

CHAPTER 3: REGULATORY

BURDENS: CORE CONCEPTS

Contents: Purpose, Why regulation, Reducing Unnecessary Regulatory Burden, Types of Unnecessary Regulatory Burdens, Government Initiatives in Best Regulatory Practices and Complexity of Regulations in Warehousing.

Key points:

- This chapter outlines the core concepts of regulatory burdens and their significance, the principles of good regulatory practice and government initiatives in best regulatory practice and generic poor regulatory practices - all these would provide useful insights to guide the development of options in the subsequent chapter and complexity of regulations in the context of warehousing.
- A well-functioning regulatory system is essential to enhance governance and promote stability, productivity, progress and prosperity while at the same time protecting public health, safety and the environment.
- Impacts should be assessed and regulations reviewed systematically to ensure that they meet their intended objectives efficiently and effectively in a changing and complex economic and social environment. Those aspects of economic regulations that restrict entry, access, exit, pricing, output, normal commercial practices, and forms of business organisation should be periodically reviewed to ensure that the benefits of the regulation outweigh the costs, and that alternative arrangements cannot equally meet the objectives of the regulation with less effect on competition.
- Regulatory burdens arise from the costs imposed by regulation and enforcement that would otherwise not arise for businesses. 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.
- In 2013, the launch of the National Policy on the Development and Implementation of Regulations (NPDIR) reflected the government's desire to improve the rule-making process. Regulatory impact statements and public consultations were introduced in order to standardize the way that policies, laws and regulations are developed and improve overall regulatory quality.
- Warehousing and logistics are 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 logistic chain and warehousing. Depending on the characteristics of the goods and the risks 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 as well as the goods, and the preservation of the environment.

- Regulations 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.
- Warehousing and logistics regulations spread over multiple sectors (and types of goods) and are often not transparent to service providers. Many local statutory regulations do not cover every aspect of warehousing and logistics activities.
- Dealing with a range of authorities requires resources from the service provider, both in terms of time and finance. In addition to the time required for the actual regulatory procedures, the service provider also has to research the requirements specific to its operations to ensure that all relevant permits have been applied for. This can be particularly challenging for small and medium-sized enterprises (SMEs) with limited financial and personnel resources.

3.1 Purpose

This chapter outlines the core concepts of regulatory burdens and their significance, the principles of good regulatory practice and government initiatives in best regulatory practice and generic poor regulatory practices, - all these would provide useful insights to guide the development of options in the subsequent chapter and complexity of regulations in the context of warehousing.

3.2 Why Regulation?

A well-functioning regulatory system is essential to enhance governance and promote stability, productivity, progress and prosperity while at the same time protecting public health, safety and the environment. Many regulatory policies have already proved their worth, supporting structural reforms, entrepreneurship and market openness. While it is usually necessary that some burden is placed on business for regulation to achieve its objectives, greater burdens may as well be created when the regulation is poorly designed or written, poorly implemented or administrated, and where there is unnecessary regulatory duplication and inconsistency.

However impacts should be assessed and regulations reviewed systematically to ensure that they meet their intended objectives efficiently and effectively in a changing and complex economic and social environment. Those aspects of economic regulations that restrict entry, access, exit, pricing, output, normal commercial practices, and forms of business organisation should be periodically reviewed to ensure that the benefits of the regulation outweigh the costs, and that alternative arrangements cannot equally meet the objectives of the regulation with less effect on competition.

Regulatory intervention can often be justified where freely operating markets would deliver less than optimal levels and qualities of output. This is usually because the benefits that the

free-market brings to individuals or businesses carrying out a particular activity diverge from the benefits to society as a whole. When regulation is used appropriately, it addresses market imperfections so that total economic and social welfare is increased.

3.3 Reducing Unnecessary Regulatory Burden

Regulatory burdens arise from the costs imposed by regulation and enforcement that would otherwise not arise for businesses. 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. Differences across states in regulations, addressing the same issue can also place additional burdens on businesses operating across jurisdictions. Regulations with the same objective, but imposing different requirements, can result in businesses having to plan and undertake a number of different approaches to meeting compliance in different geographical regions. If these different compliance activities yield similar outcomes, the differences can be viewed as unnecessary burdens. In addition, a business may have to interact with more than one regulator, either within or across jurisdictions. Different approaches to enforcement by these regulators could also create additional burdens.

