

Chapter 6

International Regulatory Cooperation in the Philippines – The Drive for Improved Regulatory Quality and Regulatory Coherence

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CHAPTER 6

International Regulatory Cooperation in the Philippines – The Drive for Improved Regulatory Quality and Regulatory Coherence

Gilberto M. Llanto, Ma. Kristina Ortiz,
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1. Introduction

The Association of Southeast Asian Nations (ASEAN) Economic Community (AEC) has committed itself to an economic integration agenda in the region; that is, it aims to achieve a single market status across the ASEAN Member States (AMS), comprising 10 countries in the Southeast Asia region. In pursuit of a more integrated region, ASEAN has been a regional growth centre, notwithstanding a prolonged global economic slowdown. More recently, the rise in oil prices and the United States (US)–China trade war have brought new challenges to the region. However, growing economic interdependence has been a driver of continuing growth in each of the AMS, even as they continue to be linked to more developed economies outside the region, such as the Organisation for Economic Co-operation and Development (OECD) economies. The Philippines is no exception to this phenomenon as it continues to strengthen ties with its trading partners outside the region while also developing deeper economic relationships within the ASEAN region.

It is clear that the country must take advantage of the economic benefits of membership in the AEC. One important step is to address the heterogeneity of development and differences in regulation amongst AMS. Differences in AMS' regulatory regimes create unnecessary trade costs, generating substantial friction in an otherwise smooth trade and economic relationship. The compliance costs arising from different regulatory regimes alone impose a huge administrative burden on importers, exporters, and even government regulators in the AMS, and constrain the free flow of goods, services, investments, and people.

Given the different levels of development and regulatory capacity across the region it is important to explore various avenues of international regulatory cooperation (IRC). This underscores the importance of IRC as it tries to address inconsistencies in and a lack of coherence amongst regulatory structures across countries. IRC takes many forms ranging from informal (e.g. agreements to share data and information) to formal arrangements (e.g. the adoption of common standards for particular products, such as the ASEAN Cosmetics Directive). The OECD (2013) examined the shift in the nature of IRC from 'complete harmonisation of regulation to more flexible options such as mutual recognition agreements', and presented evidence of the increased internationalisation of regulation with multiple actors through a range of informal and formal mechanisms.

The Philippines is a middle-income, open economy with a growing trade sector, led by trade in services (e.g. business process outsourcing and management), substantial remittances from overseas Filipino workers, and a rising manufacturing sector that has started to respond to past and current economic reforms. It stands to benefit from a rise in foreign direct investments and reduced barriers to trade in goods and services through various forms of IRC that could bring about improved regulatory quality and coherence.

The survey results reported in this chapter reflect the respondents' experience with, and knowledge of, IRC. The Government of the Philippines is involved in a wide range of international cooperation arrangements, including multilateral (e.g. with the World Trade Organization [WTO]), bilateral (e.g. the Philippine–Japan Economic Partnership Agreement), and regional arrangements (e.g. the AEC). IRC ranges from informal arrangements (e.g. information sharing) to formal arrangements, such as mutual recognition (e.g. ASEAN mutual recognition arrangements [MRAs]), full harmonisation with international organisations such as the WTO, and the unilateral adoption of international standards. Informal IRC, the most common form, is more flexible and practicable than the formal types of IRC, which require formal approval by governmental bodies, including the ratification of protocols to implement the agreement (e.g. protocols in air service agreements in the ASEAN Single Aviation Market). The survey results indicate that, with respect to formal IRC, government officials take a pragmatic and informed approach, with the overall welfare of the country as their guidepost.

This chapter reports the survey results regarding how widespread IRC is (pervasiveness), the barriers to IRC (willingness), and enabling factors for effective IRC in the country (persuasiveness). Four cases illustrating the Philippines' experience with IRC explore its effectiveness in the country. While this chapter provides a glimpse of the Philippine's IRC based on a small purposive survey as opposed to a comprehensive assessment, it offers important insights on how IRC has been used as a mechanism to ensure regulatory consistency and quality.

Overall IRC is viewed positively, although the survey respondents expressed a few concerns (discussed in full below). Although there is a general willingness to strengthen IRC efforts in the Philippines and to support more formal arrangements, realistically this will require a committed effort by various stakeholders to achieve.

1.1. Research Approach

The Philippine research team conducted intensive interviews with 15 high-level government officials in different economic sectors, including the trade, services, industry, banking, finance, professional occupations, and cosmetics industries. The interviews were guided by the survey questionnaire developed by the Economic Research Institute for ASEAN and East Asia (ERIA), New Zealand Institute of Economic Research, and participants in a workshop organised by ERIA in Bangkok on 23–24 April 2018. The research team also perused various documents on regulatory cooperation in ASEAN, such as the ASEAN Cosmetics Directive, to obtain a good understanding of IRC in the region. Before the actual interviews, the research team discussed the many forms of IRC with the survey respondents (see Figure 6.1).

Figure 6.1: The International Regulatory Cooperation Continuum



Source: Gill D. (2018), 'International Regulatory Cooperation Case Studies and Lessons Learnt'. New Zealand Institute of Economic Research Report to the Ministry of Foreign Affairs and Trade, and Ministry of Business, Innovation and Employment. Wellington: New Zealand Institute of Economic Research. https://nzier.org.nz/static/media/filer_public/1a/4c/1a4c6a07-c206-45e9-8e11-a5c2482dd3d8/irc_revised_summary_report_on_lessons_learnt_oct_2018.pdf (accessed 7 June 2020).

The Philippines is not new to international cooperation arrangements. Malaya and Mendoza-Oblena wrote that, 'the Philippines has interacted and cooperated with neighbouring countries and the rest of the international community through the decades, and as of this writing (i.e. 2010), has concluded some 1,660 agreements with them since 1946' (2010: 1). They also observed that from 2001 to the first half of 2010, the Philippines concluded some 393 agreements, covering various areas, including 11 on the promotion and protection of overseas Filipino workers, 10 tourism promotion agreements, nine investment promotion accords, eight health cooperation accords, six environmental conservation and protection agreements, and five on social security benefits. The agreements include a number of free trade agreements entered into by the Philippines and its ASEAN partners with the economies of major neighbouring countries, the Japan-Philippines Economic Partnership Agreement, the Stockholm Convention on Persistent Organic Pollutants, arrangements to establish the headquarters of the ASEAN Centre for Biodiversity and the Worldfish Centre in the Philippines, and the accessions to the Convention against Torture and the Protocol Additional to the Geneva Conventions of 12 August 1949 (Malaya and Mendoza-Oblena, 2010).

A good example of participation in such arrangements is membership in the WTO, and its predecessor the General Agreement on Tariffs and Trade (GATT).¹ Meanwhile, the Philippines of its own accord, but also prompted by the World Bank and International Monetary Fund, undertook various structural adjustment programs in the 1980s.² The unilateral reforms undertaken by the Philippines in the previous decade were instrumental in the Philippines' ratification of the WTO in 1995.

In a recent study, Llanto (2016) noted that an efficient and effective regulatory management system is necessary to achieve better societal welfare, greater efficiency and competitiveness of firms, and more efficient integration with the AEC. The Philippines does not have a formal regulatory management system like that of Malaysia, which has a detailed formal framework and process for the review and assessment of regulations in terms of impact, coherence, consistency, and quality (Llanto, 2016). While the country has the elements of a regulatory management system, those elements have not yet been woven into a formal framework and process. Meanwhile, in the pursuit of regulatory quality, the government has worked with donors to build capacity in government departments to undertake regulatory impact analysis. In this regard, the Asian Development Bank provided technical assistance to the departments of tourism, labour and employment, and finance for regulatory impact analysis. Progress in improving the regulatory framework has been accentuated by the recently enacted law, Republic Act No. 11032 or the Ease of Doing Business Act (enacted 28 May 2018), to promote regulatory quality. The government recognises the importance of regulatory quality in the pursuit of its inclusive growth agenda, as described in the Philippine Development Plan. Thus, the government has prioritised improved regulatory quality, consistency, and coherence in its development tool kit.

The Philippines also works with other AMS to improve the quality and coherence of regulations affecting all member states. Cooperation with outside parties such as donors (e.g. the Asian Development Bank) and the Malaysia Productivity Corporation has been important. For example, the Malaysia Productivity Corporation sent a senior official to help the Development Academy of the Philippines implement its training course on regulatory impact analysis.

¹ The GATT, which was established in 1947 to govern global trade, required members to follow the 'two basic principles of most favoured nations and national treatment and would bind member countries not to increase their tariffs nor use trade discriminatory measures according to agreed-upon commitments' (Medalla, 2018: 184–85). The WTO, which succeeded the GATT, came into force in 1995.

