

Chapter 4

International Regulatory Cooperation in Thailand – Swaying Bamboo and Tailgating Strategies

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CHAPTER 4

International Regulatory Cooperation in Thailand – Swaying Bamboo and Tailgating Strategies

Pechnipa Dominique Lam

1. Introduction

This chapter provides a glimpse into Thailand's international regulatory cooperation (IRC) landscape, drawing upon interviews from a small sample of IRC experts. It employs the definition and framework used by the Economic Research Institute for ASEAN and East Asia (ERIA) to examine the following five aspects of IRC in Thailand: the 'pervasiveness' of different forms of IRC, the 'persuasiveness' of the case for IRC, the 'willingness' of Thailand to engage, factors that are 'imperatives' and 'blockers' of IRC, and the governance of IRC. The chapter uses ERIA's framework, the survey results, and the context in which Thailand operates to provide insights on IRC in Thailand. In framing the context, three themes are critical to understanding the IRC environment in Thailand.

First, Thailand has long been involved in IRC. Thailand's experiences in the 19th century of unequal treaties with the major European powers and colonisation in neighbouring countries led to a strategy of balancing state-to-state relationships so as to be equally close to all major powers, in order to maintain sovereignty. This 'swaying bamboo' approach endures today.

Second, Thailand is a middle-income open economy in a fast-growing region characterised by a variety of development levels. As a result of these factors, Thailand operates in a dynamic economic and international relations environment in which many countries are jostling for market access.

Third, Thailand's own government has swung between democratic governance and military regimes throughout its modern history. This political framing provides perspective when understanding reasons for engagement in and adoption of IRC at different points in time.

These three themes provide the context for analysing Thailand's IRC landscape within ERIA's framework. In terms of the 'pervasiveness' of IRC, Thailand is heavily engaged in many IRC forums, as both an adopter and a negotiator. These forums cover the spectrum of arrangements – multilateral, plurilateral, regional, and bilateral – as well as different forms, from informal cooperation to legally binding harmonisation. Overall, Thailand's engagement reflects an open, practical approach: the substance of the IRC matters more than its form.

The 'persuasiveness' and 'willingness' aspects of IRC are analysed together. For Thailand, the 'persuasiveness' of the case for IRC determines the country's 'willingness' to engage in it. In general, government officials have a positive view of IRC, in that it presents opportunities to bring Thailand in line with global standards, and open it up for trade and knowledge exchange. When they engage, government officials are adept at playing different roles in different forums, adopting the 'swaying bamboo' approach, and being flexible to the

situation at hand. Where appropriate, officials employ a ‘tailgating’ strategy, that is, using multiple international regulatory forums to achieve one particular outcome. Configurations and alliances are chosen on a case-by-case basis, targeting the best potential outcome for Thailand. The approaches used are not ideological.

An examination of the ‘imperatives’ and ‘blockers’ of IRC reveals that Thailand operates in a complicated landscape. Three issues are consistent. First, in terms of international relations, relative state power is a key determinant of the outcome of international regulatory outcomes. In a fast-growing region, relative power balances are fluid, adding dynamism to IRC engagement. Second, at a domestic level, a complex weave of factors influences engagement in and adoption of regulation. IRC negotiated at different times may have different outcomes, depending on the exact social, economic, or political context. The governing political regime can be a factor. Third, at a practical level, time and capable staff are limited in a fast-changing, complex, and increasingly multipolar world. For many regulatory organisations, keeping up with international standards or negotiating IRC can be a challenge. An increasingly multipolar world leads to a proliferation of IRC. At the same time, many industries are changing rapidly and capable resources are limited.

The final section of the chapter describes aspects of IRC governance in Thailand. The Office of the Council of State (OCS) oversees IRC governance, and is involved in reviewing every legally binding IRC initiative before it is submitted to Parliament.

Overall, Thailand is heavily engaged in IRC in many forums. Government officials use existing forums creatively to build coalitions to advance Thailand’s agenda, and forge new alliances to achieve their objectives beyond the constraints of existing forums. Their creativity and flexibility allow Thailand to maximise the use of limited resources in a fast-changing and increasingly multipolar world.

1.1. Research Approach

The research team (Pechnipa Dominique Lam, Supasyn Itthiphawong, Warit Nimmanahaeminda, Thanachok Taticharoen) conducted 12 interviews involving approximately 20 individuals working on IRC issues. We also conducted interviews with nine different organisations, including seven government ministries or regulators and two nongovernment organisations. These included the Bank of Thailand, Civil Aviation Authority of Thailand, Department of Trade Negotiations within the Ministry of Commerce, Marine Department, National Broadcasting and Telecommunications Commission, Office of the Council of State, Thai Customs Department, Thailand Development and Research Institute, and Tilleke and Gibbins, a private law firm.

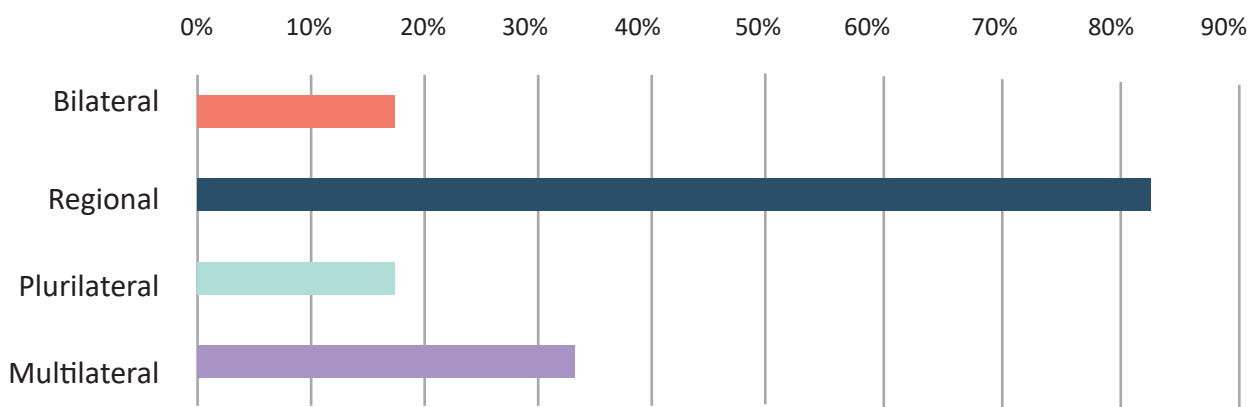
During the interview, the research team asked interviewees about their experiences with IRC. The interviews followed the format outlined in the ERIA survey, which consisted of questioning along these themes: the pervasiveness of types of IRC; the persuasiveness of and Thailand’s willingness to engage in IRC; imperatives and blockers of IRC; and the governance of IRC in Thailand. After the interview, the research team completed the survey on behalf of the interviewees, and gave the interviewees the opportunity to edit the survey responses.

This chapter summarises the results of the interviews and survey, following ERIA’s framework. It uses insights gathered from the interviews and illustrates these with case studies. Given the scope of the research, this is not intended as a comprehensive review of Thailand’s IRC, but is meant to shed light on the landscape and drivers behind IRC.

