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REGULATORY IMPACT ASSESSMENT: DEVELOPING ITS POTENTIAL FOR USE IN DEVELOPING COUNTRIES

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REGULATORY IMPACT ASSESSMENT: DEVELOPING ITS POTENTIAL FOR USE IN DEVELOPING COUNTRIES

Abstract

Regulatory impact assessment (RIA) has been adopted in most OECD countries to improve regulatory decision making. RIA involves a systematic appraisal of the costs and benefits associated with a proposed new regulation and evaluation of the performance of existing regulations. Although RIA requires capacity building in terms of regulatory assessment skills, including data collection methods and public consultation practices, it offers the means to improve regulatory practice in low and middle-income countries as well as rich ones.

This paper assesses the nature and scope of RIA and the challenges that will be faced in introducing the concept more widely across developing economies. Results from a survey of a small number of middle-income countries suggest that a number of developing countries have some form of regulatory assessment, but that the methods adopted are partial in their application and are certainly not systematically applied across government. The paper concludes by proposing a framework, drawing on the OECD guidelines, which can be applied in low and middle-income countries to improve regulatory decision making and outcomes.

INTRODUCTION

There has been a shift since the 1970s from the positive or interventionist state towards the regulatory state (Majone, 1994, 1996, 1997). In development policy this has been reflected in policies to privatise state enterprises, liberalise monopoly markets and establish appropriate state regulatory structures to tackle market failure. Market failure in developing countries can take the form of pervasive externalities in market transactions, monopoly abuse, underdeveloped or missing markets, information asymmetries in markets and the undesired social consequences of market outcomes (Parker, 2002). The neoliberal agenda substitutes markets with state regulation for state promoted economic and social development.

Regulation can be broadly defined as a government measure which is intended to affect individual or group behaviour¹. Regulatory impact assessment (RIA)² is a term used to describe the process of systematically assessing the benefits and costs of a new regulation or an existing regulation, with the aim of improving the quality of regulatory policy. In other words, by assessing the positive and negative impacts of potential and existing regulatory measures, RIA, through *ex ante* and *ex post* assessments is intended to enhance the evidence-

base for policy decisions. At the beginning of 2001, 20 of 28 OECD countries were applying regulatory impact assessment, although the extent of its use appeared to vary (Jacobs, 1997, 2002; Radaelli, 2002)³. By contrast there seems to have been little or no analysis of the potential for using RIA in developing countries or by organisations involved in the design and formulation of development policy. This despite, the considerable interest in measuring the effectiveness of development policy and in the design and implementation of regulation measures (Lee, 2002, pp 5-65; Stern, 2002; World Bank, 2003). The use of RIA has been restricted, it seems to a small number of middle-income developing countries, notably South Korea and Mexico (OECD, 1999, 2000). There has been some interest in the concept among APEC members (APEC-OECD, 2001) and in certain parts of Central and Eastern Europe, but it appears that there has been little progress in adopting RIA in many of the countries in these regions (Lee, 2002, pp.5-6). In Africa, the Middle East and much of Asia it does not appear that RIA has been seriously considered within government or is perhaps known about at all, in spite of a recognised need to build regulatory capacity in developing countries (DFID, 2000; World Bank, 2001)⁴. While there is a limited amount of empirical evidence on regulatory practices in developing countries (Jalilian, Kirkpatrick and Parker, 2003; Djankov et. al., 2002), there is an absence of even rudimentary data on the positive and negative effects of particular regulatory measures (Guasch and Hahn, 1999).

If state regulation is to promote economic and social welfare it needs to be both *effective* and *efficient*. Effective in the sense of achieving its planned goals, and efficient in the sense of achieving these goals at least cost, in terms of government administration costs and the costs imposed on the economy in terms of complying with regulations. At the same time, rarely, if ever, will a new regulation or a change in a regulations lead to a Pareto optimal gain; regulatory policy normally involves trade-offs in which one or more parties benefit, while others lose out. There is, therefore, a compelling case for the systematic appraisal of the positive and negative impacts of any proposed regulatory change - economic, social or environmental – including the distributional consequences.

The aim of RIA is to improve the quality of policy making and public management. DFID (2000, pp.24-25) comments that “Effective governments are needed to build the legal, institutional and regulatory framework without which market reforms go badly wrong, at great cost – particularly to the poor. Whilst excessive or cumbersome regulatory barriers stifle incentives and discourage investment, effective regulation remains essential...” This

invites an assessment of regulatory impact to audit both the intended and unintended affects of regulation and to promote accountability.

