CHAPTER THREE: Regulatory burdens: Core concepts


Key points

1. Regulation on business is intended to achieve certain desired objectives which otherwise would not concern business, such as the protection of consumer health and/or safety, protection of the environment, ensuring market efficiency. As such government uses regulation as the principal means to address risks to society, the economy or the environment which are not adequately addressed by individuals and markets.

2. Where requirements from regulation create a change in business behaviour and practices, a regulatory burden can be said to exist. Businesses invariably experience some costs in complying with regulations that would otherwise not arise.

3. However, where regulation is poorly designed or written or it is not administered or enforced well, it may impose greater burdens than necessary. As such poor governance is the principle cause of unnecessary regulatory burdens, resulting from poorly designed or written regulation and/or poor administration or enforcement regulation.

4. Regulations that have been formulated through a Best Practice Regulation process can achieve policy objectives without imposition of unnecessary regulatory burdens on business. Policy objectives can be achieved by regulatory or non-regulatory means.

5. The Government has implemented the initiative on best regulatory practice with the launching of the document on National Policy on the Development and Implementation of Regulations on July 2013. This policy document applies to all federal government ministries, departments, statutory bodies and regulatory commissions. The policy document spells out the objective, operating principles, responsibilities, requirements and process for the regulatory process management.

6. Regulations in logistics are influenced by several endogenous factors, which make a regulatory framework complicated, namely, the multi-sectoral nature, fragmentations, national political priorities, and historical legacies and cultural norms. Yet these many local statutory regulations do not cover every aspects of logistics activities. Logistics operators are subjected to international agreements when moving goods across borders. With the combination of these factors, there is no simple model for logistics regulations across countries.

7. There are multiple costs in regulation to achieve policy objectives. However, poor regulation may not achieve its objectives and can impose unnecessary
costs, impede innovation, or create unnecessary barriers to trade, investment and economic efficiency. Given the pervasiveness of regulations in the country, it is not surprising that regulation and red-tape continue to impose significant compliance costs. Compliance cost in logistics is particularly important to businesses as it will increase their unit cost and thereby reduce cost competitiveness.

**Why regulation?**

Regulation on business is intended to achieve certain desired objectives which otherwise would not concern business, such as the protection of consumer health and/or safety, protection of the environment, ensuring market efficiency.

Regulation may be defined differently depending on the context. The “generic” definition embodies all written legal and quasi-legal instruments ranging over primary legislation, secondary instruments, guidelines, circulars, codes, standards and others. As well as the content of written regulations, the way they are implemented, administered and enforced is an important aspect of regulation and can have significant impact on compliance burdens for businesses and the effectiveness of regulation.

In general, the government uses regulation as the principal means to address risks to society, the economy or the environment which are not adequately addressed by individuals and markets. It is important that the extent and intrusiveness of regulation is commensurate with the risk and, where individuals, communities and businesses are able take actions to address the risk adequately, additional government intervention may not be needed.

Regulation encompasses the diverse set of instruments used by government to:
- influence people or control the way people as individuals or groups behave
- achieve a diverse range of economic, social, safety and environmental policy objectives

Traditionally, ‘regulation’ has been seen as establishing formal legal requirements (written regulation) by government by way of acts, regulations and rules. A broader view of regulation takes in non-legislative policy tools such as information campaigns, education, persuasion, self-regulation or quasi-regulation (codes of practice, guidelines, etc., that can also influence behaviour).

Written regulation, which reflects a rational approach to risk, focuses on the sources of risk, provides instruments which will address them effectively without putting heavy requirements on business unless the size and the severity of the impact is large enough to justify this. The more severe the impact of a particular hazard, the more likely it is
that written regulation will be prescriptive and impose higher penalties for non-compliance.  