² For a narrative on the Philippines' structural adjustment program, see Montes (1988).

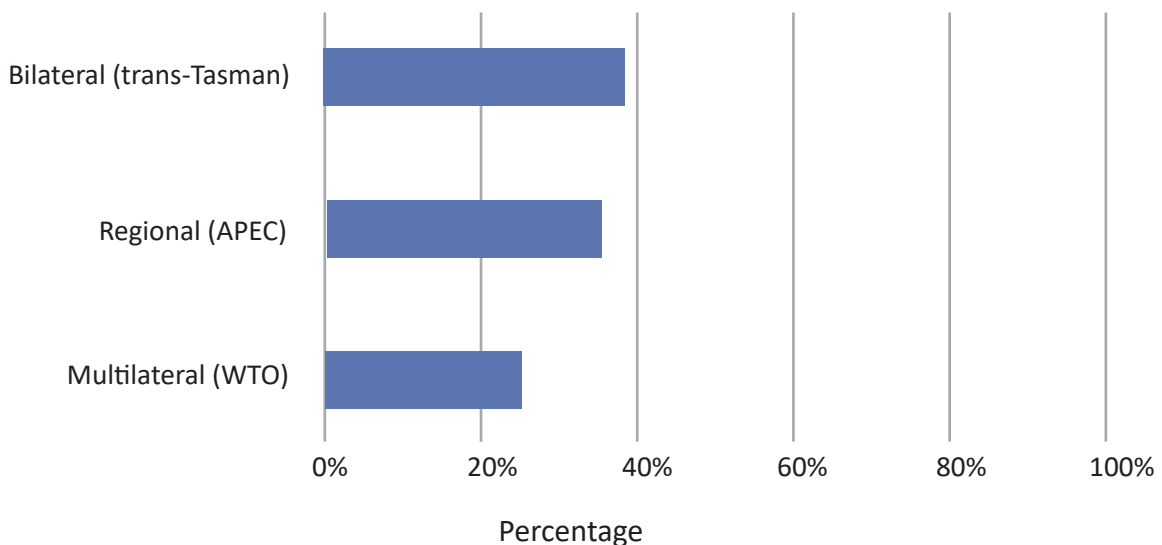
It is important to point out for the purpose of this chapter that (i) the Philippines has a lengthy and wide-ranging experience with international cooperation arrangements, (ii) the country adopted certain unilateral regulations or reforms because of their perceived benefits, and (iii) the Philippines is quite active in IRC arrangements to achieve a more integrated AEC. The country is an active participant in various meetings of ASEAN senior officials and technical workshops of ASEAN working groups to address ASEAN-wide issues (e.g. MRAs for the professions and regional cooperation on security, monetary, and financial cooperation amongst the region's central banks).

It is important to gain a good understanding of the pervasiveness and persuasiveness of IRC in the country as well as the willingness of various stakeholders to engage in functioning IRC that will lead to the harmonisation or alignment of regulatory regimes within the region. This chapter discusses the status of IRC in the Philippines as viewed by primary stakeholders, that is, various government agencies involved in different forms of IRC.

2. Pervasiveness of International Regulatory Cooperation

Respondents were asked about the nature of IRC arrangements in the Philippines, not only in their respective sectors, but across all areas. They were allowed to select more than one answer from 'bilateral', 'regional', and 'multilateral.' The survey results show that most of the Philippines' IRC initiatives are seen as bilateral (39%) and regional (36%), followed by multilateral (25%) (see Figure 6.2).

Figure 6.2: Main Forms of International Regulatory Cooperation

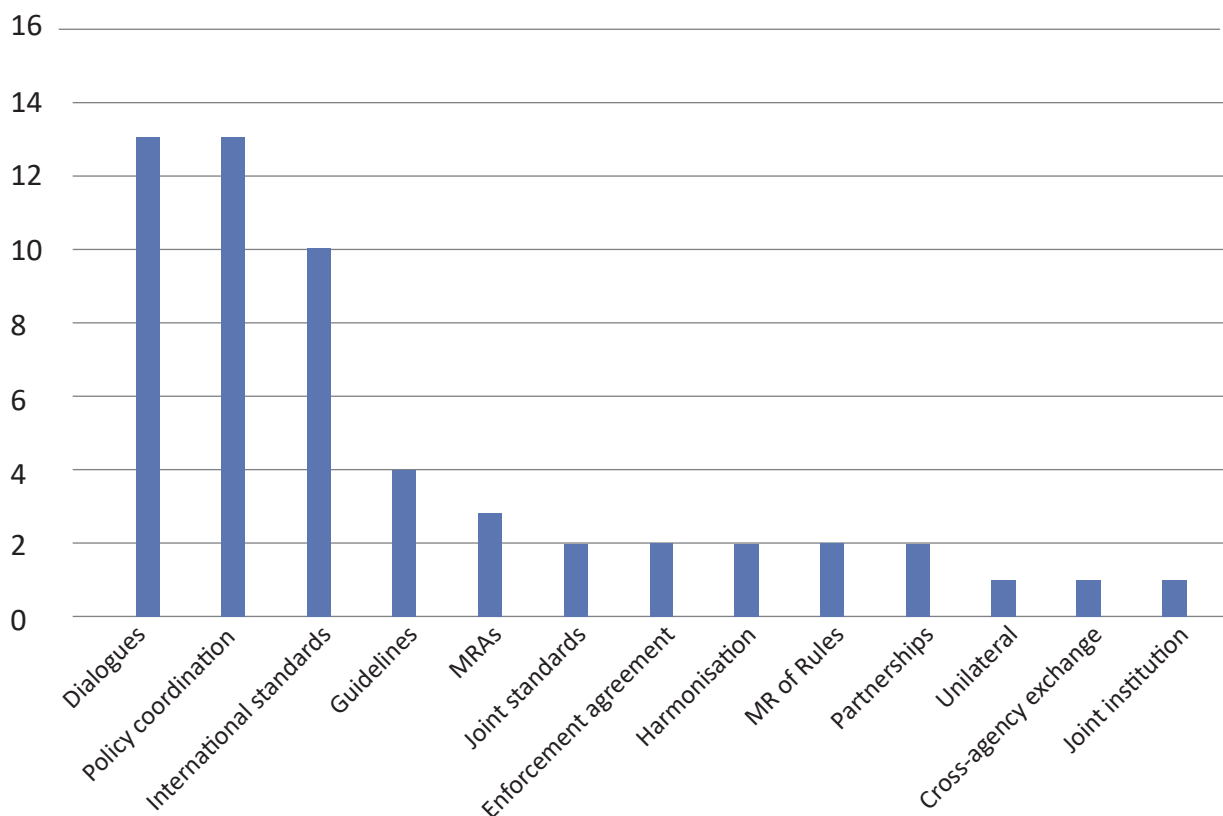


Source: Results of the Economic Research Institute for ASEAN and East Asia International Regulatory Cooperation Survey, Question 41

In terms of the pervasiveness of the different types of IRC initiatives, Figure 6.3 below shows that IRC activities mainly consist of regulatory dialogues and exchanges of information with another country or intra-regionally (13 respondents), policy coordination with partner countries on a specific sector of regulation (13 respondents), and the adoption of international standards developed by international standards setting bodies (e.g. International Organization for Standardization 9001:2015). The results illustrate that, along the IRC spectrum, the Philippines' exposure mainly falls within the informal cooperation and coordination ranges

where policy dialogues and information sharing are conducted. The country has adopted internationally set standards, indicating that it is critical to improve or upgrade to the level of international standards and/or best practices to achieve competitiveness in trade, business, and other economic activities.

Figure 6.3: Number of Interviewees Who Selected “Many” for Different Forms of International Regulatory Cooperation in the Philippines



MR = mutual recognition, MRA = mutual recognition agreement.

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

In contrast, 10 government respondents noted that none of the country’s IRC initiatives included the unilateral adoption of a trading partner’s regulatory regime because bilateral negotiation is the usual norm for mutually acceptable standards. One example of a bilateral agreement that turned out to be mutually profitable and useful for the parties involved is the Philippines–Japan Economic Partnership Agreement (PJEPA), which covers trade in goods, trade in services, investments, movement of natural persons, intellectual property, customs procedures, improvement of the business environment, and government procurement. The Philippine Senate concurred with the ratification of the PJEPA on 8 October 2008 and the agreement officially entered into force on 11 December 2008 (Department of Trade and Industry). A rough calculation of the benefits coming from IRC through the PJEPA is shown in Box 6.1.