This paper considers the scope for using RIA in lower income countries and attempts to provide a framework of principles to address in countries wishing to apply RIA. The next section of the paper discusses the principles of RIA. This is followed by a preliminary assessment of the awareness of RIA in developing economies, which draws on an initial, if limited, study of regulatory appraisal in two economies, Malaysia and the Philippines. A framework for applying RIA in a development context is then proposed, followed by conclusions for future research and policy. The overall aim of the paper is to draw to the attention of a wider audience, in developing countries and donor agencies, the advantages and feasibility of RIA and thereby improve regulatory design and practice in low and middle income countries.

THE PRINCIPLES OF REGULATORY IMPACT ASSESSMENT

State regulations can produce both ‘goods’ and ‘bads’. Regulation can both promote economic and social welfare and lead to significant economic and social costs. It is therefore unlikely that the case for or against a state regulation can be convincingly made from first principles or on a *a priori* basis. The underlying rationale for RIA is that regulations need to be assessed on a case by case basis to see whether they improve social welfare. RIA can contribute to both the outcome and the process dimensions of social welfare. The outcome contribution of RIA can be assessed against the goal of economic, social, or sustainable development. The process contribution of RIA can be assessed in terms of the principles of ‘good governance’. There is a broad consensus that these principles encompass *consistency* in decision making to avoid uncertainty, *accountability* for regulatory actions and outcomes, and *transparency* in decision making to avoid arbitrariness and promote accountability⁵.

The contribution of RIA to better regulatory decision making rests on the systematic assessment of the impacts of a regulatory measure, and the adherence to the principles of accountability, transparency and consistency. The purpose of a RIA is “to explain the objectives of the [regulatory] proposal, the risks to be addressed and the options for delivering the objectives. In doing so it should make transparent the expected costs and benefits of the options for the different bodies involved, such as other parts of Government and small businesses, and how compliance with regulatory options would be secured and

enforced” (NAO, 2002, p.51). A properly conducted RIA, therefore, systematically examines the impacts arising or likely to arise from government regulation and communicates this information to decision makers. It should also set out the consequences of not regulating (ibid., p.1). RIA encourages public consultation to identify and measure benefits and costs and thereby has the potential to improve the transparency of governmental decision making. It can promote government accountability by reporting on the information used in decision making and by demonstrating how the regulation will impact on society. The result should be an improved and more consistent regulatory environment for both producers and consumers.

Guidelines on undertaking RIAs and issues to cover exist in a number of OECD countries⁶. Radaelli (2002) reports that RIA guides are used in nine countries (Canada, Mexico, USA, Australia, UK, Denmark, France, Germany, and the Netherlands). There are variations in the national guidelines, reflecting differences in legal, legislative and administrative traditions or systems (Mandelkern Group, 2001), but most follow a broadly similar approach. As an example, table 1 sets out the OECD checklist of questions that should be addressed in a RIA.

Table 1: OECD RIA Checklist

1. Is the problem correctly defined?
2. Is government action justified?
3. Is regulation the best form of government action?
4. Is there a legal basis for regulation?
5. What is the appropriate level (or levels) of government for this action?
6. Do the benefits of regulation justify the costs?
7. Is the distribution of effects across society transparent?
8. Is the regulation clear, consistent, comprehensible, and accessible to users?
9. Have all interested parties had the opportunity to present their views?
10. How will compliance be achieved?

Source: OECD (1995)

Consistent with these guidelines, in the USA, for instance, an analysis of a proposed regulation should include (a) a *statement of need*, establishing the case for the proposed action; (b) an *examination of alternative approaches* that could be adopted to meet the need, including a justification for the option chosen; (c) an *analysis of the benefits and costs* of

each alternative against a no action alternative, wherever possible expressed in discounted constant dollars; and (d) *an analysis of distributional effects and equity* (OMB, 2001).

Table 2 provides a list of the issues a RIA in UK government is expected to address. The list includes discussion of the purpose and intended effects, risk analysis (risk assessment should be part of a RIA and involves assessing the probability of detriment or harm), an identification of intended benefits and likely costs, problems of securing compliance with the regulation, the likely impact on small business (promoting small enterprises is a particular concern of the UK government), the extent of public consultation and the need for monitoring and evaluation.

Table 2: What a Full Regulatory Impact Assessment is Expected to Cover in the UK

Purpose and intended effect	Identifies the objectives of the regulatory proposal
Risks	Assesses the risks that the proposed regulations are addressing
Benefits	Identifies the benefits of each option including the “do nothing” option
Costs	Looks at all costs including indirect costs
Securing compliance	Identifies options for action
Impact on small business	Using advice from the Small Business Service
Public consultation	Takes the views of those affected, and is clear about assumptions and options for discussion
Monitoring and evaluation	Establishes criteria for monitoring and evaluation
Recommendation	Summarises and makes recommendations to Ministers, having regard to the views expressed in public consultation

Source: Cabinet Office (2000, p.3)