There are non-regulatory options to manage risks relating to security, safety and health and the environment, such as:

- quality accreditation scheme like the Good Manufacturing Practice (GMP) accreditation
- products standards and traceability standards recognised globally
- the strong commercial and ethical incentives for manufacturers, importers, suppliers, etc. to ensure safety and quality standards are maintained
- promoting and educating businesses on unwelcome outputs such as pollution and environmental standards and practices

**Regulatory burdens**

Where requirements from regulation create a change in business behaviour and practices, a regulatory burden can be said to exist. Businesses invariably experience some costs in complying with regulations that would otherwise not arise. Most fall under the following four categories of cost impacts:

1. administrative and operational requirements, such as:
   - reporting, record keeping
   - getting legal advice, training
2. requirements on the way goods are produced or services supplied, such as:
   - requiring the use of certain forms of transport
   - restrictions on access to certain carriers
   - the use of specified type of handling or storage
3. requirements on the characteristics of what is produced or the services supplied, such as:
   - handled, stored and transported
   - bonded warehouse requirements
   - specifications on containers or bulk/liquid cargoes
4. lost production and marketing opportunities due to prohibitions, such as
   - when certain products are banned from being transported
   - limiting hours of service (e.g. for haulage drivers)
   - not allowing large haulage vehicles to use certain roads or at certain times

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Unnecessary regulatory burdens

While it is usually necessary that some burden is placed on business for regulation to achieve objectives, where regulation is poorly designed or written or it is not administered or enforced well, it may impose greater burdens than necessary. Businesses that pose high risks to consumers tend to be more highly regulated and thereby experience more regulatory burdens. In this review of regulation on logistics, unnecessary regulatory burdens are of primary interest. The types of unnecessary regulatory burdens are many as illustrated in the Box 2.1 below.

Box 2.1: Types of Unnecessary Regulatory Burdens

<table>
<thead>
<tr>
<th>Type of Burden</th>
</tr>
</thead>
<tbody>
<tr>
<td>excessive coverage by a regulation — that is, the regulation affects more activity than was intended or required to achieve its objective (includes ‘regulatory creep’)</td>
</tr>
<tr>
<td>subject-specific regulation that covers much the same issues as other generic regulation</td>
</tr>
<tr>
<td>prescriptive regulation that unduly limits flexibility such as preventing businesses from:</td>
</tr>
<tr>
<td>o using the best technology</td>
</tr>
<tr>
<td>o making product changes to better meet consumer demand</td>
</tr>
<tr>
<td>o meeting the underlying objectives of regulation in different ways</td>
</tr>
<tr>
<td>overly complex regulation</td>
</tr>
<tr>
<td>unwieldy licence application and approval processes</td>
</tr>
<tr>
<td>excessive time delays in obtaining responses and decisions from regulators</td>
</tr>
<tr>
<td>rules or enforcement approaches that inadvertently result in businesses operating in less efficient ways</td>
</tr>
<tr>
<td>unnecessarily invasive regulator behaviour, such as overly frequent inspections or irrelevant or duplicative information requests</td>
</tr>
<tr>
<td>an overlap or conflict in the activities of different regulators</td>
</tr>
<tr>
<td>inconsistent application or interpretation of regulation by regulators</td>
</tr>
</tbody>
</table>

Source: MPC 2014

In general, the logistics chain covers the management of goods handling from the point of origin to the point of destination. It involves the transportation, warehousing and management of goods. Given the immense variety of economic goods and the different modes of transportation, there will be many different regulations involved in the governance of logistics. Invariably all goods will be subject to regulatory burdens in one form or another.

Corruption, the widespread and deep-rooted abuse of entrusted power for private gain, is the greatest obstacle to economic and social development around the world. High regulatory burdens tend to foster corruption, as businesses try to avoid them.

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The logistics industry, particularly freight forwarding, is very vulnerable to corruption as it is closely engaged with customs officials. In developing economies, government employees are often poorly paid with an understanding that they will make their wages up from ‘facilitation’ payments made by forwarding and express companies to ensure fast clearance of goods. Should such corruption become deeply engrained within the system it can simply be seen as a regulatory cost to be absorbed within the cost of moving goods. The result is that government objectives are not achieved and businesses and the community lose faith in the application of law.

The survey by Transparency International has shown that countries which have exceptional records in addressing corruption, such as Singapore (ranking 5th), Hong Kong (14th) and the United Arab Emirates (27th) have been successful in transforming themselves into global logistics hubs, with efficient administration and customs processes which are largely untroubled by corrupt practices. In the Transparency International Corruption Perception Index Malaysia scores 52 out of 100 points in 2014 (50 points in 2013) ranking it at 50 out of 184 economies. Malaysia is improving its corruption perception index but slowly.