Box 6.1: Case 1—Gains from the Philippines–Japan Economic Agreement



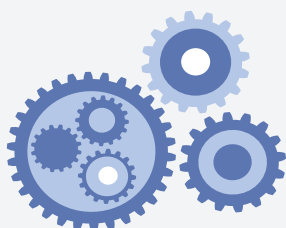
TRADE

\$21 billion total trade with Japan (2016)
Japan is the Philippines' largest trading partner since 2010.
Trade balance increased in favour of the Philippines*
19% increase in total trade with Japan*
53% increase in Philippine exports to Japan*



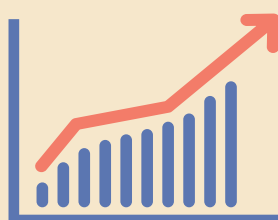
AGRICULTURAL TRADE

34% increase in Philippine agri exports to Japan
32% increase in Philippine banana exports
53% increase in Philippine pineapple exports
78% increase in Philippine coconut oil exports



INDUSTRIAL TRADE

35% increase in Philippine industrial exports to Japan
90% increase in Philippine builders' joinery exports
57% increase in insulated wires, cables exports
100% increase in semiconductor exports



INVESTMENTS

\$569.75 million approved investments from Japan (2016)
Japan is the Philippines' fourth largest source of approved investments (2016).
Investments from Japan more than doubled after the PJEPA.



FILIPINO WORKERS

8 batches deployed since 2009
1,605 healthcare workers
473 nurses
1,132 careworkers

PJEPA = Philippines-Japan Economic Partnership Agreement. MR = mutual recognition, MRA = mutual recognition agreement.

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

Source: Based on 8-year average data before 2001–2008 and after 2009–2016 (entry into force of the PJEPA), International Trade Commitment Trademap, Department of Trade and Industry. <https://www.dti.gov.ph/international-commitments/bilateral-engagements/pjepaKOR> (accessed 6 November 2018).

Looking at the other responses, Figure 6.3 shows that the Philippines is significantly engaged in formal cooperation agreements on the enforcement of regulations with other countries or within the region. Several successful initiatives have been carried out under the joint development of standards and harmonisation of technical regulations (involving specific products) with partner countries or intra-regionally. One example is the adoption and implementation of the ASEAN Harmonized Tariff Nomenclature, which several respondents cited as an example of IRC. A motivating factor behind IRC is the AMS' desire to reduce trade costs, as intra-ASEAN trade has been a key factor in the growth of the region as a whole. In the case of the Philippines, intra-ASEAN trade has been crucial to the country's resurgent manufacturing sector.

The Philippines has been engaged in many bilateral, multilateral, and regional negotiations. The majority of IRC activities consist of policy dialogues and agreements, which are categorised as informal IRC activities. Formal IRC activities, that is, those at a deeper level such as formal regulatory cooperation partnerships, the mutual recognition of rules, and cross-agency exchanges of personnel with other institutions in another country do take place, but the eventual outcome depends on the interplay of various factors and relationship dynamics with other partner countries.

It is important to note that a positive experience with one IRC initiative will bolster the confidence of regulatory agencies in cooperating with their counterparts in other countries. Box 6.2 illustrates an IRC activity with a subnational state outside the ASEAN region that provided the Philippines Professional Regulatory Commission with a positive view of such cooperative arrangements, which in turn will inform the commission's future IRC activities.

Box 6.2: Case 2—Professional Regulatory Commission and International Regulatory Cooperation

The Professional Regulatory Commission (PRC) is the lead government body regulating 43 professional services in the Philippines, in cooperation with other countries outside the Association of Southeast Asian Nations (ASEAN). One of its mandates is to handle the mutual recognition agreement (MRA) of professional services. The respondents from the PRC (the International Affairs Office) to the International Regulatory Cooperation (IRC) survey noted that 'Mutual Recognition of Professional Qualification with ASEAN Member States' is a relatively successful endeavour in the ASEAN region.

One example of the PRC negotiating IRC with countries outside the region is the MRA with the State of Hawaii on the practice of Filipino medical technologists in that state. In May 2018, the Hawaii State Department of Health and PRC signed a memorandum of understanding (MOU) on the practice of Filipino medical technologists in Hawaii.^a The PRC reports: 'Under the MOU, the Hawaii Administrative Rules, 11-110, 1-26 requiring a complete one (1) year of full-time experience as a medical laboratory technician in a clinical laboratory acceptable to HDOH, may be waived for a Filipino Registered Medical Technologist (RMT).

With satisfactory evidence of education, training and at least two (2) years of full-time work experience in a tertiary level clinical laboratory in the Philippines, a RMT may be given license to practice in the state of Hawaii as a medical technologist without passing through the technician level. A Verification of Certification to be submitted to HDOH is evaluated and approved by the Professional Regulatory Board of Medical Technology through the International Affairs Office at the Philippine International Convention Center (PICC)'.^a

The Hawaii State Department of Health initiated the recognition of professional medical technologists from the Philippines, and sent a delegation to visit tertiary-level facilities in the country. Being satisfied with what they learned from the PRC and saw in those facilities, they proceeded with the MOU, which provides for the unilateral acceptance or recognition of Filipino medical technologists based on the two above-mentioned conditions. For its part, the PRC continues to improve its regulatory stance with respect to the medical technology profession to assure local and foreign users of the quality and reliability of local medical technologists.

^a <https://www.prc.gov.ph/article/1st-international-bilateral-agreement-between-prc-and-hawaii-medical-technology/3565> (accessed 4 November 2018).

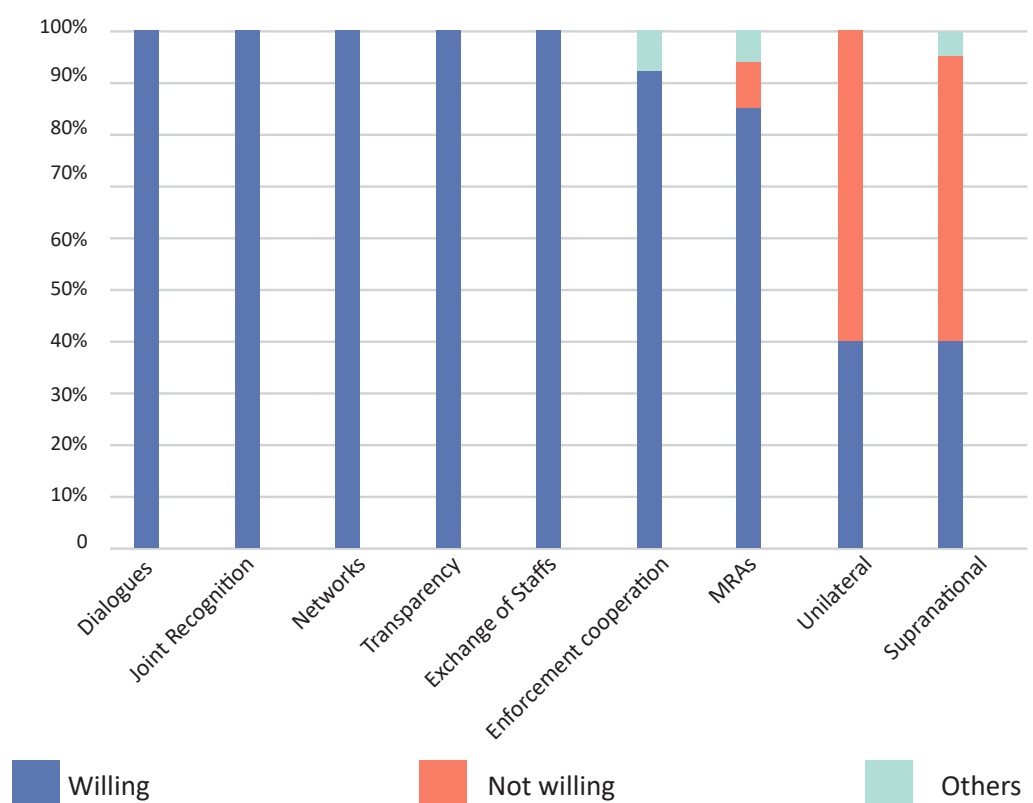
Source: Interview with the Professional Regulatory Commission.

3. Willingness to Undertake International Regulatory Cooperation

The survey respondents are well aware, based on their service to the government, that IRC can take many different forms. Their IRC experience has been heightened by the official establishment of the AEC in 2015, and the many different initiatives, both public and private, towards regional integration. They are also aware that the Philippines is signatory to multilateral, bilateral, and regional cooperation agreements, and their overall experience is that IRC, both formal and informal, has conferred benefits on the country. It is no surprise, therefore, that many of the respondents are willing to undertake IRC

There was a consensus on the willingness to undertake IRC initiatives like dialogues and the informal exchange of information on policy, enforcement, and other regulatory practices; the joint recognition of international standards; regional transgovernmental networks amongst regulators; formal requirements for transparency and the consideration of IRC when making regulations; and the formal exchange of staff, amongst others. However, there was sensitivity to the unilateral adoption of regulatory practices or regimes of other countries (60.0% of respondents unwilling), and to a supranational body overseeing the implementation of bilateral or regional legally binding regulatory agreements (53.3% unwilling) (Figure 6.4).