3.4 Types of Unnecessary Regulatory Burdens¹

Often regulations have legitimate social, economic or environmental objectives. It is usually necessary that some burden is placed on business in order for the objectives of regulation to be achieved. However, regulations create unnecessary burdens on business where they are poorly designed and written; or are poorly administered and enforced. Unnecessary burdens² might arise from:

- excessive coverage by a regulation - that is, the regulation affects more economic activity than was intended or required to achieve its objective (includes ‘regulatory creep’)
- subject-specific regulation that covers much the same issues as other generic regulation
- prescriptive regulation that unduly limits flexibility such as preventing businesses from:
 - using the best technology
 - making product changes to better meet consumer demand
 - meeting the underlying objectives of regulation in different ways
- overly complex regulation
- unwieldy licence application and approval processes, excessive time delays in obtaining responses and decisions from regulators
- requests to provide more information than needed

1 A Guide to Reducing Unnecessary Regulatory Burdens : Core Concepts, MPC, 2014

2 http://www.mpc.gov.my/wp-content/uploads/2016/04/CORE-CONCEPT-BI-30_9-ver01.pdf

- requests to provide the same information more than once
- rules or enforcement approaches that inadvertently result in businesses operating in less efficient ways
- unnecessarily invasive regulator behaviour, such as overly frequent inspections or irrelevant or duplicative information requests
- an overlap or conflict in the activities of different regulators
- inconsistent application or interpretation of regulation by regulators.

Poor governance and lack of transparency and accountability are among the principal causes of unnecessary regulatory burden, resulting not only from poorly designed or written regulation and/or poor administration or enforcement of the regulations. This frequently provides opportunities for corrupt practices.

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 practices³. In the Transparency International Corruption Perception Index⁴ Malaysia ranked 50 out of 175 countries (last year ranked 53rd). Malaysia is improving its corruption perception index but slowly.

Box 3.1: Principles of Good Regulation⁵

Effective governance structures encourage regulators to improve outcomes for the community within the boundaries of their legal framework and objectives outlined by government. The OECD (2005) Guiding Principles for Regulatory Quality and Performance recommended that good regulation should support eight key aims as follows:

1. serve clearly identified goals, and be effective in achieving those goals
2. have a sound legal and empirical basis
3. produce benefits that justify costs, considering the distribution of effects across society and taking economic, environmental and social effects into account
4. minimize costs and market distortions
5. promote innovation through market incentives and goal-based approaches
6. be clear, simple and practical for users
7. be consistent with other regulations and policies

³ Kogan Page: Innovation and Best Practice for Business Success, 2014, Endemic Corruption in Global Logistics, <http://www.koganpage.com/article/endemic-corruption-in-global-logistics>

⁴ Transparency International, Corruption Perception Index 2014

⁵ OECD Guiding Principles for Regulatory Quality and Performance, 2005

8. be compatible as far as possible with competition, trade and investment-facilitating principles at domestic and international levels.

When conducting the reviews of existing written regulations, there are six core principles providing the framework to assess the quality of regulations and help identify where unnecessary burdens on businesses could be reduced. Regulations that conform to best practice design standards are characterized by the following six principles and features. (Box 3.2) that would provide guidance to regulators.

Box 3.2: Six Core Principles for Assessing Regulation and its Administration⁶

- Principle 1: Have a proportionate and targeted response to the risk being addressed.
- Principle 2: Minimize 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 all written regulations are consistent and that regulators interpret and apply them consistently. Avoid duplication and overlap of regulations and regulators.
- Principle 5: Adopt transparency criteria, so interested parties are regularly consulted, it is clear to businesses what their legal obligations are, and all regulations are easily accessed by everyone.
- 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.

3.5 Government Initiatives in Best Regulatory Practices

In 2013, the launch of the National Policy on the Development and Implementation of Regulations (NPDIR)⁷ reflected the government's desire to improve the rule-making process. 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 Handbook⁸ (BPRH) which was launched together with the National Policy on the Development and Implementation of Regulations (NPDIR) provides detail guidance on how to carry out best practice regulation – the systematic process to the

6 A Guide to Reducing Unnecessary Regulatory Burdens : Core Concepts, MPC, 2014

7 Malaysia 2013, National Policy on the Development and Implementation of Regulations, Malaysia Productivity Corporation

8 MPC 2013b, Best Practice Regulation Handbook, Malaysia Productivity Corporation

development of regulations. Basically, a regulator has to carry out Regulatory Impact Analysis (RIA) and produce a comprehensive report, the Regulatory Impact Statement (RIS) when it is introducing any regulation that may impact upon businesses. The NDPC oversees the implementation of the National Policy on the Development and Implementation of Regulations. It monitors RIS process, examines and endorses the adequacy of all RIS prior to submission for decision by the government. The MPC is responsible for assessing the need for RIS and for performing a review of RIS for adequacy prior to submission to the NDPC. It also provides guidance to regulators in facilitating RIA and developing RIS. This RIA for best practice regulation involves seven core elements as shown in Box 3.3.