To rid of perception of corruption, regulators must be highly transparent in their decision-making, administrative processes and delivery. They must be efficient in dealing with those they serve and be accountable. Understanding how corruption creates uncertainty and cynicism for businesses and undermines the achievement of government objectives will hopefully increase government and society’s resolve to eliminate the unnecessary burdens arising from corruption.

In summary, poor governance is the principle cause of unnecessary regulatory burdens, resulting not only from poorly designed or written regulation and/or poor administration or enforcement regulation. This frequently provides opportunities for corrupt practices.

**Good governance and best practice regulation**

Over the years, analysts have identified the more important characteristics which regulation must satisfy to pass this test. Some important characteristics of well written regulation are as shown in Box 2.2.

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4 Transparency International, *Corruption Perception Index 2014*
Box 2.2: Characteristics of well-written regulation

1. The requirements placed on business are proportionate to the risk being regulated, in particular low risks are not addressed by imposing onerous requirements
2. The regulations make appropriate use of prescriptive, performance, in-principle and process-based requirements
3. The regulatory requirements are the minimum necessary to effectively achieve the objective(s) being targeted by the regulation
4. In line with responsive regulation (discussed in chapter 5), the regulations provide an adequate range of enforcement instruments to allow regulators some flexibility in addressing non-compliance
5. The regulations are consistent with other regulation and do not create conflict, inconsistency or duplication
6. The regulations are transparent, communicated effectively and readily accessible by everyone
7. The regulations place accountability requirements on the regulator such as reporting, appeal and review provisions including some that address probity

Source: MPC (2014)

These important characteristics is achieved when regulations are made according to good practice principles. There are these six core principles (Box 2.3) that would provide guidance to regulators.

Box 2.3: Six Core Principles for Assessing Regulation and its Administration

**Principle 1:** have a proportionate and targeted response to the risk being addressed  
**Principle 2:** minimise adverse side-effects to only those necessary to achieve regulatory objectives at least cost  
**Principle 3:** have a responsive approach to incentivize compliance with regulation  
**Principle 4:** ensure consistency across regulation and consistency in the application of regulations across businesses and industries  
**Principle 5:** adopt transparency criteria, so interested parties are regularly consulted, it is clear to businesses what are their legal obligations and that all regulations are easily accessed by anyone  
**Principle 6:** accountability so that businesses can seek explanations of decisions made by regulators, as well as appeal them and there are probity provisions in order to reduce corruption (National Integrity Plan, 2004).

Source: MPC (2014)

There is, of course, other mix of options including *self-regulation, quasi-regulation or co-regulation* (MPC 2013) to achieve the same purpose. Regulations that have been formulated through a *Best Practice Regulation* process can achieve policy objectives without imposition of unnecessary regulatory burdens on business. Policy objectives can be achieved by regulatory or non-regulatory means. According to the OECD, ‘good’ regulation should:

- serve clearly identified policy goals, and be effective in achieving those goals
• have a sound legal and empirical basis
• produce benefits that justify costs, considering the distribution of effects across society and taking economic, environmental and social effects into account
• minimise costs and market distortions
• promote innovation through market incentives and goal-based approaches
• be clear, simple, and practical for users
• be consistent with other regulations and policies
• be compatible as far as possible with competition, trade and investment-facilitating principles at domestic and international levels

Way back in 1995, the OECD Council has come out with a ten-question checklist reflecting good principles for regulatory decision-making (Box 2.4). These questions provide guidance to the authorities whenever there is a need to consider government intervention in business.