Figure 6.4: Openness to Types of International Regulatory Cooperation



MRA = mutual recognition agreement.

Source: Results of the Economic Research Institute for ASEAN and East Asia International Regulatory Cooperation Survey Questions 26 – 39.

An important distinction should be made here. The country has unilaterally adopted international standards and best practices that it deemed worthy of adoption and emulation, especially in the highly competitive marketplaces confronting domestic firms and consumers alike (see Box 6.3). Such decisions could be made by government departments (ministries) in the exercise of their executive functions without consulting or getting approval from the Senate.³ This type of IRC arises from a unilateral decision by the executive branch through its instrumentalities like a government department (ministry).

³ The Senate of the Philippines ratifies treaties, defined by Executive Order No. 459 as ‘international agreements entered into by the Philippines which require legislative concurrence after executive ratification’. Executive agreements are ‘similar to treaties except that they do not require legislative concurrence’ (Malaya and Mendoza-Oblena, 2010).

Box 6.3: Case 3—Adoption of ISO 9001: 2015 in Public Offices and Their Systems

The Development Academy of the Philippines reported that under the previous Philippine Development Plan 2011–2016, the government recognised the value of standardising the quality of public service delivery to become consistent with the requirements of the ISO. The goal is to ensure that public service delivery will be ‘high quality, effective, efficient, transparent, accountable, economically and physically accessible, and non-discriminatory, to create an environment where citizens and the private sector can maximize their full potential’.^a

The succeeding administration continued with this vision to improve the quality of public service delivery through the adoption of ISO requirements. To ensure the compliance of government offices, the government issued Administrative Order (A.O.) No. 161—Institutionalizing Quality Management System (QMS) in Government, and Executive Order (E.O.) No. 605, s. 2007—Institutionalizing the Structure, Mechanisms and Standards to Implement the Government Quality Management Program.

The Bureau of Product Standards of the Department of Trade and Industry Technical Committee (BPS/TC 71) was recently reconvened to update the existing guidance document in Government Quality Management Program System.^b The BPS/TC 71 on Government Quality Management Program, comprising various representatives from academia, trade/industry, consumers’ organisations, professional associations, research institutions, government agencies, and testing institutions, met to discuss the possible adoption of the 2015 version of ISO 9001: Quality Management Systems-Requirements for implementation in public offices and their systems. The BPS/TC 71 was guided with the International Workshop Agreement 4:2009 to establish the guidelines in applying ISO 9001 in the government offices and their systems. The BPS/TC 52 adopted the ISO 9001:2015 as a Philippine National Standard in December 2015.

^a Under the current administration, the present plan is the Philippine Development Plan 2016–2022, which essentially follows the development agenda of the previous Philippine Development Plan 2010–2016.

ISO = International Organization for Standardization.

^a Development Academy of the Philippines (2014), ‘Development of a Quality Management System Certifiable to ISO 9001:2008’. <https://www.dap.edu.ph/wp-content/uploads/2014/07/ISO-Brochure-Detailed-7.15.2014-forPrint.pdf> (accessed 5 November 2018).

^b Department of Trade and Industry, Bureau of Product Standards (2017), ‘DTI: PH Government Discusses Adoption of ISO 9001:2015 in Public Offices and Their Systems’, 19 June. http://www.bps.dti.gov.ph/index.php?option=com_content&view=article&id=444:dti-ph-government-discusses-adoption-of-iso-90012015-in-public-offices-and-their-systems&catid=1:latest-news&Itemid=1 (accessed 5 November 2018).

Of some concern was IRC involving the unilateral adoption of a trading partner’s regulatory regime. In the interviews, respondents (especially those from the trade sector) manifested strong hesitation over two IRC activities: (i) the unilateral adoption of policy and regulatory practices of other countries or international bodies, and (ii) governance of IRC by a supranational regional body. The respondents appeared to perceive IRC in these two forms as a potential surrender of policy space or diminution of sovereignty. The perception of ‘surrender of policy space’ may be driven by the fear that unilaterally adopting a trading partner’s regulations may not result in positive outcomes because those partners issue regulations that serve their own interests. A typical conservative bureaucrat would rather have this form of IRC brought to the negotiating table to unpack the implications of trading rules, and to negotiate compromises if necessary.

On the perception of 'diminution of sovereignty', policy and regulatory governance is a shared space with Congress (legislators) who may have different views on IRC. Congress may want to subject proposals to closer scrutiny if they are not fully convinced of the merits of the regulations of trading partners. In the Philippine setting, a useful distinction of formal IRC is between an executive agreement, which needs presidential ratification in order to enter into force, and an agreement that is a treaty, which requires both presidential ratification and Senate concurrence (Malaya and Mendoza-Oblena, 2010). However, it should be noted that there are informal transgovernmental agreements where responsibility lies with the lead regulatory agency or department, as in the case of the Basel agreements where the Philippine central bank is a lead agency.

The survey responses seem to indicate an awareness of the tension between maintaining sovereignty and control over domestic regulations on the one hand, and the need for international cooperation on regulation for activities and events that transcend national boundaries on the other. This tension is best explained by the OECD in their 2018 report on globalisation, interconnectedness, and domestic regulatory frameworks (see Box 6.4). Globalisation and interconnectedness have resulted in a freer and more rapid flow of goods, services, people, and finance, which has tested the effectiveness and capacity of domestic regulatory frameworks (OECD, 2018). The future is more and more about IRC, especially in addressing failures of the market that impact the common good, particularly those with negative spillover effects beyond the border (e.g. climate change or pandemics), but this will require a calibrated pushback against sovereignty and domestic control of regulations. The OECD (2018) is conscious of the complexity of the political economy of IRC, and the concomitant challenges in the enforcement and implementation of cooperative agreements. This is certainly a challenge for the ASEAN Member States, which are in varying stages of development under different political frameworks.

Box 6.4: Case 4—Globalisation, Interconnectedness, and Domestic Regulatory Frameworks

OECD (2018) reports:

'Goods and services are now bought from all over the world. Global trade intensity doubled between 1990 and 2015. Today, products cross many borders before being finally purchased in a given country.

People no longer live in the same place their whole life. In 2015, 13% of the total population living in OECD countries was foreign-born, compared to 9.5% in 2000.

World travel has become a lot easier with passenger air traffic expected to grow by 3% to 6% annually over the next 15 years.

We interact internationally through digital platforms. Social media viewing trends show that users increasingly access content outside their own country. Internet is enabling significant cross-border financial transfers on a daily basis'.

The consequence: '. . . acting in isolation is not an option anymore'

New things bureaucrats should realise:

'Responding to climate change, tackling tax evasion and avoidance, managing pandemics, and strengthening financial market stability are all complex and multidimensional issues of an intrinsically transnational nature. The ability of countries to effectively deal with global challenges solely through domestic regulation is limited. Co-ordination is needed to tackle these challenges and achieve a coherent and effective regulatory response. Beyond this critical aspect, examples from the trade area show that greater coherence of regulations can lower time and costs for firms and citizens having to comply with multiple regulatory requirements. Co-operation is also likely to bring substantial gains to regulators, who are able to pool knowledge and resources through cooperating with their peers across borders. Yet international co-operation remains, to a large extent, under-valued by governments'.

Source: Organisation for Economic Co-operation and Development (2018), 'International Regulatory Co-operation: Adapting Rulemaking for an Interconnected World', Organisation for Economic Co-operation and Development Regulatory Policy Division Policy Brief, October. pp.1–2.