2. Pervasiveness of International Regulatory Cooperation

The survey results show that most forms of IRC are used widely in Thailand. Thailand is involved in bilateral, regional, plurilateral, and multilateral IRC initiatives. Most interviewees responded that Thailand is mainly involved in regional IRC initiatives (Figure 4.1). However, this reflects interviewees' impressions of Thailand's involvement in IRC initiatives, and does not reflect the actual proportion of regional IRC initiatives compared with other types. The percentage indicates the number of interviewees who selected that response, divided by the total number of interviewees. As some interviewees identified more than one response, the total responses sum to more than 100%.

Figure 4.1: Interviewee Impressions of Thailand's Main International Regulatory Cooperation Initiatives

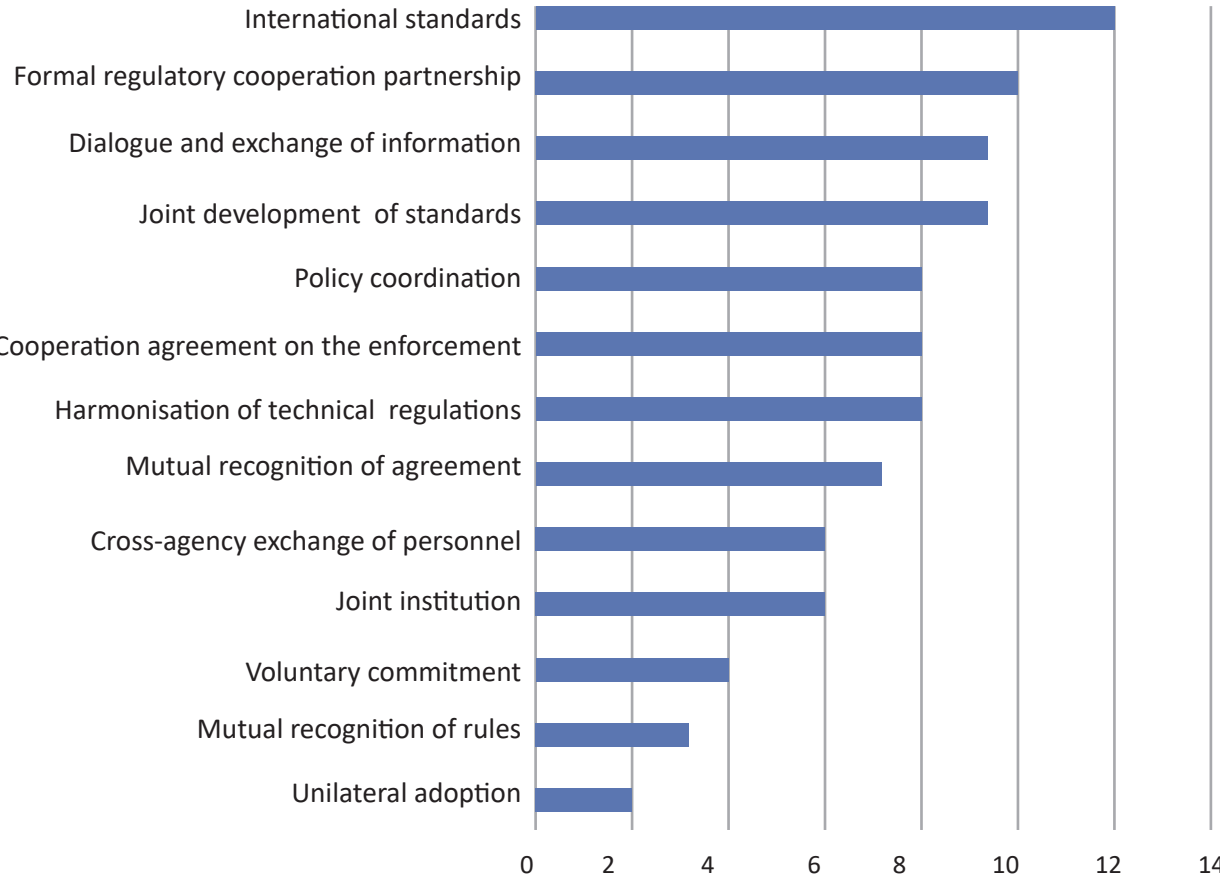


Source: Economic Research Institute for ASEAN and East Asia International Regulatory Cooperation Survey, Question 1f

The survey asked interviewees how frequently different forms of IRC are used in Thailand: 'not at all', 'one or two', 'few', or 'many'. All forms of IRC specified in the survey are used in Thailand. Figure 4.2 shows that the most frequently used IRCs appear to be 'international standards', 'formal regulatory cooperation partnerships', and 'dialogues and exchange of information'. This is consistent with government officials' approach to IRC as revealed through the interviews, discussions of which are elaborated on later in the chapter.

The interviewees revealed that they are concerned with the substance of IRC under consideration and its potential impact on Thailand, rather than the specific form of IRC.

Figure 4.2: Number of Interviewees Who Selected “Many” of Different Forms of International Regulatory Cooperation in Thailand



Source: Economic Research Institute for ASEAN and East Asia International Regulatory Cooperation Survey, Questions 26–39

3. Persuasiveness of and Willingness to Develop International Regulatory Cooperation (Sections 4 and 5 of Questionnaire)

Government officials discussed the persuasiveness of an IRC initiative as determining their willingness to engage. That is, if the case for IRC was persuasive and overall beneficial for Thailand, then they would be willing to engage. Interviewees did not see a need to distinguish between the persuasiveness of a case for IRC and Thailand’s willingness to engage in it.