RIA is not a tool which substitutes for decision-making, rather it should be seen as an integral part of the policy making, which aims to raise the quality of debate and therefore the quality of the decision-making process. The ways policy makers make decisions on regulations has been classified as *expert*, where the decision is made by a trusted expert; *consensual*, where political representatives make the decisions based on political priorities; *benchmarked*, where the decision is based on an outside model; and *empirical*, where the decision is based on fact finding and analysis that defines the parameters of action according to established criteria (OECD, 1997, p.14-15). RIA is an empirical approach to decision making. It has the potential to strengthen regulation by systematically examining the possible impacts arising from government actions and communicating this information to decision makers in a way that allows them to consider (ideally) the full range of positive and negative effects (benefits and costs) that are associated with a proposed regulatory change. Equally, RIA has the potential to improve the monitoring of existing regulatory policies (SIGMA, 2001). This might lead to revisions to an existing regulation to improve its performance. RIA may also help to constrain economically damaging regulatory discretion and expose cases of regulatory conflicts (e.g. between agencies).

RIA is a process which is intended to enhance the quality of regulatory policy decision-making internally. The ‘success’ of RIA is assessed incrementally based on own practice, rather than in terms of some kind of international benchmarking. Radaelli (2002) argues that an emphasis on benchmarking best practice generates legitimacy rather than regulatory efficiency. Benchmarking implies a ‘one-size fits all’ approach to policy, which RIA rejects. The principles and criteria for ‘good’ RIA described in the preceding paragraphs should be viewed strictly as guidelines rather than as best practice standards.

Hence, the pattern and pace of adoption and implementation of RIA is expected to vary between countries. Firstly, RIA may very well require a cultural change within government, involving a more open policy making process, in place of what has traditionally been a closed and politicised event. RIA can be manipulated to produce an outcome that has been pre-determined by political criteria and this needs to be avoided. Secondly, it will need the development of RIA skills within the government machinery, including skills in enumeration and valuation of costs and benefits. Generally, qualitative effects will involve much judgmental or subjective evaluation and physical units introduce serious problems of aggregation. There may be a temptation, therefore, to diminish the RIA to include only an

evaluation of measurable financial costs and benefits. In particular, where a regulation has been decided upon or is imposed by international treaty then the assessment could be reduced to looking solely at the cheapest way of achieving the regulatory outcome (in effect providing a *cost effectiveness* study only) in which the benefits are taken as given. This lesser form of RIA risks ignoring important differential benefits from differing forms of regulation.

Thirdly, RIA requires the extension of consultation procedures to ensure that appropriate information is collected and analysed in reaching a view on the regulatory impact. There may be little tradition of consulting widely before undertaking regulation or those chosen for consultation in the past may have been selected on political grounds. Fourthly, the need to consult and evaluate can be time consuming and resource heavy within hard stretched governments. RIAs may involve multiple stages with each new regulation facing an initial RIA, another RIA after consultation and redrafting, and a final RIA on the legislation as passed by the legislature⁷. A sensible approach to minimise these costs is to prioritise where detailed RIA should be undertaken, by using a screening procedure to identify when a regulation is likely to have major effects on the economy, society or the environment. It is important, however, that the decision on when to use a RIA is not made simply on political grounds. Fifthly, RIA will need to be championed across government if it is to be used consistently and become a normal feature of regulatory policy making. It therefore needs clear and powerful political support within government if it is to overcome bureaucratic and political inertia. In the UK a Cabinet Office Regulatory Impact Unit has been established to monitor progress and encourage the implementation of RIA across government. Similar bodies exist in a number of other OECD countries (Radaelli, 2002, p.9)⁸. One result is published guidelines to government departments (e.g. Cabinet Office, 2000); the other is the establishment of Departmental Regulatory Impact Units (as in the UK) to advance RIA in each government department.

Finally, RIA must also confront the possibility of “regulatory capture”. In practice, the nature and content of regulation is likely to be “captured” by special interest groups who have the time, resources and incentives to invest in influencing the regulatory process. In market economies resources flow to where the perceived returns are highest and this is no less true in the shaping of regulation policy. There will be constant pressure from external groups and their spokespersons within the legislature and government to advance regulations that promote their members’ economic rents. For this reason regulatory policymaking may not be