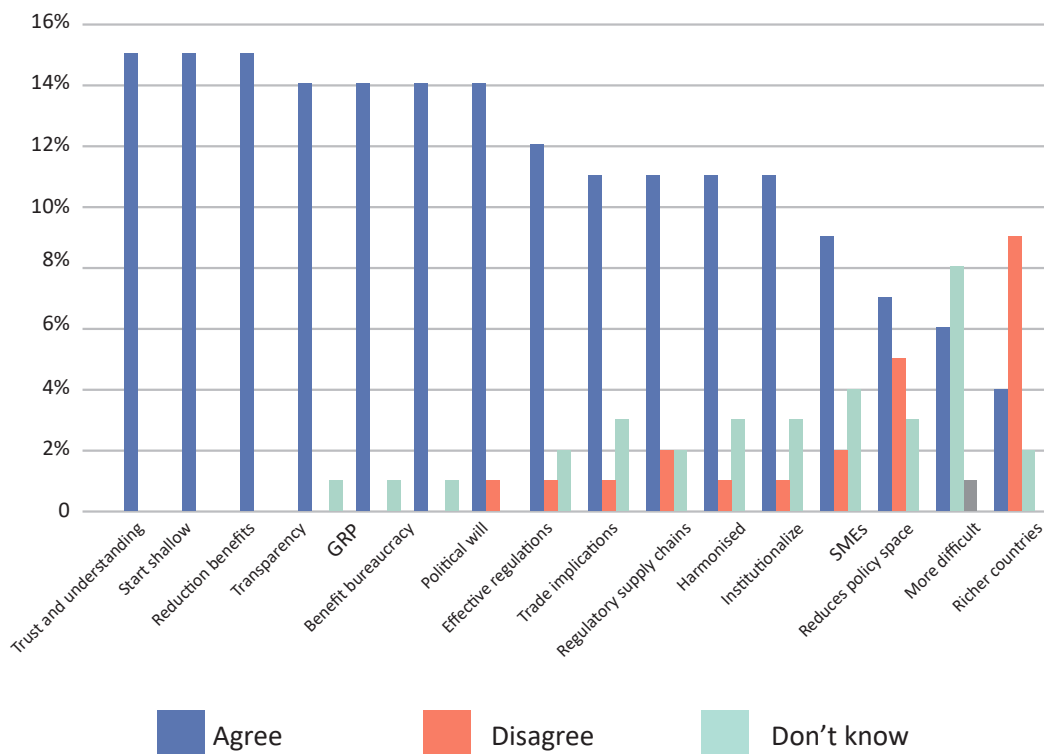
4. Persuasiveness of International Regulatory Cooperation

This section discusses the respondents' views on aspects of IRC. The contained propositions about IRC are mostly presented as positive statements. There were also a few negative propositions, meaning that answers agreeing to those statements indicate the respondents' reservations in terms of the possible consequences of IRC for the country. Figure 6.5 shows that in many aspects, the respondents generally had a positive attitude towards IRC.

The overwhelming majority agreed to the propositions about the positive impacts of IRC as shown in Figure 6.5. For instance, all agreed to the idea that IRC creates trust and mutual understanding amongst institutions in countries in the region and that it enhances

transparency and predictability (14 respondents). Most (93%) also believed that IRC works to the advantage of the countries/bureaucracies through enhanced knowledge flow about technical issues and policy experiences with other countries.

Figure 6.5: Positive Attitude to International Regulatory Cooperation (Agree/Disagree)



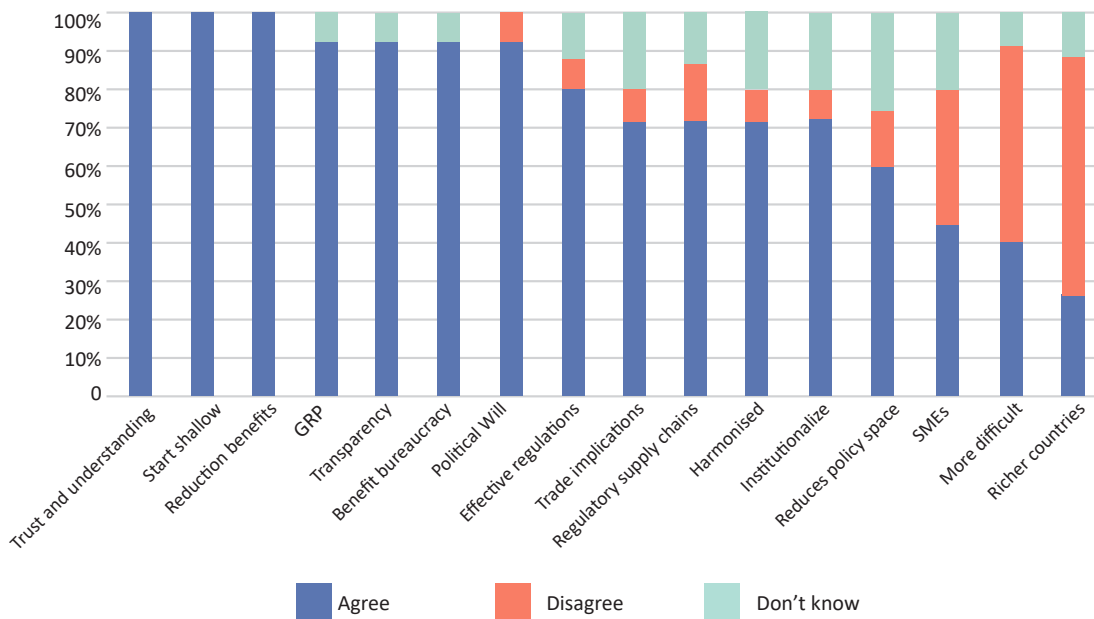
GRP = good regulatory practice, SMEs = small and medium-sized enterprises.

Source: Results of Economic Research Institute for ASEAN and East Asia International Regulatory Cooperation Survey Questions 11-26.

The responses to the survey indicate that there is a need to demonstrate to the regulators and politicians the benefits to the country of reducing regulatory differences or inconsistencies. To achieve this, the majority agreed that it would be best to begin with shallow regulatory cooperation that applies to all members and deeper (high-level) cooperation for those who are willing and/or interested in pursuing it. IRC also needs good regulatory practice to make regulations more effective and beneficial to firms and citizens. Finally, they believe that without a strong political will, IRC cannot be sustainably implemented.

However, respondents also expressed some concerns about IRC. Looking at the last three items on the right side of Figures 6.6, seven of the 15 respondents believe that IRC that requires treaties and protocols actually reduces policy space to the disadvantage of the country, with three respondents undecided. This illustrates the difficulty facing stakeholders and government agencies in embracing certain forms of IRC, including unilateral adoption, full harmonisation, and oversight by a supranational regulatory body.

Figure 6.6: Positive Attitude to International Regulatory Cooperation (Agree/Disagree)



GRP = good regulatory practice, SMEs = small and medium-sized enterprises.

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

Another concern is that IRC adds an additional layer of coordination and makes life for administrators and regulators even more difficult and bureaucratic. Six of the 15 respondents believed this to be the case. Four respondents thought that IRC favours richer countries more than poorer countries because they believed that the more economically advanced AMS are equipped to benefit more substantially from IRC than other members. But the prevailing view amongst respondents is that IRC benefits all countries regardless of their socioeconomic standing or level of development.

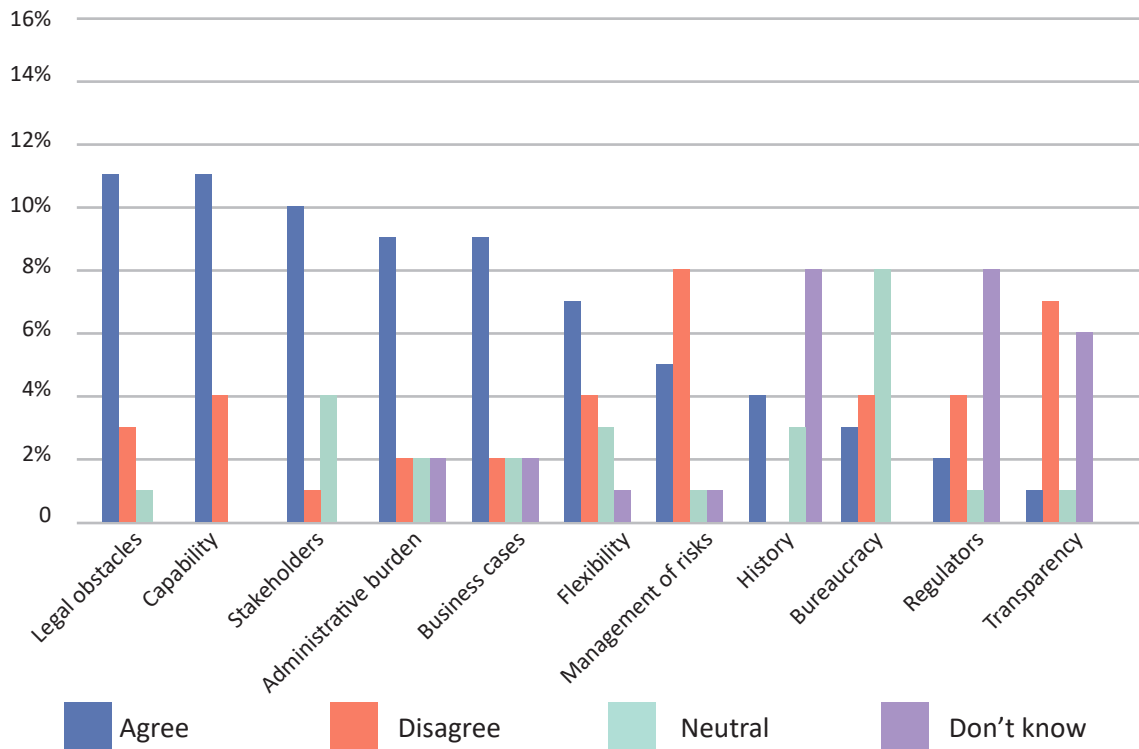
Overall, despite some doubts, most are optimistic that IRC would be a beneficial mechanism to achieve better quality regulations, both in terms of formulation and enforcement across countries. IRC can be a mechanism to build greater trust, coordination, and cooperation across countries.