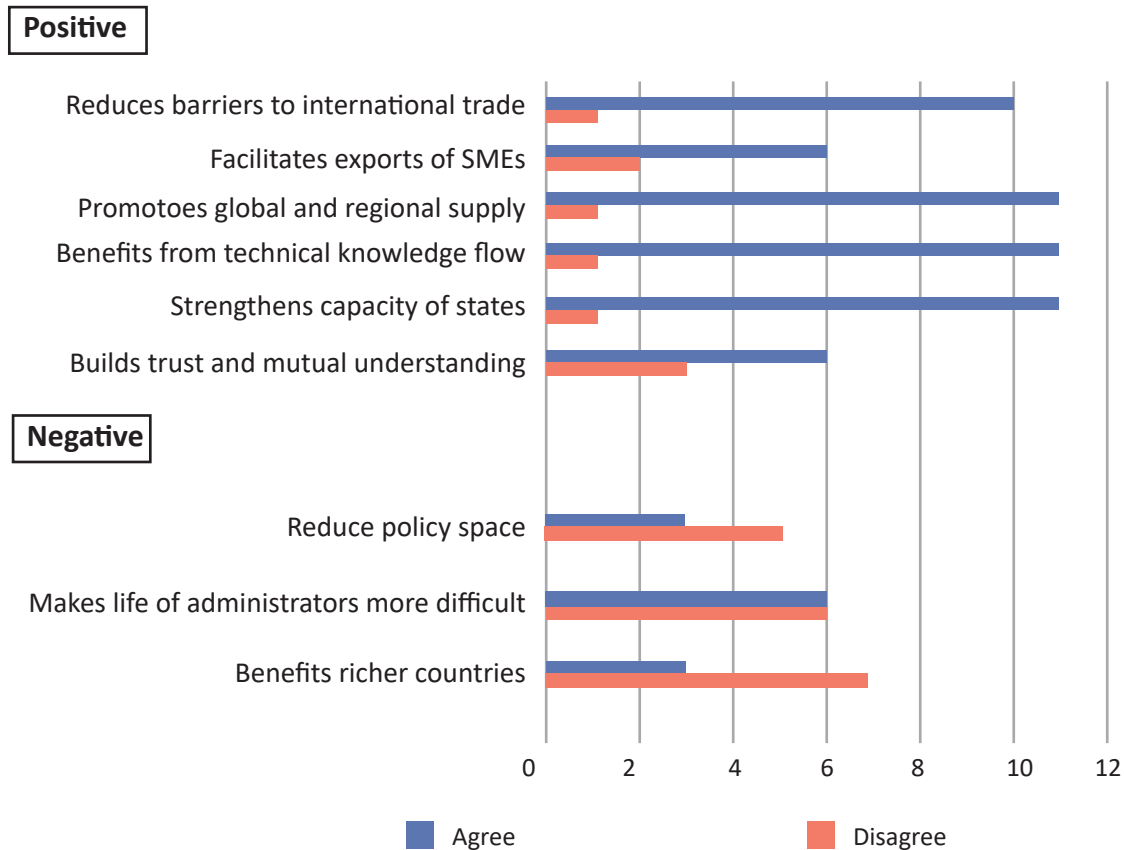
Three themes emerged consistently. First, government officials generally had a positive opinion of IRC and the case for engaging. In general, officials were ‘willing’ to engage in IRC, as long as the case was ‘persuasive’. Second, Thai officials are flexible at adapting their roles to the forum in which they are engaged (the ‘swaying bamboo’ approach). Third, Thai officials often strategically ‘tailgate’ their engagement, using one international forum to achieve a particular objective in another forum. The latter two themes interacted with the ‘persuasiveness of IRC’ and ‘willingness to develop IRC’; that is, the strategies that officials adopted determined what they could get out of an IRC negotiation. In turn, this raised the IRC’s ‘persuasiveness’ and consequently officials’ willingness to engage.

As with the ‘pervasiveness’ of IRC, officials’ willingness to engage in IRC depended on the substance of the issue at hand, rather than its form. As such, this section discusses general themes arising from the interviews rather than the particular forms of IRC.

3.1. Overall, Government Officials Had a Positive View of International Regulatory Cooperation and the Case for Engaging

Overall, interviewees expressed a constructive view of IRC, agreeing with the survey’s positive statements on IRC. Government officials see IRC as an opportunity to bring Thailand in line with global standards, to open up Thailand’s economy to trade, and to promote knowledge exchange between countries. Officials were savvy enough to be aware of the need to work around another country’s agenda to ensure a win-win outcome for Thailand. As such, government officials were generally ‘willing’ to engage in IRC.

Figure 4.3: General Views on International Regulatory Cooperation



SMEs = small and medium-sized enterprises.

Source: Economic Research Institute for ASEAN and East Asia International Regulatory Cooperation Survey, Questions 11–26.

Notes: ‘Agree’ includes ‘strongly agree’ and ‘agree’ responses; ‘disagree’ includes ‘strongly disagree’ and ‘disagree’ responses.

Government officials welcomed the opportunity to bring Thailand in line with global standards, particularly where Thailand is a technology-adopter, and following global standards is a requirement for market access. This was true in sectors such as aviation, telecommunications, and marine safety. Officials recognised the benefits of knowledge transfer from IRC engagement in these sectors, as Thailand is often able to gain knowledge from relatively more advanced countries through such engagement. Occasionally, interviewees expressed cynicism about the training opportunities offered by advanced economies, that such training is only offered based on the national interest of advanced economies.

Interviewees generally acknowledged that Thailand benefitted from IRC by reducing barriers to trade and integrating the economy with global supply chains. Interviewees also recognised that IRC tends to benefit exporters more than domestically focused businesses, and large businesses more than small businesses. The negative effects of globalisation were not widely

expressed. Where negativity was raised, it was suggested that advanced economies gain more than developing countries from IRC negotiations, due to their greater knowledge, resources, and skills.

Overall, interviewees were positive about the opportunities arising from IRC engagement. The gains from accessing global markets and opening up to trade were usually key factors that determined the 'persuasiveness' of an IRC initiative, and Thailand's 'willingness' to engage. Officials themselves often gained from knowledge exchange during IRC engagement. In broad terms, government officials had a positive impression of IRC, meaning that they were open to the 'persuasiveness' of the initiatives and willing to engage.

3.2. Thai Officials Are Adept at Playing Different Roles in Different Forums (the 'Swaying Bamboo' Approach)

The most capable Thai officials demonstrate a high degree of flexibility and ability to engage in IRC across a range of forums. Such highly capable officials are able to discuss and negotiate on vastly contrasting issues in different contexts. These officials use their flexibility to find 'win-win' solutions. Their willingness to engage in this manner helps to raise the 'persuasiveness' of an IRC initiative beyond its original potential.

Thailand is a middle-income country striving to become an advanced economy. It shares borders with three 'least developed countries' – Myanmar, the Lao People's Democratic Republic, and Cambodia.¹ Thus, Thai regulators need to operate at varying levels across many sectors in different international forums. Sometimes, Thai regulators handle IRC negotiations with more advanced economies. At other times, Thai officials partner with neighbouring countries in a Thailand+1 agreement to attract investment from a more developed economy. Effective regulators understand the variation of development and infrastructure across Thailand's main partners and use this to achieve IRC outcomes.

For instance, different levels of development in regulations on currency settlement have hindered the progress of cross-border trade settlement systems across the Association of Southeast Asian Nations (ASEAN). In 2017, Thailand, Malaysia, and Indonesia completed the negotiation of a series of bilateral agreements on local currency trade settlement frameworks, enabling the use of local currencies and reducing reliance on major currencies, such as the United States dollar, for cross-border transactions amongst the three countries (Ibrahim, 2018). These negotiations originated in the form of an ASEAN-wide framework, but found traction on a smaller scale, and so shifted towards more flexible bilateral solutions. This demonstrates Thailand's willingness and ability to engage in IRC, using its flexibility to find a 'win-win' solution to negotiations.

In general, officials were comfortable adopting this flexible, 'swaying bamboo' approach to IRC. Given Thailand's position, this flexibility is necessary for negotiating successful IRC outcomes. Thailand's historical narrative, that of successfully courting many allies while maintaining sovereignty, originally gave rise to this international relations approach. Because of its past success, its place in the national narrative, and present-day usefulness, the 'swaying bamboo' approach endures today.

¹ According to the United Nations' list of least developed countries as of March 2018.

3.3. Thai Officials Often ‘Tailgate’, Using Multiple International Regulatory Forums to Achieve One Particular Outcome

Thai officials often adopt a ‘tailgating’ strategy, using multiple forums in conjunction with one another to achieve an overall outcome. This reflects a practical approach to engagement, rather than motivation based on ideological or cultural attachments. International forums were chosen based on their usefulness in achieving the desired objective. This ‘tailgating’ strategy demonstrates a high level of ‘willingness’ to engage in forums. Given that IRC negotiations are dynamic, using this strategy generally increases the ‘persuasiveness’ case of IRC, which in turn increases the ‘willingness’ to engage.