Approach to regulatory design

A common approach for regulating particular activities is the use of rules or standards. There are four main categories:

• *prescriptive rules* focus on the inputs and processes of an activity, specifying the technical means used in undertaking an activity. They are rules which prescribe how an outcome is to be achieved where the focus is on the methods of operation or inputs (as in the mandatory installation of speed limiters or restrictions on vehicle engine capacity)

• *performance-based rules* performance-based rules which specify a particular outcome without prescribing the method to be used to achieve it (as in a speed limit of 60kph)

• *principle-based standards* outline the desired outcomes by specifying the spirit or broad intention of the regulation and require interpretation according to the circumstances (requiring drivers to travel at a speed ‘appropriate to the conditions’ or ‘not in a manner dangerous’)

• *system-based or process-based; or management-based* regulations where businesses develop their own risk management strategies which are audited by regulators

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Box 2.4: The OECD Reference Checklist for Regulatory Decision-Making

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<table>
<thead>
<tr>
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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td><strong>Is the problem correctly defined?</strong> The problem to be solved should be precisely stated, giving evidence of its nature and magnitude, and explaining why it has arisen (identifying the incentives of affected entities).</td>
</tr>
<tr>
<td>2.</td>
<td><strong>Is government action justified?</strong> Government intervention should be based on explicit evidence that government action is justified, given the nature of the problem, the likely benefits and costs of action (based on a realistic assessment of government effectiveness), and alternative mechanisms for addressing the problem.</td>
</tr>
<tr>
<td>3.</td>
<td><strong>Is regulation the best form of government action?</strong> Regulators should carry out, early in the regulatory process, an informed comparison of a variety of regulatory and non-regulatory policy instruments, considering relevant issues such as costs, benefits, distributional effects and administrative requirements.</td>
</tr>
<tr>
<td>4.</td>
<td><strong>Is there a legal basis for regulation?</strong> Regulatory processes should be structured so that all regulatory decisions rigorously respect the “rule of law; that is, responsibility should be explicit for ensuring that all regulations are authorised by higher level regulations and consistent with treaty obligations, and comply with relevant legal principles such as certainty, proportionality and applicable procedural requirements.</td>
</tr>
<tr>
<td>5.</td>
<td><strong>What is the appropriate level (or levels) of government for this action?</strong> Regulators should choose the most appropriate level of government to take action, or if multiple levels are involved, should design effective systems of co-ordination between levels of government.</td>
</tr>
<tr>
<td>6.</td>
<td><strong>Do the benefits of regulation justify the costs?</strong> Regulators should estimate the total expected costs and benefits of each regulatory proposal and of feasible alternatives and should make the estimates available in accessible format to decision-makers. The costs of government action should be justified by its benefits before action is taken.</td>
</tr>
<tr>
<td>7.</td>
<td><strong>Is the distribution of effects across society transparent?</strong> To the extent that distributive and equity values are affected by government intervention, regulators should make transparent the distribution of regulatory costs and benefits across social groups.</td>
</tr>
<tr>
<td>8.</td>
<td><strong>Is the regulation clear, consistent, comprehensible and accessible to users?</strong> Regulators should assess whether rules will be understood by likely users, and to that end should take steps to ensure that the text and structure of rules are as clear as possible.</td>
</tr>
<tr>
<td>9.</td>
<td><strong>Have all interested parties had the opportunity to present their views?</strong> Regulations should be developed in an open and transparent fashion, with appropriate procedures for effective and timely input from interested parties such as affected businesses and trade unions, other interest groups, or other levels of government.</td>
</tr>
<tr>
<td>10.</td>
<td><strong>How will compliance be achieved?</strong> Regulators should assess the incentives and institutions through which the regulation will take effect, and should design responsive implementation strategies that make the best use of them.</td>
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</table>


The temptation for a regulator is to lay down a prescriptive rule that must be adhered to. This encourages certainty, particularly in the short term and will suffice when dealing with issues for which limited alternatives exist for achieving the objective of the regulation (such as outright prohibitions). Against that though, a major problem with
prescriptive rules is that they can limit flexibility in meeting regulatory objectives and can retard innovation. Other problems with prescriptive rules are that they can be rendered superfluous by technological change or encourage wasteful by-passing tactics by industry.

Such ‘black letter’ prescriptive rules are falling out of favour because regulators will never be as smart as those they seek to regulate. Regulators limit themselves when they define behaviour by prescription. Business who has met the limits of prescribed behaviour will take it as meeting their obligations, and behaviour which falls outside their limits, whether fitting the intent of the law or not, is acceptable. At the other extreme, business may take the prescribed limit as a challenge “to find ways to get around it”.