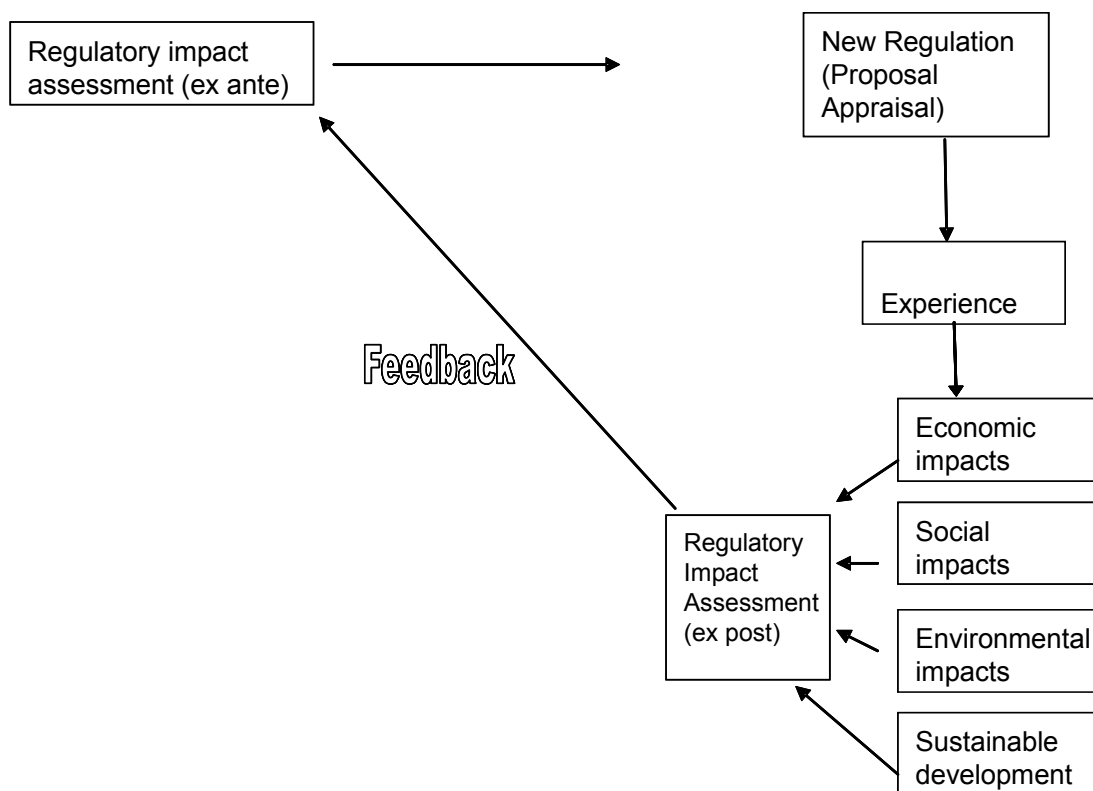
the objective and rational process that RIA presumes, with its emphasis on fact finding and disinterested decision making. At the same time, however, RIA can help to control rent seeking activity within government by promoting wider consultation and by requiring the explicit identification and evaluation of costs and benefits. RIA, by making the regulatory process more transparent and accountable, provides a means of weakening regulatory capture.

The approach adopted in this paper is that RIA has the potential to form an integrating framework within government to improve regulatory design and implementation in developing economies. Introducing RIA will face difficulties, but cost benefit analyses, environmental impact assessments and social impact assessments have been used for some time by governments and international agencies and have similarities to a RIA. In the first two cases, at least, their methodologies are well established⁹. A properly carried out RIA will usefully address both regulatory goals and the regulatory process and by so doing should lead to:

- Improved regulatory capability.
- Improved regulatory effectiveness.
- Improved regulatory efficiency.
- Improved regulatory consultation and accountability.
- Improved regulatory assessment methods.
- Improved regulatory co-ordination (“joined-up government”).

Figure 1 provides a generalised picture of the operation of RIA with regulatory policy affected by both *ex ante* and *ex post* RIAs, with the lessons from existing regulations impacting on the design of future regulation.

Figure 1: Regulatory Impact Assessment



In the next section of the paper we attempt to develop a framework for designing RIA within the specific context of a developing country. In doing so, we build on the OECD ‘best practice’ template, while recognising that the particular approach adopted by any individual developing country will be influenced by its institutional characteristics (Baldwin and Cave, 1999, pp.86-95).

APPLYING RIA IN DEVELOPING COUNTRIES

While RIA is now used in most OECD countries, albeit to varying degrees, there is little recorded evidence of its use in developing countries. One possible reason is that the methodology proposed in the OECD guidelines does not readily transfer to these countries with their very different economies and their greater focus on sustainability and poverty goals. A related issue is the extent to which RIA is culturally, socially and historically embedded or context specific. This section of the paper addresses these issues before proposing a framework for designing an appropriate RIA.