One such opportunity to use a ‘tailgating’ strategy in multiple forums exists in the financial sector, as seen in the Bank of Thailand’s (BOT) participation in the Executives’ Meeting of Asia-Pacific Central Banks (EMEAP) and the Basel Committee on Banking Supervision (BCBS) at the Bank for International Settlements. The EMEAP is a cooperative forum made up of 11 central banks, including the BOT, which discusses issues regarding economic and financial developments in East Asia and the Pacific region. Together, EMEAP economies make up 28% of the global economy, while Thailand’s economy by itself makes up less than 1%.² On the other hand, the BCBS is a global standard-setting body, whose rules cover 95% of the global economy (Bank for International Settlements, 2005). At the BCBS, rules are often made by the 10 founding members and then cascaded to other members, including Thailand.

The BOT uses the EMEAP forum to discuss the development of new global regulatory standards. As the EMEAP members make up more than one-quarter of the global economy, it is effective for Thailand to find common ground at this forum, finding issues of mutual concern amongst the members. Members then use the common ground found at the EMEAP to speak with a group voice at the global BCBS forum, and thereby have more impact than speaking as an individual country. Finding areas of common ground at the EMEAP and then letting the EMEAP take these forward at the BCBS is one way that Thailand uses the ‘tailgating’ strategy to influence regulatory standards at a global level.

The BOT in particular is well experienced in using multiple forums to achieve IRC outcomes. Box 4.1 demonstrates the BOT’s use of ASEAN as a forum to discuss capital flow measures as a policy tool. The BOT’s part in this debate and eventual ASEAN-level agreement were factors that enabled a shift in the global-level discussion of this issue at the International Monetary Fund.

Overall, this ‘tailgating’ strategy demonstrates a high degree of willingness to engage in international forums. Thai officials are willing to adopt approaches that help to increase the ‘persuasiveness’ case of an IRC initiative, which further positively impacts officials’ ‘willingness’ to engage.

² World Bank, GDP (current US\$). <https://data.worldbank.org/indicator/NY.GDP.MKTP.CD>; Thailand Development Research Institute calculation (accessed 17 September 2018).

Box 4.1: Thailand Plays its Role—The Global Debate on Capital Flow Management

Capital flow surges, the buildup of large amounts of cross-border liabilities, and ‘sudden stops’ in international capital flows have long been an issue for many emerging markets, sometimes ending in economic and financial crises. Managing these episodes requires international regulatory cooperation to mitigate the vulnerabilities of the country involved and ensure that systemic risk is not pushed elsewhere. However, the framework governing international capital movements is fragmented. The International Monetary Fund (IMF) gives its members the right to ‘exercise such controls as are necessary to regulate international capital movements’. However, members are generally obliged to refrain from imposing restrictions on the making of payments and transfers for current international transactions unless they are authorised by the IMF. Indeed, in the decades prior to the global financial crisis, the IMF promoted financial liberalisation policies.

Meanwhile, countries can be hamstrung by investment agreements, often included in free trade agreements (FTAs), which have provisions for the free transfer of capital flows and do not allow for the introduction of capital outflow restrictions in the event of a balance of payments crisis. In addition, investor state dispute settlement provisions in these agreements mean that private companies can sue governments if a government uses capital flow management measures. Thus, during surges of capital inflows or outflows, governments are hamstrung: on one hand they may need to act to reduce real risks associated with capital flow surges; but on the other they run the risk of being sued under investor state dispute settlement provisions if they use capital flow management measures as a policy tool.

The Bank of Thailand has been on the front foot in negotiations, pushing for greater policy space during such episodes. Throughout the 2000s, Thailand negotiated derogation texts in its FTAs with Australia, Japan, New Zealand, and the Association of Southeast Asian Nations (ASEAN). The ASEAN derogation text was agreed as part of the ASEAN Comprehensive Investment Agreement in 2009 and implemented in 2012. Similar to the bilateral FTAs, the ASEAN derogation text allows ASEAN member states to set up temporary controls in exceptional circumstances, to protect themselves against serious economic or financial disturbance during times of strong capital outflows or inflows. Thailand’s push enabled regional agreement on the use of capital flow management measures to address balance of payments issues.

At a global level, acknowledging anything other than the merits of financial liberalisation before the global financial crisis was intractable, and other views were not widely discussed or accepted among policy makers. However, large swings in international capital flows evidently played a role in asset price bubbles and aspects of the global financial crisis itself. As such, a broader group of economies were more supportive of capital flow management measures as a policy tool. Following the financial crisis, the IMF shifted its view, acknowledging that surges in capital inflows or outflows can create macroeconomic and financial stability risk, and that there can be a role for ‘capital flow management measures’ in macroeconomic and financial stability policy.^b The ASEAN Comprehensive Investment Agreement was accepted as part of this. In 2012, the IMF fully updated its institutional view on capital flows to reflect these changes, effectively giving greater policy space for countries to implement temporary controls on capital in the event of surges in capital inflows or outflows.

a International Monetary Fund (2010), The Fund’s Role Regarding Cross-Border Capital Flows. Washington, DC:

International Monetary Fund. <https://www.imf.org/external/np/pp/eng/2010/111510.pdf>. (Accessed 17 September 2018).

b International Monetary Fund (2012), The Liberalization and Management of Capital Flows: An Institutional View (Washington, DC: International Monetary Fund. <http://www.imf.org/external/np/pp/eng/2012/111412.pdf>. (Accessed 17 September 2018).

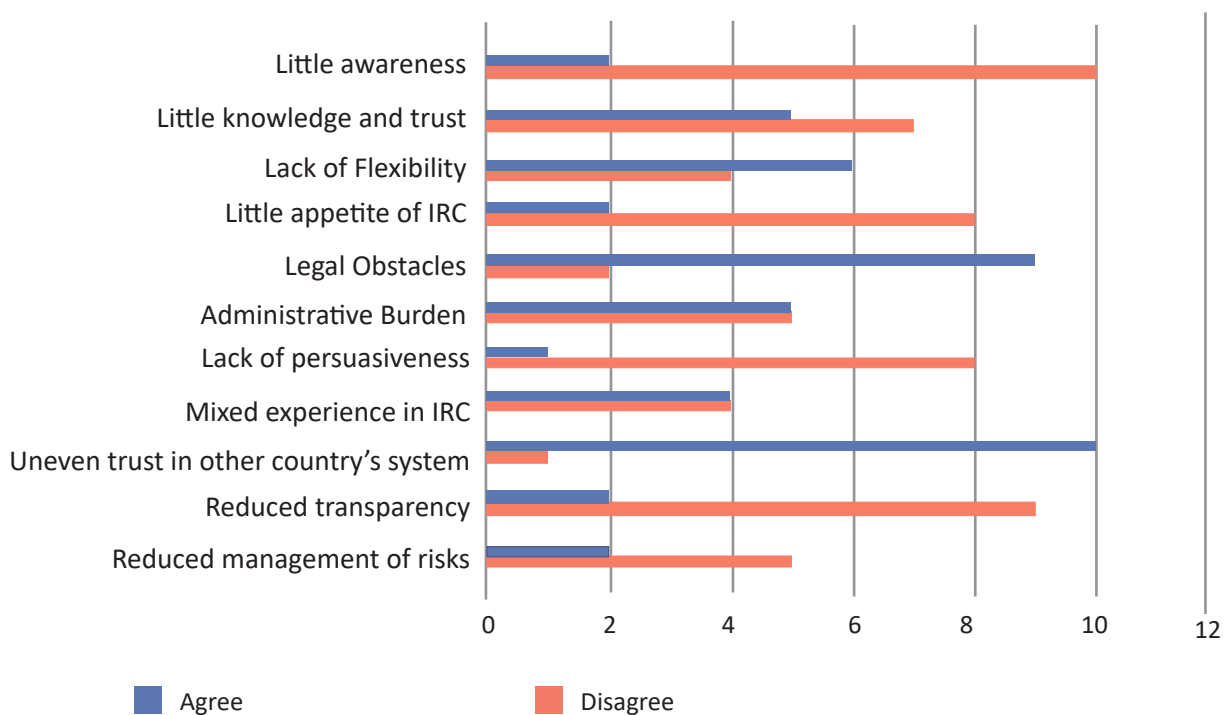
Source: Author.