Malaysia has traditionally followed the prescriptive approach in regulation, more so in areas where safety and health is concern. However, there is now interest in pursuing the performance-based rules as is being done in other benchmarked countries like Australia. Performance-based rules are most suited to areas for which the desired outcome is easily quantifiable. In specifying the desired outcome, individuals and firms can seek out the optimum cost for achieving it.

However, performance-based rules also have their limitations. Firstly, while allowing firms flexibility in achieving an objective, performance rules provide no flexibility in the objective itself. For example, emission controls generally specify a maximum amount that can be emitted from a particular factory, but the effect on the receiving medium will vary according to a variety of factors, including weather conditions, time of day, and the level of emissions from other factories at the same time. Secondly, as with prescriptive standards, once an individual or firm has met the performance-based standard, there is little incentive to go beyond that standard even when it would be socially desirable. For example, firms may reduce emissions to levels prescribed in a performance standard but would have little financial incentive to reduce them further, even if further reductions could be achieved at little cost.

Apart from both prescriptive-based and performance-based rules, some regulators have considered the use of principle-based standards. The use of principle-based standards assumes that the detailed preventative rules cannot possibly anticipate and prescribe the inexhaustible variety of human heartlessness and negligence, and at the same time will be often be harshly over inclusive. From this perspective, the appropriate strategy is to draft broadly worded statutes and regulations, laced with words such as “reasonable” and “so far as feasible,” enabling regulatory officials to “custom tailor” regulatory requirements and penalties to particular enterprises and situations7.

Government Initiative in best regulatory Practice

The Government has implemented the initiative on best regulatory practice with the launching of the document on National Policy on the Development and Implementation of Regulations (NPDIR)\(^8\) on July 2013. This policy document applies to all federal government ministries, departments, statutory bodies and regulatory commissions. It is also applicable for voluntary adoption by state government and local authorities. The policy document spells out the objective, operating principles, responsibilities, requirements and process for the regulatory process management.

The national policy also specifically mandates the MPC, through its responsibility to the National Development Planning Committee (NDPC), to implement the functions of the national policy. MPC is to assist in the coordination for implementing this policy.

The Best Practice Regulation Handbook\(^9\) as launched together with the national policy. This handbook provides the detail guidance on carry out best practice regulation – the systematic process to the development of regulations. Basically, a regulator has to carry out regulatory impact analysis (RIA) and produced a comprehensive report, the Regulatory Impact Statement when it is introducing any regulation that may impact upon businesses. MPC role here is to ensure that the RIS is adequately prepared before it is submitted to NPDC for further. This RIA for best practice regulation involves seven core elements as shown in Box 2.5.

Complexity of regulations in logistics

Logistics is largely concerned with managing, handling, storing and transporting goods and materials from one destination to another destination. As the types of goods are almost infinitely large in numbers, so are the regulatory requirements to manage the logistics chain. Depending on the characteristics of the goods and the risk they pose to human beings and the environment, there will be highly variable needs for the level and type of regulatory intervention to ensure the security, safety and health of the public and the preservation of the environment.

\(^9\) MPC 2013b, *Best Practice Regulation Handbook*, Malaysia Productivity Corporation
Box 2.5: Seven elements of RIA in best practice regulation

### Seven Elements of RIA:

1. **Problem statement**: RIA should clearly identify the problem/s that need to be addressed
2. **Objectives**: The “objectives” element should state the intent of the proposed regulatory action in concrete terms and relate this to the broader policy of the agency and Government
3. **Options**: This element describes the range of regulatory and non-regulatory options to be considered in addressing the issue or risk identified including the proposed regulatory action and the key differences between options
4. **Impact analysis**: To conduct a comprehensive assessment of the expected impact (costs and benefits) of each feasible options
5. **Consultation**: Any proposed new regulation or changes to regulation will involve consultation with relevant stakeholders, including the main parties affected by the proposal: Business, non-governmental organisations, the community, regulators and other government agencies
6. **Conclusion & recommendation**: should include a clear statement identifying the preferred option based on the impact analysis. The recommendation for the selection of this option must be supported by the preceding analysis and a comparison with other options provided.
7. **Strategy for implementation**: It is necessary to consider how the option will be implemented and enforced, and to establish a review strategy that will allow the option to be evaluated after it has been in place for sometime