5. Barriers and Enablers of International Regulatory Cooperation

This section discusses the respondents' perceptions of barriers to the development of IRC in the Philippines. There were six options: 'strongly agree, agree, disagree, strongly disagree, don't know, and neutral'. To simplify the analysis, the answers of 'strongly agree' and 'agree', and 'strongly disagree' and 'disagree' were lumped together to form aggregates of 'agree' and 'disagree' in the graphs.

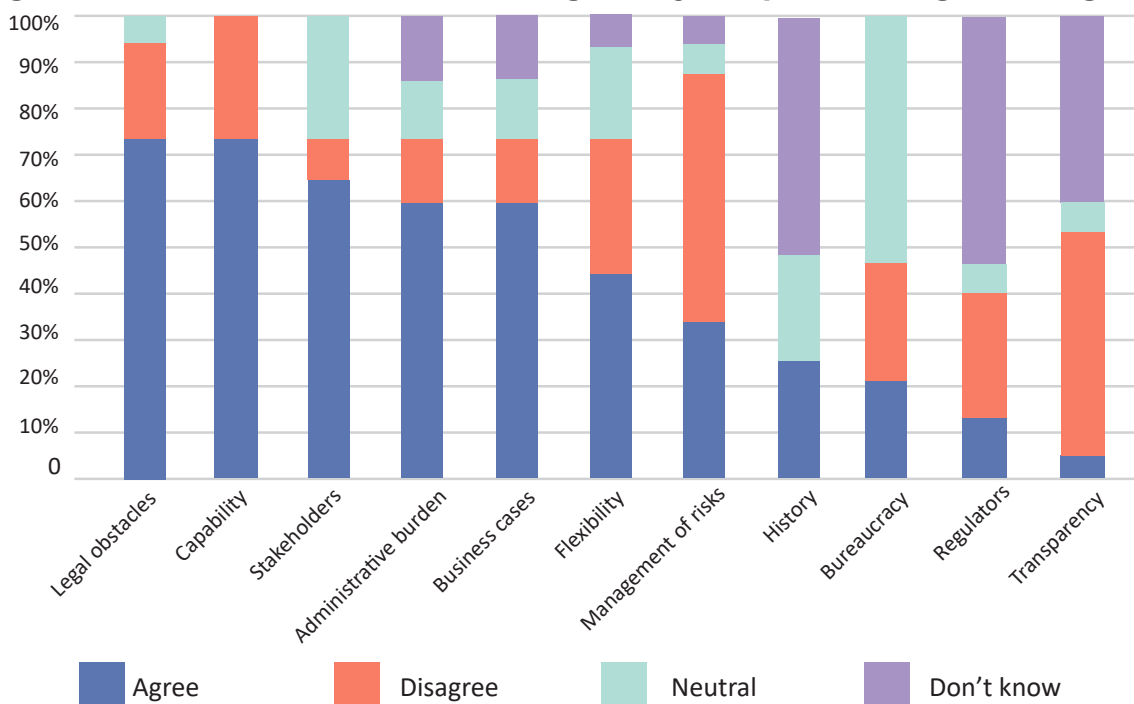
The majority of the respondents thought that the main hindrances to the development of IRC were legal obstacles (73%), uneven trust in other country's systems due to differences in capability and country size (73%), little awareness and understanding of IRC by stakeholders (67%), possible increased administrative burden (60%), and lack of persuasiveness as business cases for IRC do not stand up (60%) (Figure 6.7).

Figure 6.7: Barriers to International Regulatory Cooperation




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

Figure 6.8: Barriers to International Regulatory Cooperation (Agree/Disagree)



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

Figure 6.8 shows some of the difficulties hindering IRC, in particular, the perception that it has not contributed to the management of risks across borders (53%) and has led to reduced transparency between countries (47%). In some respects, many of the respondents appear undecided, specifically in terms of the bureaucracy having little



knowledge of and trust in the regulatory regimes of other countries (53% are neutral). They are unsure whether IRC would proliferate in the country given the different experiences in international cooperation (53%), and regulators' appetite for joint design, monitoring, and evaluation of regulation with partner countries in the region (53%).

Insights from the interviews show that there are several factors that may inhibit the country's receptiveness to IRC. For instance, one respondent shared the country's experience during the negotiation processes to achieve ASEAN harmonisation in a specific sector. There seemed to be a common perception that bilateral negotiations are only beneficial at the discussion or signing stages because, when it comes to implementation, progress is very difficult to achieve. The respondents felt that full integration will require giving up national policy, which is often problematic, since no AMS would want to compromise their own policies for something that may not benefit them as much.

The respondent cited above also observed that AMS rarely share experiences in a specific sector for reasons of national policy, negotiation strategy, or state security. Some countries are hesitant to divulge information about their current practices and experiences. Some countries tend merely to engage in prolonged talks during the negotiation stage, as ASEAN agreements often fail to ensure that AMS adhere to the prescribed timelines and outcomes. According to the respondent, there have been instances in the past when AMS officials would agree at the committee level but, during subsequent meetings, their representatives would insist that their superiors did not approve or agree to the agreement made in previous meetings. The reasons cited for this behaviour usually include the intensity of the commitment and the difficulty of adhering to the given timeline. AMS also have different capacities at the technical, administrative, and managerial levels, which by its nature IRC does not directly address. The implication is that effective IRC, in its many forms, presupposes a certain degree of competence and commitment amongst AMS stakeholders. If these are absent, it is difficult to get past the talking stage in instances where IRC is most needed, such as the handling and transshipment of dangerous drugs used in the pharmaceutical industry.

Overall, these survey results are important, notwithstanding the negative tone of some responses. They indicate a positive expectation of how IRC can improve the country's regulatory frameworks, as well as cross-ASEAN regulations. At the same time, the responses underscore the need for awareness of IRC experiences to build trust in IRC both within the Philippines and in the other AMS, and most of all, to build capacity amongst the country's government agencies and regulators on the different forms of IRC, including how to use them in pursuit of better regulations.

The respondents note that, while there are indeed gains to having IRC, these are somehow limited or restricted by the domestic rules that need to be followed in each country. Nonetheless, they recognise that dealing bilaterally and/or intra-regionally entails costs, and that it is a give-and-take process. The role of IRC is especially important when there are crises and issues that need to be resolved within the region and between countries.

For IRC to work, the AMS must work together on having proposed agreements or cooperative tasks very well understood, not only by the political leaders but also the various stakeholders (e.g. business leaders) to generate support for the required action and adhere to established timelines. Box 6.5 illustrates this point with an example from

the cosmetics industry, where the stakeholders, upon understanding the importance of a common regulatory regime, accepted the adoption and harmonisation of health and safety standards.

Box 6.5: Case 5—Food and Drugs Administration, Cosmetics

The Food and Drug Administration (FDA) is responsible for safeguarding public health by setting a certain level of public health standards in the Philippines in conformance with international public health standards. It maintains a Center of Cosmetic Regulation and Research, which covers cosmetic products and household and urban hazardous substances. According to their website, cosmetic products 'are substances or preparation intended to be placed in contact with the various external parts of human body or with the teeth and the mucous membranes of the oral cavity'.^a

In 2003, the Philippines, through the FDA, ratified the ASEAN Harmonized Cosmetic Regulatory Scheme with other Association of Southeast Asian Nations (ASEAN) member states (AMSs). This came after the AMSs had identified priority products, one of which is cosmetic products, as part of the harmonisation scheme. The ASEAN Harmonized Cosmetic Regulatory Scheme, a regional agreement on cosmetics regulation, is an example of mutual recognition and harmonisation of regulatory regimes. This facilitates trade of cosmetic products by the 'harmonization of standards, reciprocal recognition of tests and certification of products'.^b The agreement aims to enhance cooperation and eliminate restriction of trade of cosmetic products among AMSs.

