggestions on rules and regulations and engages with government agencies to reduce the burden of regulations on business.

Effective implementation of GRP requires capable regulators who are steeped in GRP principles and approaches. Among the more important GRP-supportive approaches are the proto-RIA and full-blown RIA as well as RURB. Proto-RIAs (or skeleton RIAs or framework RIAs) do not involve detailed quantification of the effects of (proposed) regulation but focus on answering the key questions regarding the necessity for the proposed regulation and assessing qualitatively

and systematically the best available alternatives. Proto-RIAs would be appropriate for AMSs with very limited technical capacity at present, except for a few regulations that address big issues with trade-offs, which need a more quantitative approach.

Nonetheless, AMSs may need to invest to build the analytic capability of an institution in their country similar to Malaysia's MPC. Similarly, such institution would need to develop capability on RURB for a systematic approach to engaging the private sector and regulators and to analyse alternative options to RURB on business.

5. At the regional level, set out a medium-term and long-term programme of regulatory cooperation to support capacity building and regulatory reform of AMSs, sharing of experiences, intra-regional inter-agency cooperative arrangements for the implementation of GRP in the region, and regulatory convergence within the region.

There is a wide range of possible unilateral, informal, and formal IRC initiatives that can be pursued towards regulatory convergence (see Mak and Nind, 2015). It is also useful to encourage innovative regulatory initiatives such as the Asian Region Funds Passport. Finally, it is important to develop and support capacity building and technical assistance on GRP, especially to the poorer AMSs. Current regional capacity building initiatives include an ADB-funded programme on RIA; the ERIA-funded modest pilot study-cum-training on RURB in conjunction with MPC; and APEC-initiated GRP and IRC initiatives.

Concluding Remarks

Finally, and summing up, the implementation of the above recommendations is the fostering of ASEAN's Quiet Revolution: *ASEAN's quiet revolution is one of GRP and regulatory coherence in each AMS, regulatory cooperation and convergence among AMSs driven by AEC measures, and regional cooperation in capacity building towards well-performing RMSs* (e.g. training networks, sharing of experiences). The resulting regulatory connectivity deepens and strengthens institutional connectivity in ASEAN. Considering that the regulatory system is like a connective tissue, similar to physical infrastructure, within and among AMSs, seamless connectivity in ASEAN is underpinned not just by good, integrated, and connected physical infrastructure, transport, and logistics systems but also by GRP and well-performing RMSs. Thus, AMSs' concerted implementation of AEC Blueprint measures, together with GRP, responsive regulations, and a well-performing RMS in each AMS, will facilitate regulatory convergence, lower transactions costs, and support ASEAN's drive towards a highly integrated and cohesive economic region. In short, as Ambassador Trevor Matheson of New Zealand to Indonesia emphasised during the Second EAS Regulatory Roundtable, GRP and regulatory coherence are key to ASEAN integration. And ASEAN's regulatory connectivity and integration ensures a more compelling ASEAN as an investment destination, a driver of socio-economic development, and a catalyst for deeper people-to-people connectivity and community building in ASEAN.

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