The goals of development policy include achieving sustainable development and poverty reduction. This is normally understood to require long-run economic growth, environmental protection and social justice (UN, 1997, p.1). In the case of developing countries, RIA needs, therefore, to address developmental goals. The aim of regulation policy should be to change private sector behaviour in ways that are consistent with sustainable development and poverty reduction. This implies a wider range of objectives for regulation policy beyond those which lie at the core of the OECD guidelines, namely promoting market efficiency (Kirkpatrick, 2001). If the positive and negative impacts of regulation in terms of, for example, prices and job opportunities and access to credit are to be properly recognised, a RIA must specifically address the social effects of regulatory changes. It may even be appropriate for RIAs to be “pro-poor” by placing an explicit heavy weighting on poverty reduction and skewing the assessment in favour of regulatory changes that assist the poor.

At the same time, RIA may face certain methodological and operational difficulties when applied to decision making in developing countries. The application of RIA needs to reflect the level of expertise, resources and information available in a country. It should not demand expertise, resources and information that go well beyond the capability of government departments to furnish. For example, governments in some low and middle-income countries may lack the capacity to collect the necessary data to undertake a meaningful RIA. The data requirements of a RIA are demanding. Equally, RIAs can be “captured” by elite interests leading to highly normative evaluations of the data gathered. For example, *ex ante* RIA will involve risk assessment, in which probabilities must be applied to possible outcomes, including, for example, risks to safety or health. The valuation of probabilities in a highly politicised decision-making environment can be manipulated to bring about the result initially desired by the policy makers. In developing countries with underdeveloped conventions and rules on probity within government, RIA will need protecting from such rent seeking behaviour¹⁰. Difficulties and dangers will be compounded when benefits and costs are problematic to quantify with any accuracy. Qualitative outcomes e.g. a better environment, need to be addressed within a meaningful RIA and the result is data that are not easy to aggregate. In developed economies “shadow prices” are used to reflect such costs and benefits but in developing economies there may be no obvious prices to use as proxies. Also, econometric techniques and engineering studies to estimate costs, and surveys of what people

are willing to pay for a regulatory change to assess benefits, are relatively well developed in industrial economies, but they may well be non-existent in low and middle-income countries.

The role of the “institutional endowment” or the pre-existing legislative, administrative and judicial arrangements of a country, in the design of effective regulatory arrangements, is now well recognised (Levy and Spiller, 1995). The institutional endowment will impact on the extent to which RIA can be successfully adopted. RIA is more than a method of analysis, it requires an open and transparent process of decision making within government. The result is RIA that is context specific, reflecting the realities of a country’s political behaviour. The consequences of institutional weaknesses may be a lack of long-term commitment to RIA within government, especially if it is imposed by donor agencies. Another possibility is that a RIA is undertaken to meet donor expectations but its results are effectively ignored. In other words, the rational process of analysis which lies at the heart of a RIA is confronted by political and administrative behaviour more consistent with *public choice theory* than disinterested government (Niskanen, 1971; Buchanan, 1972). This will be exacerbated where regulatory skill shortages are acute so that no effective challenge can be made to rent seeking actions within government. Moreover, if RIA is to promote sustainable development and poverty reduction by improving regulatory practice, it is essential that its introduction into low and middle income countries does not impose unacceptable delays in government decision taking (Deighton-Smith, 1997, p.213).

The problems arising from inappropriate adoption of regulatory models developed in an advanced economy context are clearly evident, in the late 1980s and 1990s, in the area of banking and finance regulation in developing economies. Financial liberalisation was not matched by an effective financial regulatory system, which was severely constrained by important weaknesses in obtaining accurate financial information, lack of skilled regulatory staff, weak accounting and legal frameworks, and pervasive political interference in the regulatory authorities (Brownbridge and Kirkpatrick, 2000, 2002). These weaknesses contributed to the post-liberalisation financial crises that affected many developing countries¹¹. Such weaknesses are unlikely to be limited to the finance sector, rather they are likely to pervade all forms of regulation in low income countries.

Existing evidence on the use of RIA in developing countries

In spite of the above potential problems, some developing countries have introduced RIA with the aim of improving regulation. The RIA methods used in Mexico and South Korea are detailed in OECD (1999, 2000). The approaches adopted are similar to those found in developed economies and are consistent with OECD principles. Nevertheless, their experiences appear to confirm the problems identified. For example, on Mexico the OECD report (1999, p.159) comments: “The biggest problem for the Costs and Benefits Section of the RIA is that the quality of data is generally poor and thus a quantitative analysis of proposals is virtually impossible. Regulatory authorities are not asked to produce net benefit estimates for fear of creating additional incentives to distort already inadequate data”. The report on RIA in South Korea notes that “the bulk of the RIA is still being conducted at a low level of sophistication (OECD, 2000, p.153).