The ASEAN Cosmetics Directive allows all AMSs to adopt the main features of the regime of technical standards for cosmetics ingredients in the European Union Cosmetics Directive. As discussed in Chapter 7 (Box 7.2), it is a case of harmonisation leading to trading up to a de facto world standard rather than a race to the bottom.

The mutual recognition agreement for product registration for cosmetics means that approval in one country also applies in the others. A feature of this mutual recognition arrangement is to recognise the 'cosmetic products registered by a Member State', which 'can be marketed in the territory of the other ASEAN Member States'.^b This procedure is done by a company notifying a regulatory body in a certain AMS of a cosmetic product registration.

All AMSs have agreed to participate in the ASEAN Harmonized Cosmetic Regulatory Scheme. This scheme includes the ASEAN Cosmetic Directive, which outlines the regulatory requirements of cosmetic products in the ASEAN region based on the European Union directive. Safety requirements and ingredient listing, labelling requirements, product information, and product claims are considered in the Cosmetics Directive. The ASEAN Guidelines for Cosmetic Good Manufacturing Practice ensures consistency and controlled quality in manufactured cosmetic goods. The Philippines is represented by the Department of Health, through the FDA, in the ASEAN Cosmetic Committee.

^a Gutierrez, M.A. (2013), Overview of Cosmetics Regulation and Research (CCRR). Food and Drug Administration. <https://www.pappi.ph/sites/default/files/CCRR.pdf> (accessed 14 November 2018).

^b ASEAN Cosmetics (2003), Agreement on the Asean Harmonized Cosmetic Regulatory Scheme. <http://www.aseancosmetics.org/docdocs/agreement.htm> (accessed 14 November 2018).

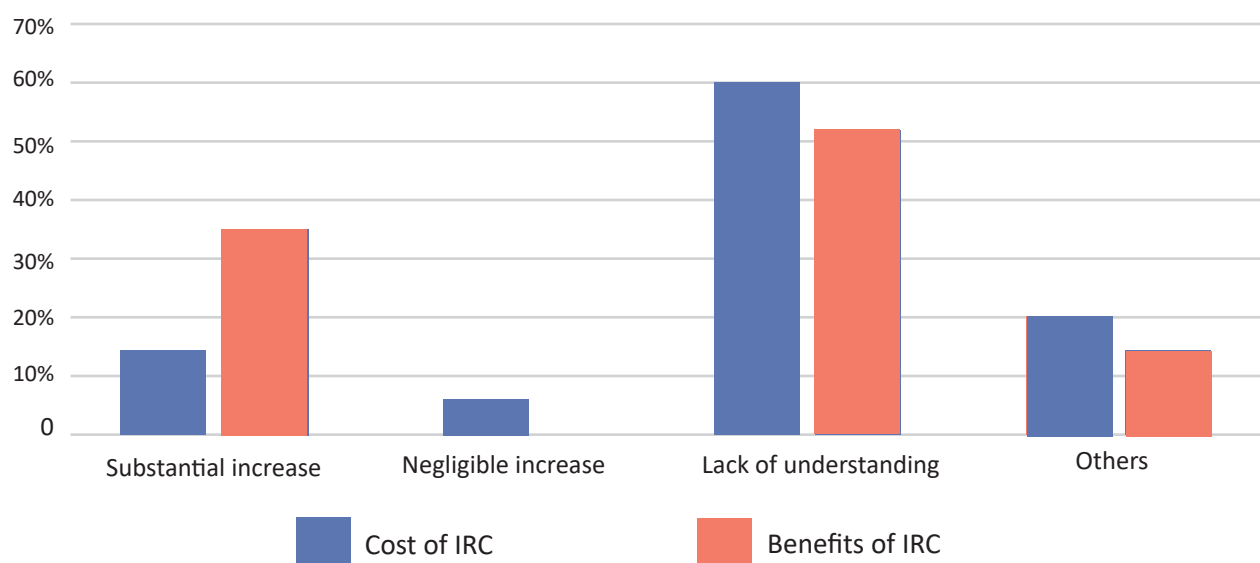
Source: Interview with the Food and Drug Administration, Cosmetics.

Another respondent shared that IRC may be welcome if it can be shown that IRC will lead to better economic performance of the country relative to its ASEAN peers. For instance, the need to coordinate and improve the systems of government agencies (i.e. computerisation) as part of the ASEAN Single Window initiative should be understood as not just about complying with the initiative's requirements, but also as an important step to reduce the cost of doing business and build competitiveness in the country to attract more investments. Another important point to consider is that the success of or experience with IRC may differ by sector. Some sectors are easier to navigate or negotiate at the international level, while others are less easy to handle, like the banking sector.

6. Dynamics of International Regulatory Cooperation

This section examines the dynamics of IRC in terms of its perceived costs and benefits and how these may be related to the support of various stakeholders by phase. Figure 6.9 suggests that most respondents were still undecided as to whether the benefits outweigh the costs at the later stages of IRC. Many (33%) believed that benefits had increased substantially across time, while a much smaller percentage (13.3%) said that costs had increased substantially instead.

Figure 6.9: Costs and Benefits of International Regulatory Cooperation

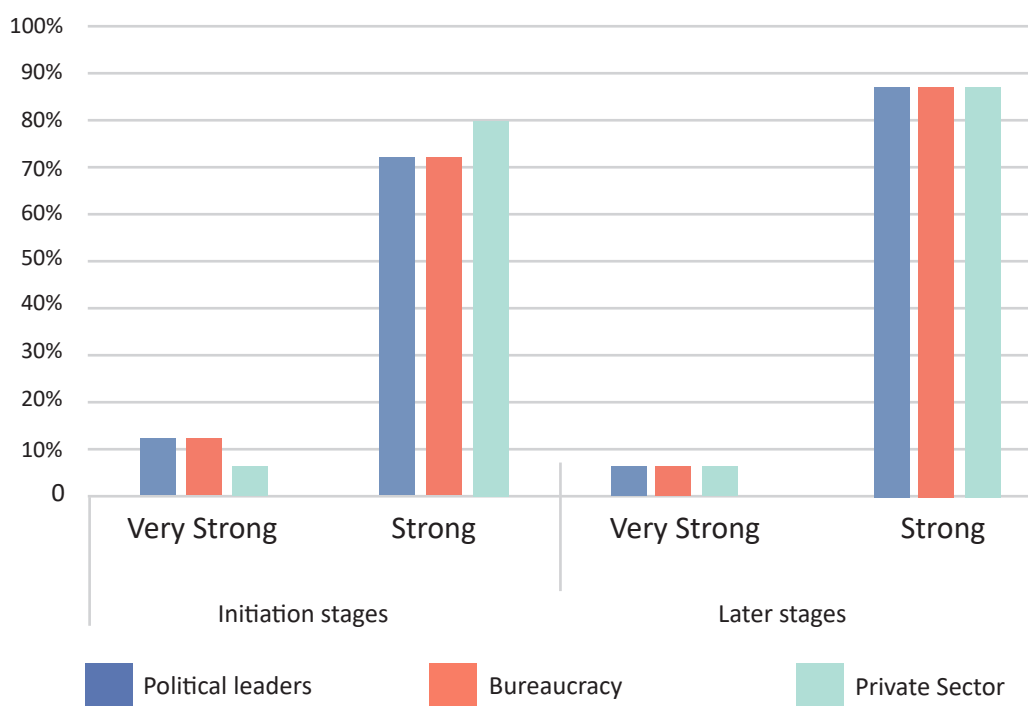


IRC = international regulatory cooperation.

Source: Results of Economic Research Institute for ASEAN and East Asia International Regulatory Cooperation Survey Questions 57-58

With regard to support from the different stakeholders in IRC, it is notable that, at the initiation stage and at the later stages especially, the respondents believe that support from political leaders, bureaucracy, and the private sector is strong. This indicates that these stakeholders are largely involved in the conduct of IRC across all stages. Their participation has influenced and contributed to the support of IRC and its development over time (Figure 6.10).

**Figure 6.10: Dynamics of International Regulatory Cooperation—
Support by Phase, Strong, and Very Strong**



Source: Results of Economic Research Institute for ASEAN and East Asia International Regulatory Cooperation Survey Questions 50-56

In one of the interviews, the respondent emphasised that political will and support from the leadership are the two key factors to the success of IRC. The Philippine regulatory environment is governed by many rules and bureaucratic procedures, which may sometimes negatively affect market transactions to the detriment of the end users. One example is the experience of an agency with regard to the requirement to computerise transactions and procedures across government agencies to improve their systems, and ultimately to help the country connect to the ASEAN Single Window. During the implementation of this initiative, the legal teams of the other government agencies asked the agency about the legal basis of this move. Looking at this initiative through the lens of ease of doing business, it is obvious that the move to computerise transactions and procedures across an agency should be an agency thrust and part of the drive to provide quality services to the public through improvements in the government agencies' systems and procedures. The query about the legal basis is unnecessary. Fortunately, the agency was able to secure a Cabinet declaration from the Office of the President to satisfy the legal query. Subsequently, the Office of the President issued a memorandum mandating agencies to comply with the move towards computerisation.