**Source**: MPC (2015); [http://www.mpc.gov.my/home/?sstr_lang=en&cont=ds&id=8i2&item=d8&t=3](http://www.mpc.gov.my/home/?sstr_lang=en&cont=ds&id=8i2&item=d8&t=3)

Regulations in logistics are influenced by several endogenous factors, which make a regulatory framework complicated; namely, the multi-sectoral nature, fragmentations, national political priorities, and historical legacies and cultural norms. With the combination of these factors, there is no simple model for logistics regulations across countries.\(^{10}\)

Logistics regulations spread over multiple sectors (and types of goods) and are often not transparent to service providers and shippers. One can hardly find all regulatory requirements, say for licensing, which are published in one place. For example, the logistics service providers need to obtain the business premise licence from the Local Authorities, the trucking licence from the Road Transport Department, the Brokerage Licence from Customs and such.

Apart from licensing requirements, logistics have to deal with operation permits, approvals, inspections and certifications requirements. These multitude of regulations

are administered by different ministries, agencies, departments, divisions and their outsourced partners. For example, imports permits are required for many types of goods such as automotive strategic goods from MITI, agriculture produce and products from Malaysian Quarantine Inspection Services, MAQIS, pharmaceuticals for MOH, and radioactive materials from Atomic Energy Licensing Board, AELB, and so forth. As for operations of logistics services, operators should comply with environmental requirements from Department of Environment, DOE, safety and health from Department of Occupational Safety and Health, DOSH, fire safety from Fire & Rescue Department of Malaysia, BOMB, and so on. Goods clearance from ports frequently are subjected to quarantine and inspections, again by different agencies according to the applicable regulations.

Yet these many local statutory regulations do not cover every aspects of logistics activities. Logistics operators are subjected to international agreements when moving goods across borders. These agreements are meant to facilitate the movements of goods, but unnecessary burdens can result from poorly harmonised implementations.

In the ASEAN context, for example, the logistics market has expanded significantly along with the implementation of Free Trade Agreements within ASEAN as well as with ASEAN Dialogue Partners such as China, Korea, Japan, India, Australia and New Zealand. ASEAN Economic Ministers decided Logistics Sector as the twelfth Priority Sector in ASEAN for accelerated economic integration in 2006. The Roadmap for the Integration of Logistics Services was adopted in 2007. It contains specific measures which were formulated in consultation with both, government and business sectors with the aim to:

- create an ASEAN single market by 2015 by strengthening ASEAN economic integration through liberalisation and facilitation measures in the area of logistics services, and
- support the establishment and enhance the competitiveness of an ASEAN production base through the creation of an integrated ASEAN logistics environment\(^\text{11}\)

The extreme difficulty with its multi-sectoral nature is to find all regulatory information, nowadays especially online, results in lack of transparency. There is no “one stop centre” to pull out all logistics-related regulations as different logistics regulations are administered and enforced by various separate entities. Some regulatory information is restricted to members of trade associations and not available to the public thereby compounding the problem.

With these many statutory regulations and international agreements, there are still many other aspects of logistics activities which are “self-regulated”. The various trades in logistics have their own trading conditions, standards and codes of practice which

logistics operators have to adhere to. These governance aspects are not in the scope of this review.

Moving goods across national borders is a major logistics case. **Trading across borders**, the World Bank term for cross borders logistics, is a measures of logistics efficiency between counties. The World Bank ranking of 189 economies in 2014 is based on the criteria of cost, time and number of documents involved. The sample used is based on a set of assumptions (see Box 2.6).