4. Imperatives and Blockers of International Regulatory Cooperation (Questionnaire Section 2)

Interviewees cited a range of issues as ‘imperatives’ and ‘blockers’ of IRC. Three insights consistently emerged from the interviews: (i) relative state power is a determinant of international regulatory negotiations; (ii) a complex weave of factors influences the outcomes of IRC (successful IRC outcomes depend on a case-by-case basis, based on the exact context at the time of negotiation and adoption); and (iii) organisations are limited in their capable resources in a fast-changing, increasingly multipolar world. These three key issues worked together as a complex mix of ‘imperatives’ and ‘blockers’ of IRC.

The survey results in Figure 4.4 below show little consistent agreement on the factors that are ‘blockers’ of IRCs. This aligns with the qualitative interview conversations, which agreed that IRC outcomes depend on a case-by-case basis. Most respondents agreed that an ‘uneven trust in other country’s system’ and ‘legal obstacles’ were ‘blockers’ of IRC. The former is consistent with the qualitative interview results that relative state power is a key issue in IRC, while the latter is consistent with interview conversations that discussed difficulties in transposing regulation.

Figure 4.4: Blockers of International Regulatory Cooperation



IRC = international regulatory cooperation.

Notes: ‘Agree’ includes ‘strongly agree’ and ‘agree’ responses; ‘disagree’ includes ‘strongly disagree’ and ‘disagree’ responses.

Source: Economic Research Institute for ASEAN and East Asia International Regulatory Cooperation Survey, Questions 65–75.

4.1. Relative State Power Is a Key Determinant of the Outcome of International Regulatory Negotiations

Regulation is the act of a government imposing rules and defining the institutions of a market. In textbook economics, government regulation is used to solve coordination failures or agency problems for the benefit of society as a whole. Governments usually justify to their citizens the imposition of regulations by asserting that it is for the benefit of society, although there are instances of regulatory capture. IRC at the country-to-country level of engagement often seeks to impose rules and institutions on market participants in another country. Thai officials involved in IRC recognise this country-to-country engagement as a reflection of the relationship between the countries involved, their relative power, and the particular agenda that they bring to the negotiations. As such, relative state power is usually perceived as an ‘imperative’ of IRC.

As a middle-income country in a fast-growing region, Thailand’s relative negotiating power is fluid. Thailand has more influence in negotiations that include its less developed neighbours, and less influence in negotiations with advanced countries. This means that Thailand’s relative status depends on the specific situation at hand, and sometimes varies within the context of a single negotiation. The importance of relative state power and Thailand’s fluid negotiating power is highlighted by discussions surrounding the 2000 Lancang-Mekong Lancang–Mekong Commercial Navigation Agreement described in Box 4.2.

Recognising that an imbalance of power exists at the outset of negotiations, interviewees identified the need to see other countries’ positions as a reflection of national interests, rather than altruistic behaviour. More developed, powerful countries generally have more influence over the substance and form of negotiations. The agenda of these countries acts as a strong ‘imperative’ for IRC. Some interviewees expressed scepticism about IRC altogether, observing that it always works in the favour of more developed, larger economies, as less developed countries tend to have less information, expertise, or negotiation skills, creating risks for them during the negotiations. However, it was generally acknowledged that it is up to countries to find win-win solutions in negotiations. Ultimately, Thailand engages in IRC in many forums because it is of overall benefit to the country.

4.2. A Complex Web of Factors Influences the Adoption of Any Particular Piece of Regulation

At the domestic level, Thailand adopts regulation for a variety of reasons, depending on the exact social, economic, or political context. Usually, when regulation is negotiated or adopted, it is of benefit in at least one, if not all, of these dimensions. At least, it usually does no great harm by any one measure. Thailand’s institutions mostly adopt or negotiate regulations based on the context at the time, according to what can be practically achieved. The negotiation and adoption of international regulation reflects the complexities of domestic affairs, as well as the state of relations between countries. Thus, many factors work together to act as ‘imperatives’ and ‘blockers’ for any particular IRC.

This complexity and Thailand’s practical approach to regulation are demonstrated by examining the contextual factors in Thailand’s U-turns in trade negotiations with the United States, the Trans-Pacific Partnership (TPP), and Comprehensive and Progressive Agreement for TPP (CPTPP), over the last 15 years (see Box 4.3). In this case, the governing political regime is one factor which changed significantly during the evolution of the IRC.

Box 4.2: Relative State Power as a Factor in the Lancang-Mekong Commercial Navigation Agreement, 2000

Initiated by China, the Lancang-Mekong Commercial Navigation Agreement was instituted to increase trade and promote commercial navigation between the 'Upper Mekong' river countries: China, the Lao People's Democratic Republic (PDR), Myanmar, and Thailand. The negotiations were overwhelmingly driven by China, due to its relative power compared to the other countries in the agreement (in 2000, China's economy was nearly 10 times that of Thailand, and more than 100 times that of Myanmar and the Lao PDR).

The Government of China pushed forward negotiations at a fast pace. For the most part, the Lao PDR and Myanmar were willing to accede to China's demands, and Thailand found itself in a difficult position of negotiating against a bloc of three countries. In the end, the four countries signed the agreement behind closed doors in April 2000. Among other issues, the four countries agreed to the 'improvement of the navigability of the river', the details of which would later prove to be controversial.

Soon afterwards, the four countries set up the Lancang-Mekong Navigation Channel Improvement Project, as part of the 'improvement of the navigability of the river'. China funded the project. The objective was to enable large boats to pass freely along the Upper Mekong River. A critical and contentious part of this improvement was the dynamiting of 11 rapids and 10 reefs.

After a Thai cabinet decision approved the project in January 2002, the details of the project came into the public eye. In particular, the planned dynamiting of the Khon Pi Luang islets caused controversy due to the potential impact on the environment and border demarcation between Thailand and the Lao PDR, and Thai civil society and a number of politicians actively opposed the planned dynamiting.^b

Following this, the Government of Thailand and Thai civil society exerted a small but critical influence in the negotiations on the Lancang-Mekong Navigation Channel Improvement Plans. The Thai government persuaded China to agree to a local, non-Chinese environmental impact assessment, gaining support from Myanmar and the Lao PDR. Thailand held up the project further by demanding a review of the impact on the Thai-Lao PDR border demarcation. Thai civil society has been active in educating the wider public about the adverse impact on the river's ecosystem and livelihood of locals. As of 2018, Thailand still resisted the final implementation of the project.