7. Governance of International Regulatory Cooperation in the Philippines

In general, there is no single government agency that oversees the quality of regulations or monitors the number and type of regulatory issuances made by government regulatory agencies. Seamless coordination of regulatory efforts is absent under the present structure of the bureaucracy, and there is no lead government body that promotes overall regulatory quality. Instead, each government department (ministry) such as the Department of Trade and Industry, Department of Agriculture, Department of Health, and other agencies perform regulatory functions over their respective sectors. In addition, specific regulatory agencies are tasked with regulating particular economic activities; these include the Food and Drug Administration, Philippine Ports Authority, Energy Regulatory Commission, and Bangko Sentral ng Pilipinas (central bank), amongst others. As noted by Llanto (2016), the regulatory system in the Philippines is spread amongst as many as 60 different regulators.⁴

While international coordination concerning regulations and policies depends on the sector involved (e.g. the Department of Trade and Industry for trade-related matters), the National Economic and Development Authority (NEDA) is the closest agency that monitors and coordinates activities relevant to the formulation of government policies, plans, and programs; and undertakes policy reviews. The NEDA reports to the NEDA Board, which comprises the President of the Philippines as chair and several government agencies, including the Department of Finance and Department of Budget and Management. The NEDA implicitly oversees IRC activities across different sectors because it is tasked with providing policy reviews and recommendations to policy makers and is also the lead agency that prepares the Philippine Development Plan.

Consequently, there is no explicit or distinct institutional framework governing IRC in the country. Nonetheless, the Philippines has various bilateral, regional, and multilateral cooperation arrangements that have undergone some form of IRC, such as coordination meetings on ASEAN MRAs. Meanwhile under the NEDA auspices, the Philippines has adopted the ASEAN Good Regulatory Practice Guidelines, which guide all ASEAN bodies working in the areas of standards, technical regulations, and conformity assessment procedures. The guidelines have three elements: (i) transparency on non-tariff measures and removal of trade barriers, (ii) the implementation of MRAs, and (iii) the harmonisation of standards and technical regulations. It is also used in conjunction with the ASEAN Policy Guidelines on Standards and Conformance. During the 23rd ASEAN Economic Ministers Retreat in March 2017, the ASEAN Work Plan on Good Regulatory Practice (2016–2025) was also adopted.

The Asia–Pacific Economic Cooperation (APEC), on the other hand, provides a valuable forum for economies to share knowledge and their respective experiences in IRC. The Philippines adopted the APEC Good Regulatory Practices, which contribute to the establishment of a common, predictable framework for regulatory intervention, thereby facilitating global regulatory cooperation and harmonisation. The Eighth Conference

⁴ The responses and insights in this paragraph were given prior to the enactment of the Philippine Congress of Republic Act 11032 or the 'Ease of Doing Business and Efficient Delivery of Government Service Act of 2018', which created an oversight body for regulatory quality called the Anti-Red Tape Authority. The law enjoins government agencies, especially regulatory bodies, to undertake a regulatory impact assessment of proposed regulations prior to issuance. According to this new law, 'all proposed regulations of government agencies...shall undergo regulatory impact assessment to establish if the proposed regulation does not add undue regulatory burden and cost to agencies and the applicants or requesting parties'. At present, the Anti-Red Tape Authority has been organised and is currently acting as oversight body for regulatory quality.

on Good Regulatory Practice in August 2015 at Cebu City included experience sharing from policy officials and representatives from the private sector on the following tools: (i) single online locations for regulatory information, (ii) periodic review and prospective regulatory planning, (iii) capacity building and education efforts, (iv) best practices of the APEC economies, and (v) challenges faced by small and medium-sized enterprises for inclusive growth. In addition, IRC falls within regulatory reform efforts, and the Philippines implements the Individual Action Plan of the Renewed APEC Agenda on Structural Reform.


Despite not having a comprehensive and integrated regulatory management system that oversees IRC activities, the initiatives and efforts discussed earlier show that the Government of the Philippines is committed to engaging and developing IRC further in the country. The respondents suggested some factors that may contribute to better IRC practices, including the commitment of all AMS to abide by the provisions in the AEC 2025 Strategic Action Plan. Within the Philippines, regular information sharing and consultation amongst all stakeholders (e.g. professional regulations) and the upgrading of professional standards and practice will be a good platform for regulatory cooperation, whether at the national or international level. Some of the survey respondents stressed that IRC, once in place, increases regulatory predictability, something that will especially benefit importers and exporters. It was also suggested that AMS should assess the likelihood or practicability of IRC in the light of different socioeconomic and political contexts in the region to make it implementable.

8. Concluding Comments

This chapter presents the findings of a small survey (n = 15) of key respondents from a range of government agencies on their experiences with IRC. The survey is purposive, and its main objective is to gain a rapid understanding of how IRC is viewed across some government agencies that have been involved or engaged in IRC in its many different forms.

Overall, the responses indicate a positive view of IRC. Most IRC in the Philippines is of the informal type, such as the sharing of information and staff exchanges with counterparts in the ASEAN region. The survey found that the government has wide-ranging involvement in IRC arrangements. Most of the respondents observed that the type of involvement ranges from bilateral, to regional, to multilateral. This is explained by the Philippines' long-standing engagement with different types of partners: bilateral (e.g. PJEPA), multilateral (e.g. membership in the WTO), country development partnerships with multilateral donors like the World Bank, and regional (e.g. various ASEAN policy dialogues).

IRC ranges from informal arrangements (e.g. information sharing), to mutual recognition (e.g. ASEAN MRAs), to full harmonisation with international organisations such as the WTO. In formal IRCs, government officials take a pragmatic and informed approach, with the overall welfare of the country as a guidepost. The most common form of IRC is informal, which is more flexible and practicable than the formal type of IRC (e.g. the air service agreement in the ASEAN Single Aviation Market), which requires formal approval by government bodies, including the ratification of protocols to implement the agreement.



There is great willingness on the part of respondents to undertake IRC because of their overall experience that IRC, whether formal or informal, has benefited the country. IRC could help bring about regulatory quality and coherence in AMS' regulatory frameworks. Regulatory quality and coherence address both 'behind the border' issues (e.g. domestic regulation) and 'across the border' issues (e.g. customs administration). Undertaking such regulatory reforms through IRC will stimulate cross-border investments; greater trade; and mobility of goods, services, and natural persons. In turn, as the case of the ASEAN Cosmetics Directive demonstrates, IRC can also contribute to the agenda for more effective domestic regulation.

The Philippines, a middle-income country with a growing trade in the goods and services sector, has experienced the benefits of IRC, especially in contributing to freer trade and investment regimes. For example, the ASEAN Free Trade Area has encouraged greater intra-ASEAN trade that correlates well with growth and the accessibility of a wide range of intermediate and final (consumer) goods across the AMS.

The types of IRC least appealing to respondents were those involving the unilateral adoption of the standards or practices of a trading partner, full harmonisation of regulation across AMS, and the establishment of a supranational body for IRC. The most often cited reason was the threat to the policy space, especially in view of an active Congress that is jealous of its policymaking mandate. These are not irremediable problems. There is scope for acquiring support for more formal types of IRC, such as MRAs, and the adoption of common standards or protocols (e.g. the manufacture of cosmetics products and the ASEAN Single Aviation Market). However, this will require substantial investment in better communication and education on the advantages of IRC, and building capacity amongst government agencies, especially regulatory agencies in smart regulation and IRC processes. There is a perceived need to build more awareness of IRC in its different forms as a key factor in regulatory quality and coherence, and to build capacity amongst stakeholders.

This chapter has surfaced some factors or barriers hindering the establishment of effective IRC in the Philippines, namely, (i) the lack of understanding of or familiarity with IRC processes, (ii) the lack of capability of the bureaucracy, (iii) a lack of information and awareness of the benefits of IRC, (iv) few occasions to share experiences of IRC across ASEAN, and (v) the perception that IRC reduces policy space. On the other hand, the respondents mentioned facilitating factors for IRC that provide a positive context for the establishment of IRC, such as those described in the four case studies. Notwithstanding the fear of erosion of policy space or surrender of sovereignty, there is strong support for IRC from political leaders, the bureaucracy, and the private sector alike. Respondents perceive political will and support for IRC by political leaders as key to its success. The information provided on the pervasiveness of IRC, positive perceptions, and willingness to undertake it in its many forms as indicated by the survey responses augur well for the country.

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