To shed further light on the use of RIA in developing countries, a study of its use in the Philippines and Malaysia was undertaken in October 2002 using questionnaires distributed to government regulators. Regulators completed the questionnaire while attending regulation workshops in Manila and Kuala Lumpur at which the authors were facilitators. They came from a wide spread of government departments (e.g. education, transport and the environment) and dedicated regulatory agencies (e.g. telecommunications and power). The following reported results are based on the questionnaires completed - 5 from the Philippines, out of a total of 20 regulators attending the workshop, and 8 from Malaysia, out of 18 regulators attending the workshop – completion of the questionnaire was voluntary¹². This is admittedly a very small number of returns, though the population (total regulators in these countries) is also small and we have no reason to believe that the results are systematically biased in any way. Nevertheless, the results, while interesting, are preliminary.

Starting with the replies from the regulators in the Philippines, the questionnaire asked about the use of RIA (which was defined and explained in an accompanying note) within government. Three out of the 5 respondents confirmed that RIA (or similar) was used in some cases; although one respondent answered that to the best of his/her knowledge it was never used and another was unsure. The answers also suggested that RIA was not required by law in the Philippines and that there are no published guidelines on RIA within the government. Where RIA is used, it is applied to economic regulation only and not in social or environmental regulation, suggesting only partial application of the concept, at best. There

was also some uncertainty amongst respondents as to the extent to which both costs and benefits are evaluated during a RIA, perhaps suggesting much variation in practice across regulatory departments. More consistent was the finding that where RIAs are used for new regulations, public consultation does occur, with a main emphasis on the use of public notices and invitations to comment, followed by public meetings. Also, when RIAs are adopted they seem to take place at all stages of a proposed regulation, including at the outline stage, prior to detailed proposals being made and after detailed proposals are made. In only some cases, however, are the views of participants in the consultation exercise made public, suggesting scope for improved regulatory transparency. Some published policies on regulatory quality improvement seem to exist within the Philippines government, although not all of the regulators were aware of them. However, there is no ministry or other dedicated body responsible for encouraging and monitoring regulatory quality in the national administration.

Turning to the replies from the Malaysian regulators, the respondents suggested that some type of RIA (or similar) was used within government, but there was agreement that it was not used consistently. There was a lack of consensus, however, as to whether RIA was required by law and whether guidelines on how RIA should be undertaken exist – again, perhaps this reflects different practices in different departments. Unlike in the Philippines, in Malaysia RIA, when adopted, is applied across social and environmental regulations as well as economic ones. This seems to suggest that in Malaysia the use of RIA is more extensive than in the Philippines. However, as with the responses in the Philippines, there was uncertainty as to the extent to which benefits as well as costs are evaluated and apparently only sometimes are benefits and costs quantified. In Malaysia public consultation before the introduction of new regulations seems well developed with all respondents agreeing that consultation occurred and this consultation usually included public meetings. Also, as in the Philippines, where RIAs are adopted they are used at all stages in the regulatory process through to detailed proposals, but, again, the views of participants in the consultation exercise are usually not made public. There was disagreement amongst the respondents as to whether an explicit, published policy promoting government-wide regulatory reform or improvement existed, although most replied that published policies existed for promoting regulatory quality improvements in specific sectors. One important difference with the Philippines related to the existence of a dedicated body responsible for encouraging and monitoring regulatory improvements, with one-half of respondents confirming that such a body existed¹³.

Although the questionnaire is now to be sent out to a much wider range of low and middle income countries, the results for Malaysia and the Philippines are consistent with those for Mexico and South Korea. They confirm that there is much to be done in terms of regulatory capacity building if RIA is to be operated systematically and effectively in developing countries.

A Proposed framework for applying RIA

From the above discussion, we conclude that even where RIA is adopted the effectiveness of its use varies. There is an evident need for an approach to RIA which is appropriate to the needs and adaptable to the resource and capacity constraints of low and middle income developing countries. Although the OECD guidelines are a useful comparator for developing a RIA in these countries, the guidelines need translating to reflect the particular issues that arise when regulating in developing countries, including issues to do with regulatory capacity, poverty reduction and development goals. At present it does not appear that a clear framework of principles exists for applying RIA in these countries and the purpose of the remainder of the paper is to begin to address this need. In proposing a framework for the use of RIA in developing countries, an immediate choice exists between developing an approach that has a relatively narrow field of application, implying the need for multiple approaches to cover different fields or sectors, or one that is more comprehensive. While a comprehensive, integrated framework will be less finely tuned to the needs of specific countries or specific sectors e.g. environmental as against economic regulation, it is preferred because it has the potential to achieve wide application¹⁴. From this generic framework, it should be possible to develop specific implementation frameworks more directly applicable to particular fields of regulation.

The approach here is to propose a framework of principles that can be used to assess regulatory proposals and evaluate actual regulations in low and middle-income countries, i.e. one that is useful for undertaking both *ex ante* and *ex post* assessments¹⁵. The discussion below is intended to provide a “think piece” to help clarify the nature and principal characteristics of the RIA methodology to be adopted in developing countries; the scope and nature of its subsequent practical application; and related capacity building activities that need to be undertaken e.g. awareness raising and staff training.