Overall, the whole episode demonstrates the impact of relative power on these negotiations. While China's economic size and influence led these countries to rush negotiations and sign an agreement, this ultimately led to a border dispute between Thailand and the Lao PDR, and had potential adverse effects on the environment and livelihoods of those living along this part of the river. That one country could have an impact on a sovereign issue outside its own borders is a clear signal of its relative power and influence on IRC.

IRC = international regulatory cooperation, Lao PDR = Lao People's Democratic Republic.

a World Bank, 'GDP (current US\$)', Thailand Development Research Institute calculation.

b Pas-ong, S. (2005), 'Case Study: Lancang-Mekong Navigation Channel Improvement Project', in Thailand's State of Environmental Governance Report 2005 (2nd Assessment). Nonthaburi: Thailand Environment Institute, pp.191–206, <http://www.tei.or.th/tai/tai1-content-eng.html> (accessed 17 September 2018).

Source: Living River Siam Association, 'Navigation Channel Improvement Project on Lancang-Mekong River'. http://www.livingriversiam.org/4river-tran/4mk/_sub-eng-navigation.html (accessed 17 September 2018).

In general, proposed regulation usually affects a number of stakeholders across the country. During the negotiation and adoption of regulation, the complex web of these stakeholders and the context in which they operate interact, affecting the eventual outcome of the regulation. The exact push and pull of these factors and their context will change over time. Therefore, each IRC initiative is specific to its circumstances, and the reasons behind the negotiation and adoption of any particular regulation must be examined within the frame of its own context. This makes it difficult to draw general conclusions about factors which act as 'imperatives' or 'blockers' of IRC in Thailand.

Box 4.3: The Context of Thailand's U-Turns—United States Free Trade Agreement, Trans-Pacific Partnership, and Comprehensive and Progressive Agreement for the Trans-Pacific Partnership

Discussions on a bilateral FTA between Thailand and the US started in 2003. However, civil society groups protested the draft FTA provisions on intellectual property, as these would raise the local price of medicines. These protests held up discussions, and in 2006 the Government of Thailand broke off negotiations to focus on a domestic political crisis.^a

In 2008, the prospect of facing these same civil society protests prevented Thailand from entering TPP negotiations, as the intellectual property provisions in the TPP were similar to the US FTA proposals. Thus, despite the significant economic potential of entering into an FTA with the US, and the even greater potential of joining a broader group of countries in the TPP, Thailand's position was held back by protests.

Nearly a decade later in 2015, the Thai government reversed Thailand's position, announcing its intention to join the TPP. In 2018, the same government announced its intention to join the CPTPP (the modified version of the TPP following US withdrawal).^c The government, backed by the private sector, perceived that it had missed an opportunity by not joining the TPP discussions earlier. Meanwhile, the CPTPP had been modified to reduce the intellectual property provisions in the TPP, which it was hoped would appease the civil society groups that had protested against the US FTA proposals.

The political backdrop to these episodes provides useful context for examining the Thai government's changed position. When the US-Thailand FTA and TPP agreement were being negotiated, Thailand's government was democratically elected and thus sensitive to civil society protests and their popularity. These protests held the government back from progressing with negotiations. By contrast, Thailand's recent announcements of its decisions to join the TPP and CPTPP were made by a military government, which has restricted all protests since being in power. Thus, it is plausible that these decisions were made possible by the government's clampdown on protests and silencing of opposition to its positions, rather than changes made to the intellectual property provisions in the CPTPP.

Thailand's economic backdrop and position relative to its ASEAN neighbours provides another useful framing context for examining the government's changes in position. From 2000 to 2007, Thailand's economic growth averaged 5.4%, comfortably between the growth rates of Malaysia, Singapore, and Viet Nam, other ASEAN countries that had joined the TPP. However, from 2010 to 2014, Thailand's average annual growth rate almost halved to 2.9%, while Malaysia, Singapore, and Viet Nam maintained similar rates of GDP growth.^c In particular, Thailand appeared to be losing ground to Viet Nam. From 2000 to 2014, Thailand's GDP per capita fell steadily year on year, from five times to three times that of Viet Nam.^d Thailand's rejection of the US FTA and TPP proposals in 2006 and 2008 had been made on the back of strong economic growth performance, but by the time of the country's U-turns in 2015 and 2018, the economy was much weaker and losing its strength relative to its ASEAN neighbours. Thus, the reversal in Thailand's TPP and CPTPP positions could have been a reaction to the weakness in the country's economy, and a perceived need to boost international trade and investment via international agreements.

ASEAN = Association of Southeast Asian Nations, CPTPP = Comprehensive and Progressive Agreement for TPP, FTA = free trade agreement, GDP = gross domestic product, TPP = Trans-Pacific Partnership, US = United States (accessed 17 September 2018).

a Silp, S. (2006), 'Thai-US Free Trade Agreement Talks Spark Protests', *The Irrawaddy*, January 9. http://www2.irrawaddy.com/article.php?art_id=5344 (accessed); Meelarp, R.D. (2016), 'Sideline Democracy?: Explaining the United States' Response to Thailand's 2006 and 2014 Coups d'état', *Calhoun*, 29. <https://calhoun.nps.edu/handle/10945/49345> (accessed 17 September 2018).

b Arunmas, P. (2018), 'Somkid: Thailand Eyes Becoming CPTPP Member', *Bangkok Post*, March 30. <https://www.bangkokpost.com/business/news/1437386/somkid-thailand-eyes-becoming-cptpp-member> (accessed 17 September 2018).

c World Bank, GDP (constant 2010 US\$). <https://data.worldbank.org/indicator/NY.GDP.MKTP.KD> (accessed 17 September 2018), Thailand Development Research Institute calculation.

d World Bank, GDP per Capita (current US\$). <https://data.worldbank.org/indicator/NY.GDP.PCAP.CD> (accessed 17 September 2018), Thailand Development Research Institute calculation.

Source: Author.

4.3. Capable Resources Are Limited in a Fast-Changing, Complex, and Increasingly Multipolar World

On a practical level, Thai government agencies have resources to engage in IRC where necessary. However, these agencies are constrained by a limited supply of resources in terms of time and capable staff. Three issues are critical: (i) the pace of change in the industry; (ii) capabilities of staff in terms of language and specialist qualifications; and (iii) duplication of efforts amongst international forums, which requires staff to attend multiple forums of similar substance, particularly in an increasingly multipolar world. These factors sometimes exacerbate one another, leading to a shortage of capable staff able to engage and thus acting as a 'blocker' to progress in IRC.

Firstly, the rate of change outpaced regulators' expectations in many industries, making it difficult to keep abreast of international regulatory standards. For instance, in aviation, flight departures from Thailand grew at an average rate of more than 12 percent% each year from 2006 to 2016, compared with a global average of just 3.33 percent% (Frost and Sullivan, 2018). With the number of flights doubling roughly every 6 years, regulators were unable to keep up with the pace of growth. This partly contributed to the International Civil Aviation Organization (ICAO) decision to give Thailand a 'red flag' in 2015, signalling that Thailand was not meeting the ICAO's aviation safety inspection standards (Mahitthirook, 2015).