**Box 2.6: World Bank Trading Across Borders Criteria and Assumptions**

<table>
<thead>
<tr>
<th>Assumptions about the traded goods:</th>
<th>The traded product travels in a dry-cargo, 20-foot, full container load (1). It weighs 10 tons and is valued at $20,000. The product:</th>
</tr>
</thead>
<tbody>
<tr>
<td>•</td>
<td>Is not hazardous nor does it include military items.</td>
</tr>
<tr>
<td>•</td>
<td>Does not require refrigeration or any other special environment.</td>
</tr>
<tr>
<td>•</td>
<td>Does not require any special phytosanitary or environmental safety standards other than accepted international standards.</td>
</tr>
<tr>
<td>•</td>
<td>Is one of the economy’s leading export or import products</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Assumptions about the business: The business:</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Is located in the economy’s largest business city. For 11 economies the data are also collected for the second largest business city (see cities list).</td>
</tr>
<tr>
<td>• Is a private, limited liability company.</td>
</tr>
<tr>
<td>• Does not operate in an export processing zone or an industrial estate with special export or import privileges.</td>
</tr>
<tr>
<td>• Conducts export and import activities but does not have any special accreditation, such as an authorized economic operator status.</td>
</tr>
<tr>
<td>• Is 100% domestically owned</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Economy</th>
<th>Trading Across Borders Rank</th>
<th>Trading Across Borders DTF</th>
<th>Documents to export (Number)</th>
<th>Time to export (days)</th>
<th>Cost of export: US$ per container</th>
<th>Documents to import (Number)</th>
<th>Time to import (days)</th>
<th>Cost of import: US$ per container</th>
</tr>
</thead>
<tbody>
<tr>
<td>Malaysia</td>
<td>11</td>
<td>89.94</td>
<td>4</td>
<td>11.0</td>
<td>525.0</td>
<td>4</td>
<td>8.0</td>
<td>560</td>
</tr>
</tbody>
</table>


Malaysia 11th position in this ranking is commendable. However, it should be noted that the World Bank analysis should be viewed with caution as the reality of logistics activities and processes are very complex. For example, the documents presented at the cross-border transaction have gone through many other processes involving many parties. The hidden costs, other related documents and actual time involved are camouflaged.

In the case of Malaysia, only four pieces of documents are required for export (see Box 2.5); the Bill of Lading, Commercial invoice, Customs Export Declaration, and Packing list. A typical shipper’s export declaration, for example, may require more than 25 data inputs, some of which may require supporting documentation (see a sample in Figure 2.1).
As for the Bill of Lading which functions as; a receipt for the goods shipped, evidence of the terms of the contract of carriage, and a document of title to the goods specified in the Bill. The filing requirement includes information for both shipper and consignee, terms of sale, reason for export, description of the item, tariff codes, quantity (number
of units and packages, weight) value (price), country of origin, and shipper’s signature and date (see sample in Figure 2.2).

Figure 2.2: Sample of Bill of Lading

![Bill of Lading](http://www.morethanshipping.com/bill-of-ladings/#sthash.7BsfezqO.dpuf)

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The probability of data-filing error and discrepancy, minor or otherwise, is always there. When errors detected by regulatory gate-keeper, suspicion arises, calling for verification and validation of the documents. Importers and exporters must always be ready to produce further evidences whenever demanded for the release of goods as the regulators are empowered to do so. As such one should not be lulled into believing that the need to submit only four pieces of forms means that there is less regulatory burden.

As such, the reality need to be reviewed from the total logistics chain. Just to illustrate, importation of goods can involve a multitude of processes by different parties from shippers to the port (see Figure 2.3)\textsuperscript{12}. Almost if not all the processes involve informational transactions and these cumulated to the final four documents required for goods clearance at Customs.

The transport industry in logistics is similarly governed by many regulations. This is not surprising, considering the serious consequences of system failures – road, sea, air and rail accidents, environmental disasters and even food poisoning. As such all stakeholders in the logistics industry strive to reach a common goal: safe and efficient transportation of freight by road, air, rail, inland waterway, or ocean-going marine vessel.