The 1997 OECD guidelines provide a basis for establishing this framework (OECD, 1997). These guidelines are now reformulated under the principles of (i) building an effective regulatory management system, (ii) improving the quality of new regulations, and (iii) upgrading the quality of existing regulations, to reflect the particular needs of developing economies.

The first step in providing a framework for RIA in a developing country involves *building an effective regulatory management system*. This requires:

1. Adopting regulatory reform policy at the highest political levels in developing countries. Reform principles and the use of RIA need to be endorsed at the highest levels of government. RIA should be supported by clear ministerial accountability for compliance, perhaps through the Prime Minister's department.
2. Establishing explicit standards for regulatory quality and principles of regulatory decision-making within government. It is important to allocate responsibilities for RIA programme elements carefully. Delineating responsibility for RIA across regulators will improve "ownership" of the process and facilitate its integration into government decision-making. A central body within government is useful to act as champion of the RIA process (e.g. Prime Minister's office) and ensure consistency, credibility and quality at the departmental level. This body needs adequate authority and skills to perform this function successfully (hence the possible preference for the Prime Minister's Office).
3. Introducing effective training schemes in regulation theory and practice. It will be important to give regulators and relevant civil servants the skills required to undertake and appraise high quality RIA.
4. Introducing effective data collection processes. Data quality is essential and the framework should clarify data needs, quality standards for acceptable data and suggest strategies for collecting data at minimum cost and within the required time limits.
5. Instituting systems to monitor regulatory implementation. RIA should be integrated within the policy-making process, beginning as early as possible, so as to assist capacity building and the roll-out of RIA across government; it should become an automatic part of the legislative process.
6. Clarifying the role of RIA in achieving sustainability and poverty reduction goals. The precise impact of RIA in terms of these goals and the trade-offs with other goals need to be stipulated.

The second step is to *improve the quality of new regulations*. To this end government will also need to institute:

1. Procedures to ensure that RIA is built into the process of regulatory evaluation, at the earliest possible stage in the design of an important new regulations and proposed regulatory changes.
2. RIAs that take into account the public's views. Systematic public consultation procedures with affected interests should be introduced to ensure the widest possible input into regulatory decision making. Interest groups should be consulted widely and in a timely fashion and treated even-handedly.
3. Methods for assessing regulatory options, including not regulating. Resources should be concentrated on those regulations where the impacts are likely to be the most significant and where the prospects are best for altering regulatory outcomes. RIA should be applied to all significant policy proposals, whether implemented by law, lower level rules or Ministerial actions.
4. Systems to ensure improved regulatory co-ordination within government. The method adopted should include facilities for peer review within government, perhaps by a dedicated impact assessment bureau.
5. Regulators should see RIA as integral to policy decisions within government, rather than as an "add-on" requirement for external consumption or to meet donor requirements.

The third step is to *upgrade the quality of existing regulations*. This will be achieved by:

1. Systematically reviewing and updating existing regulations. RIA should be applied to reviews of existing as well as new regulations. The results of RIA must be communicated clearly with concrete implications and options explicitly identified to ensure transparency on the need for change. The use of a common format for RIA within government will aid effective communication.
2. Reducing red tape and government formalities. The benefit/cost principle should be adopted for all regulations, although analytical methods can vary as long as RIA identifies all significant positive and negative effects and integrates qualitative and quantitative analyses. Mandatory guidelines should be issued within government to maximise consistency of approach.

Although this framework for implementing RIA is intended to facilitate and speed up the use of methods to assess the impact of regulations (both *ex ante* and *ex post*), it is recognised that the assimilation of RIA into government decision making is likely to be gradual, as it has been in OECD countries. It is also recognised that there will need to be flexibility in implementation to reflect local needs and institutional capacity. This approach is consistent with the “lesson drawing” literature (Rose, 1991; Radaelli, 2002), with its assumption that there is no one best way of doing things that can be readily transferred from country to country. It acknowledges that the problems RIA sets out to tackle will differ, leaving scope for local interpretation. Nevertheless, by developing RIA according to the framework of principles set out above, the result should be more effective and efficient regulation.

CONCLUSIONS

RIA has been adopted in most OECD countries in recent years, but there is little evidence of its use in low and middle income countries or its promotion by international organisations with responsibility for the design of development policy.