Secondly, Thai agencies do not always have enough capable staff to enforce or negotiate international regulation. Fluency in a second language is a common first hurdle to engagement in international regulation. While English is the most common second language amongst government officials, their degree of operational fluency and ability to negotiate in an international forum varies. Occasionally, officials are fluent in a different second language, such as French or Chinese, and this determines the international forum in which they engage. For instance, fluency in French rather than English encourages an official to engage with and gain exposure in a multilingual forum such as the Organisation for Economic Co-operation and Development (OECD) rather than a predominantly English-speaking forum such as ASEAN. In other areas, the enforcement of regulation requires specialist qualifications. Employing regulators with specialist qualifications takes time in terms of recruitment and training. This can constrain effective regulation, particularly in an industry undergoing rapid change.

Thirdly, the organisations interviewed mentioned the duplication of efforts amongst international forums as creating a constraint on resources. This was more often the case in industries where there was scope for negotiation according to domestic context or choice, rather than where adherence to an international standard was mandatory. For instance, the OCS described the ASEAN Good Regulatory Practice and OECD Best Practice Principles on the Governance of Regulators forums as being overly similar in their discussions and recommendations. In this particular case, the OCS adopted many of the OECD's best practice principles, and saw the ASEAN equivalent as a duplication of those efforts, but was obliged to send staff to attend both forums.

More generally, the increasingly multipolar nature of the world is resulting in the proliferation of IRC. This reflects the international relations environment in which Thailand operates. As Asia continues to grow rapidly, multiple states are competing for economic and strategic success in the region. In the past, IRC in Thailand usually involved cooperation with advanced economies. Today, IRC will just as often involve a mix of countries within Asia. The configuration of countries is often not bound to any established or preconceived patterns of cooperation, but dependent on circumstances as countries continue to develop and jostle for market access. This environment encourages the proliferation of IRC, in turn putting pressure on Thailand's regulators to keep up with these developments.

5. The Governance of International Regulatory Cooperation in Thailand (Questionnaire Section 6)

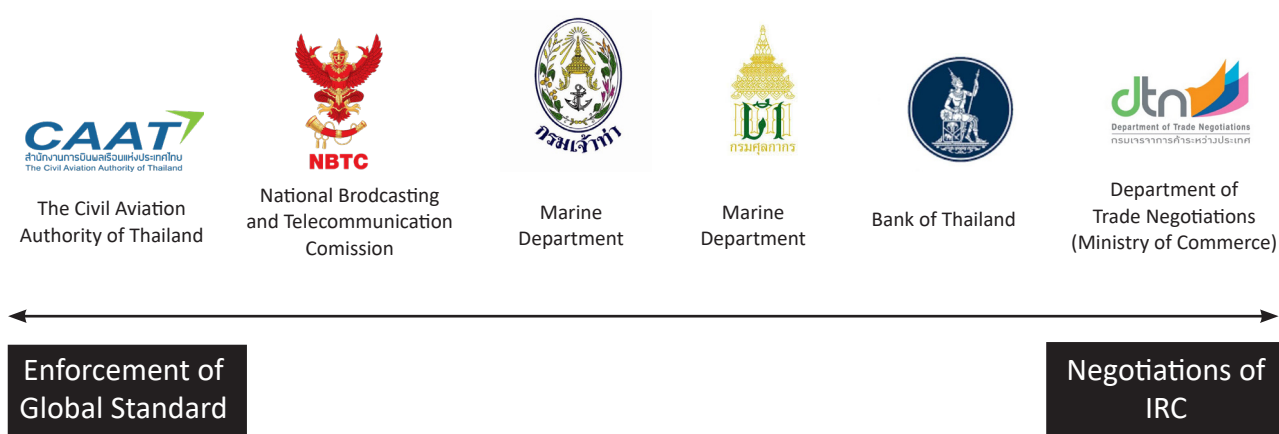
This section describes aspects of Thailand’s IRC governance by assessing the organisations interviewed, the type of IRC in which they are engaged, and the responsibilities of the OCS; and by illustrating the IRC governance landscape of the Civil Aviation Authority of Thailand (CAAT).

5.1. A Variety of Organisations Are Involved in Many International Regulatory Cooperation Cases, with the Office of the Council of State Involved in Every Legally Binding Agreement

Thailand’s modern regulatory institutions reflect its history of international relations, in particular its approach of courting many different foreign powers. For instance, the government’s highest legal advisory agency, the OCS, was modelled on the French Conseil d’Etat (OCS), the Bank of Thailand was set up after the Thai government sought advice from the British and French banking industries (Bank of England Archives), and the Marine Department was originally headed by a British official (Marine Department, 2014).

Today, responsibilities for international regulation in Thailand are held across a number of different governmental ministries and regulatory agencies. Most of the organisations interviewed are responsible for both enforcing standards and negotiating international regulation in a number of international forums. Some organisations are more involved with enforcing international standards, and some are more involved with negotiating international regulation. In general, regulators in well-established, technology-led sectors are primarily responsible for enforcing international standards. On the other hand, regulators in sectors where domestic contexts require accommodation were more involved in negotiating international regulation. For instance, the CAAT is mostly involved in enforcing global standards led by aviation safety and security issues. Meanwhile, the Department of Trade Negotiations within the Ministry of Commerce is mainly involved in negotiating Thailand’s trade and investment agreements with other countries, which is necessarily done on a voluntary, case-by-case approach. Figure 4.5 below illustrates, in relative terms, the extent to which the organisations interviewed are involved in enforcing international standards compared with negotiating international regulation.

Figure 4.5: Relative Engagement in the Enforcement of Regulation Compared to the Negotiation of International Regulatory Cooperation



IRC = international regulatory cooperation.