Regulatory fragmentation exists to a great extent in the logistics service industry and contributes to unnecessary regulatory burdens. Each segment of logistics services is often restricted by a different license, such as for a customs clearing agent, trucking, warehousing, handling dangerous goods, and fire safety. This fragmentation gives logistics operators a high hurdle to provide integrated door-to-door services under their control, therefore, operators often outsource some services to several service providers. Moreover, setting up a logistics service business may need to have external partners. If foreign companies intend to provide door-to-door logistics services, foreign companies are often required to partner with local enterprises (joint venture), which impedes the establishment of integrated logistics business. Furthermore, institutional fragmentation among relevant ministries and agencies causes less transparency in terms of compliance to regulations.

Market fragmentation adds more complexity due to having different levels of engagement by operators in freight forwarding activities. To provide seamless logistics services in the fragmented environment, logistics operators combine possible activities along the supply chain that they can arrange under the existing legal system. There are three tiers to logistics service activities: tier 1 involves core logistics services offered by the majority of logistics service providers; tier 2 is the transportation services that are integral to the movement of goods; and tier 3 is the input or value-added

services. Logistics services provide one or combined pieces of services from tiers 2 and 3, depending on the capacity of operators, and more importantly, on their legal status as service providers for each service.

Figure 2.3: Example of Import Processes

Then there are national priorities at the policy level. Beyond the multi-sectoral issue, national prioritization influences domestic regulations and bilateral/international transport agreements, such as transit regimes. Developing countries in particular are often keen on regulating international transport services since the taxes from international movement of goods generate a large share of the national revenues. Therefore, policy makers use their political power upon deciding transport related agreements. They will take account of economic interests when they open the industries to foreigners. There are instances that policy makers attempt to protect certain sectors from foreign investors. While entry of foreign operators in the logistics service industry can generate economic development of a country local operators are exposed to the risk of losing their business. As a result of economic favours towards
local service operators, foreign operators often encounter higher hurdles in various requirements to enter the industry.\textsuperscript{13}

**Costs of regulatory compliance**

There are multiple costs in regulation to achieve policy objectives. These costs impact upon business, consumers and the government in general (Figure 3.1)\textsuperscript{14}. What is important is that the benefits accrued from achieving the regulatory objectives must be greater that the total cost of regulation. Some regulatory costs are inevitable as can be viewed as the price of the benefits which the regulation brings. High quality regulation is both effective in address an identifiable problem and efficient in terms of minimizing unnecessary compliance and other costs imposed on business. The best regulations achieve their objectives at acceptable level of cost.

By contrast, poor regulation may not achieve its objectives and can impose unnecessary costs, impede innovation, or create unnecessary barriers to trade, investment and economic efficiency. Given the pervasiveness of regulations in the country, it is not surprising that regulation and red-tape continue to impose significant compliance costs. Direct compliance costs can include the time taken to comply with regulations, the need for additional staffing, the development and implementation of new information technology and reporting systems, external advice, education, advertising, accommodation and travel costs.

As well as having a direct impact on regulated businesses, compliance costs also impact indirectly on the community, by changing pricing and distorting resource allocation, impacting on international trade and delaying the introduction of new products or services. There remain concerns that such costs are excessive\textsuperscript{15}.

In an international study in 1998, the OECD estimated from survey responses that taxation, employment and environmental regulations imposed over US$17 billion (2.9 percent of GDP) in direct regulatory compliance costs on small and medium-sized businesses in Australia. The cost components are:

- employment regulations accounted for 40 percent (OECD average was 35 percent)
- compliance with tax regulations accounted for 36 percent (OECD average, 46 percent)

\textsuperscript{13} Ibid\textsuperscript{10}
environmental regulations accounted for 24 percent (OECD average, 19 percent)

The more advanced countries like Australia have taken measures to improve the cost-effectiveness of regulations and to reduce compliance burdens and red-tape. Some of the measures include:

- the increased adoption of performance-based regulation
- the consideration and adoption of implementation options that minimize red-tape
- the improvement of regulatory services through the employment of new technology
• increased electronic publication of regulatory information
• licensing reforms and/or reduction in number of licences
• streamlining of government paperwork requirements
• privatization of certification and inspection functions
• stakeholders consultation to improve implementation and compliance

Compliance cost in logistics is particularly important to shippers as it will increase their unit cost and thereby reduce cost competitiveness. The cost eventually will be passed on to the consumers thereby paying higher prices for no additional value add.