This study has considered the nature of RIA, drawing especially on the experiences of the UK and the OECD guidelines. It has considered the scope for using RIA in developing countries. In spite of the formidable challenges RIA faces in developing countries, the approach adopted has been that it has the potential to greatly improve regulatory decision making. To facilitate the adoption of RIA in these countries, an implementation framework has been proposed in terms of building an effective regulatory management system, improving the quality of new regulations and upgrading the quality of existing ones. RIA is a policy that can improve the nature and outcome of regulation, leading to higher economic growth and poverty reduction. At the same time, RIA provides a potentially useful means of promoting accountability, democratic legitimacy and ultimately good government.

As the World Bank (2001, p.72) has commented: “Better regulation does not always mean less regulation”. To date, however, it does not appear that donor agencies have been particularly active in promoting better regulation through RIA. This contrasts with the heavy emphasis that these agencies have put on privatisation and market liberalisation and the establishment of government agencies to regulate newly privatised, monopoly markets. State regulation needs to be effective if it is to benefit developing countries by removing market failure and promoting sustainable development. RIA is a technique for improving the

empirical basis for regulatory decision making. When correctly applied, it systematically examines potential impacts arising from government regulation and communicates this information effectively.

There are two areas on which research into RIA in developing countries might usefully focus in the future:

1. What is happening in terms of regulation and regulatory governance in particular countries and what lessons can be learned?
2. What pressures exist in countries to monitor or not monitor the performance of regulation?

There is also a need to extend knowledge of the current use of RIA in developing economies and problems encountered. This study has added knowledge on the situation in the Philippines and Malaysia to the information published earlier by the OECD relating to Mexico and South Korea. It has confirmed that confusion exists amongst regulators in developing countries about the use of RIA and hence the need for more capacity building. Although institutional reform including regulatory capacity building is inevitably a deeply political act, the discussion in this paper has proceeded on the view that effective development policy requires the promotion of appropriate methods to improve regulatory practice. RIA is a method for improving both consequences and governance in the new regulatory state.

Notes

¹ 'Although there is no accepted international definition of regulation, the term "regulation" is used broadly in this document to include the full range of legal instruments by which governing institutions, at all levels of government, impose obligations or constraints on private sector behaviour' (OECD, 1996).

'Regulation may be widely defined as any government measure or intervention that seeks to change the behaviour of individuals or groups' (Cabinet Office, 2000).

² Regulatory impact assessment is alternatively referred to as regulatory impact analysis (EPC, 2001).

³ A systematic approach to RIA was first established in the USA in the 1970s. The UK adopted RIA in 1998 (NAO, 2002, p.1). In the mid 1990s the OECD published a checklist of questions and guidelines for regulators to consider when deciding upon regulations.

⁴ Weaknesses in regulatory practice in developing countries are well documented (Stern and Holder, 1999; Parker and Kirkpatrick, 2003).

⁵ Additional process criteria relating more specifically to 'good policy', would include *targeting* of regulation to ensure it achieves its goals at the least cost, and *proportionality* to ensure that no regulation is on a scale disproportionate to the perceived social, economic or environmental problem (Cabinet Office, 2000).

⁶ Details of the approaches to RIA adopted in a number of these countries can be found in Lee (2002, pp.12-14).

⁷ In the UK RIAs go through various stages as a regulatory proposal is being developed, culminating in a final RIA submitted to Ministers and Parliament.

⁸ A notable exception is the Netherlands where three government departments share main responsibility for promoting RIA. The European Commission has considered the possible application of RIA to EU policy (Mandelkern Group, 2001) and is now committed to undertaking a sustainability impact assessment (SIA) of all major community policy proposals that are presented in the Annual Policy Strategy or in the Work Programme of the Commission.

⁹ Lee and Kirkpatrick (1997) discuss the integration of economic cost benefit analysis and environmental impact assessment with other forms of assessment in the development process.

¹⁰ Djankov et. al. (2002) argue that the cross-country evidence on regulation costs associated with entry of new firms is consistent with the public choice view that entry regulation is used to benefit politicians and bureaucrats.

¹¹ Griffith-Jones and Ocampo (1999) make the same point about the need for better, not less, regulation with respect to international capital flows.

¹² A copy of the questionnaire can be obtained from authors. The questionnaires were completed anonymously and handed back at the end of the workshop or posted back immediately afterwards.

¹³ Unfortunately, the answers did not indicate which body this is, although one answer suggested that it was the Prime Minister's Office.

¹⁴ Integrated impact assessment encompasses economic, social and environmental assessment. This approach to impact assessment is also known as sustainability impact assessment. Lee and Kirkpatrick (2000) examine the concept of integrated impact assessment. The SIA methodology is discussed in Kirkpatrick and Lee (2001).

¹⁵ Lee (2002, pp.30 and 40-44) provides a valuable compilation of various OECD RIA guidelines, together with an initial assessment of which elements of these 'best practice' guidance are most likely to be readily adaptable to meet developing country needs and which may require greater modification.

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