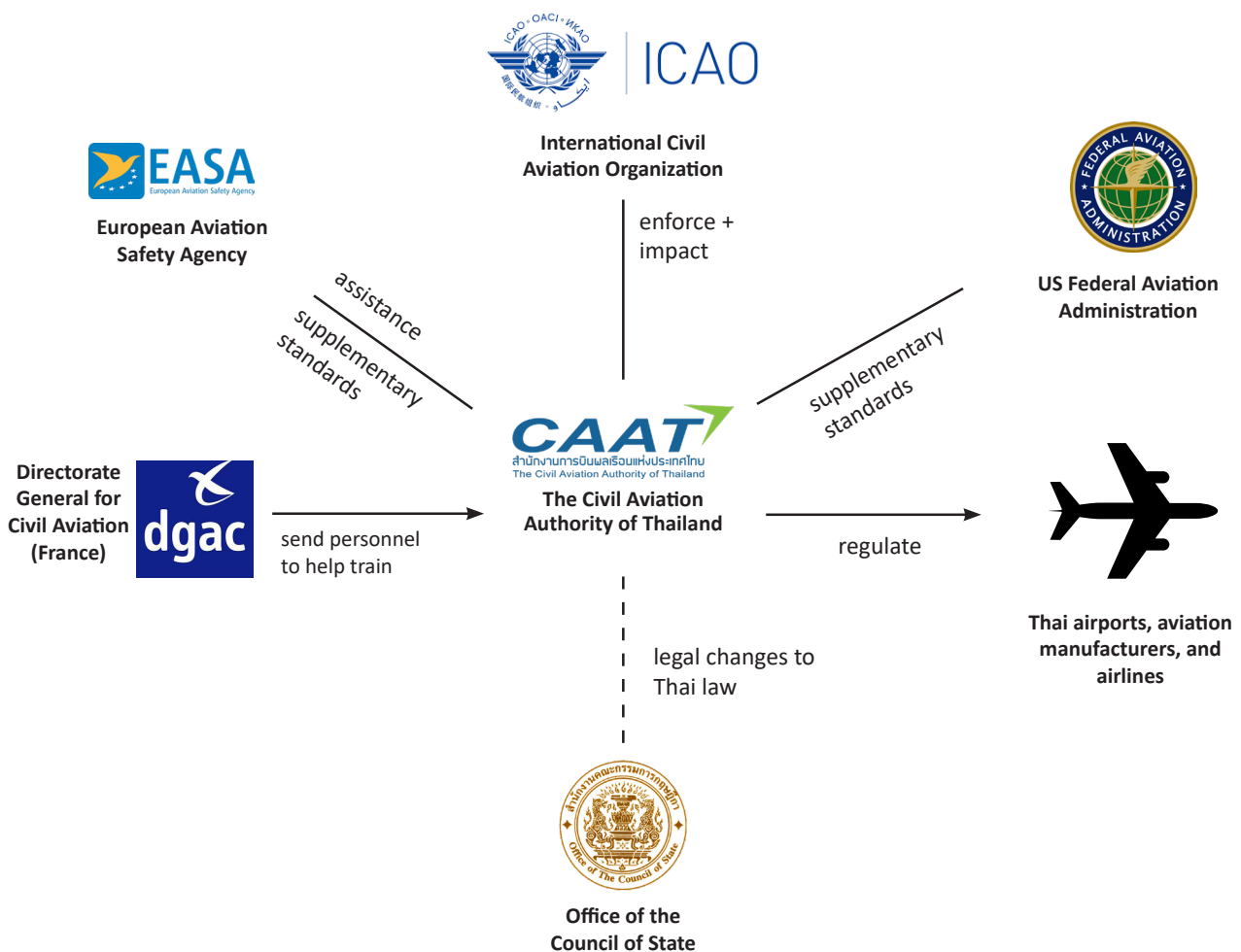
Note: This diagram is intended to illustrate the extent to which the organisations interviewed are involved in enforcement of global standards compared with negotiations of international regulation.

Source: Author.

The OCS oversees one aspect of the IRC process. As a key stakeholder for all organisations involved in regulation that impacts domestic law, the OCS is responsible for reviewing and assessing every piece of draft legislation before it is submitted to Parliament. The OCS is also responsible for translating every piece of legislation and regulation into English and Thai (Ongkittikul and Thongphat, 2016).

The international regulatory landscape of each individual organisation is complex, as it reflects the industry being regulated, the different forums at which Thailand is represented, and the domestic setup of the regulatory organisations. As an example, Figure 4.6 below illustrates the CAAT’s international regulatory relationships in the aviation industry. This is a relatively straightforward set of relationships compared to the other organisations interviewed.

Figure 4.6: Overview of the Civil Aviation Authority of Thailand’s International Regulatory Cooperation Relationships



ICAO = International Civil Aviation Organization, US = United States.
 Note: This diagram is intended to be illustrative, not comprehensive.
 Source: Author.

The ICAO oversees the international aviation standards that all of its 192 member countries, including Thailand, must follow, as well as recommended practices (ICAO), and conducts regular audits of its member countries. However, the CAAT must also ensure that Thai airlines that fly to the US and European Union meets the stricter standards of the US Federal Aviation Authority and the European Union's European Aviation Safety Agency. To help it meet these international standards, the CAAT receives technical experts from France's Directorate General for Civil Aviation and the European Aviation Safety Agency. Meanwhile, on the domestic side, the CAAT has drafted a revised version of the civil aviation law, seeking approval from the OCS to make sure that the transposition of global aviation standards is consistent with Thai law.

6. Concluding Comments

Thailand is deeply involved in a complex array of IRC initiatives. Government officials view IRC positively and are open to the 'persuasiveness' argument for IRC. In general, officials acknowledge IRC as an opportunity for Thailand to open up to trade, integrate with global supply chains, and exchange knowledge. Officials are willing to engage in IRC where there is a case for it.

To understand the context in which Thailand operates, it is important to assess its IRC landscape. Thailand's history, its middle-income status in a fast-growing region, and the political backdrop of its governance are useful frames for understanding its IRC environment. Similarly, these contexts are critical to understanding Thailand's operating environment.

Thailand's past provides officials with a historically successful and practical approach to engaging in IRC forums – the 'swaying bamboo' approach. Officials adapt their roles according to different forums, being flexible to the situation at hand. The historical success of this approach gives credence to its place in the national narrative and its endurance in international negotiations today. Furthermore, Thailand's position in a fast-growing region means that it needs to manage dynamic power balances actively amongst countries jostling for market access. Its middle-income status within the region means that officials need a high degree of flexibility to adapt to different IRC forums with countries at varying degrees of development. Thailand's own politics are dynamic, and its swings between democratic governance and military regimes provide different domestic backdrops for IRC negotiations.

Government officials engage in IRC in a practical manner, by looking at the substance of the IRC, and are willing to engage if there is benefit for Thailand. When engaging in IRC, government officials often employ 'tailgating' strategies. For example, to achieve an objective, officials might 'tailgate' one international forum to accomplish a goal at a different forum. More generally, officials choose alliances based on what is of greatest benefit to Thailand. This reflects a practical, rather than ideological, approach to IRC. In a fast-changing, increasingly multipolar world where resources are limited, these practical and flexible approaches serve Thailand well.

Overall, it is difficult to make generalisations about the 'imperatives' or 'blockers' of IRC. The outcome of any particular IRC depends on a complex web of international, domestic, political, social, and economic factors. Each IRC initiative needs to be examined in isolation to determine its particular 'imperatives' or 'blockers'.

Further study examining the development of IRC along a narrower and more clearly defined scope would be welcomed. The current IRC landscape of any given industry reflects the historical factors that have affected its development. As this chapter discussed, these factors form a complex web that changes over time. Many competing domestic factors impact the outcome of an IRC initiative, as seen in Thailand's positions with respect to the Thai-US FTA, TPP, and CPTPP. In addition, external developments, whether regional, global, or technological, influence IRC outcomes. This was seen in the outcomes of the Lancang-Mekong Lancang-Mekong Commercial Navigation Agreement, the global debate on capital flow management, and developments in the aviation industry.

Thus, future research could focus on the analysis of a single sector to enable more meaningful consideration of the factors affecting IRC outcomes. The sector could be analysed over a period of time and across a number of countries. Concurrent economic, political, social, or technological developments could more effectively be isolated and understood as to whether or not they affect IRC outcomes. Providing consistent analysis of IRC developments within a single sector across several countries might further understanding of what factors are truly exogenous. For instance, global or technological developments might affect the industry worldwide. This approach might yield a more meaningful comparative study. Isolating exogenous factors might enable a clearer understanding of the domestic factors affecting IRC outcomes.

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