Box 3.3: Seven Elements of RIA⁹

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

Regulatory impact statements and public consultations were introduced in order to standardize the way that policies, laws and regulations are developed and improve overall regulatory quality. Under National Policy on the Development and Implementation of Regulations (NPDIR), all Federal Government regulators must undertake Regulatory Impact Assessment (RIA) and present the Regulatory Impact Statement (RIS) in the creation of all new regulations or review of regulations that relate to, or impact business, investments and trade, upon assessment by MPC. The process is also applicable for voluntary adoption by state governments and local authorities. RIA will be applied in all ministries and agencies. The tool is to enable governments to make sound analysis, evidence-based decision making and ensure transparency in all new and amended regulations.

MPC has published the Guidelines on Public Consultation Procedures as public consultation is a central element of RIA. This guideline is part of MPC’s efforts to facilitate the implementation of the NPDIR and also supplements the BPRH. Much of the information is

9 GRP portal grp.mpc.gov.my

based on the practices and publications from various countries such as the OECD, the United Kingdom, and the Australian Government. The intention of this guideline is to provide a reference for Ministries and federal agencies in conducting their public consultation exercises. It will also clarify the role of the stakeholders involved in public consultation. For the general public, the information will provide them with better understanding on the transparency and democratic process of the Government when developing regulations that will affect them.

3.6 Complexity of Regulations in Warehousing

Warehousing is defined¹⁰ as the storage of goods: raw materials, semi-finished goods, or finished goods. This includes a wide spectrum of facilities and locations that provide warehousing. Since this is a point in the logistics system where goods are held for varying amounts of time, the flow is interrupted or stopped, thereby creating additional costs to the product. In a macroeconomic sense, warehousing creates time utility for raw materials, industrial goods and finished products. It also increases the utility of goods by broadening their time availability to prospective customers

Flexibility of available warehousing space is a major concern as owners/occupiers of warehouses aim to maximise their workflow efficiency (their cube-wise space – length, width, and height) to fully optimise the warehouse for efficient material handling, order picking and storage processes, accommodating personnel movement, and handling of equipment. Thus the lack of warehousing standards and accreditation poses a significant challenge to the industry, in particular when the owner/occupier needs to invest and upgrade / expand space and are unsure of what specifications to standards should be adopted and complied with.

Depending on the characteristics of the goods and the risks 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 as well as the goods, and the preservation of the environment. Regulations 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.¹¹

Warehousing and logistics regulations spread over multiple sectors (and types of goods) and are often not transparent to service providers. Many local statutory regulations do not cover every aspect of warehousing and logistics activities. Operators also face difficulty to access all regulatory information as there is no “one stop centre” to centralise all the important information needed. Some regulatory information is restricted to members of trade associations and not available to the public thereby compounding the problem.

10 Council of Supply Chain Management Professionals (CSCMP), <http://www.referenceforbusiness.com/management/Log-Mar/Logistics-and-Transportation.html>

11 Maika Watanuki (August 2015), Review of Logistics Service Regulations for Freight Forwarding Businesses, What Should Be Addressed for a Better Logistics Regulatory Framework?, World Bank; http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2015/08/21/090224b08308af57/2_0/Rendered/PDF/Review0of0logi0ulatory0framework000.pdf

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. Furthermore, institutional fragmentation among relevant ministries and agencies causes less transparency in terms of compliance to regulations.

Dealing with a range of authorities requires resources from the service provider, both in terms of time and finance. In addition to the time required for the actual regulatory procedures, the service provider also has to research the requirements specific to its operations to ensure that all relevant permits have been applied for. This can be particularly challenging for small and medium-sized enterprises (SMEs) with limited financial and personnel resources.

For authorities, the duplication of regulatory information creates inefficiencies and may contribute to longer processing. At the same time, the likelihood of human error and conflicting information held by authorities may be higher. High regulatory burdens tend to foster corruption, as businesses try to avoid them.

Studies¹² have suggested that although performance improvements are evident in many areas of the transport and logistics value chain, red tape still remains a serious issue facing importers and exporters in many developing countries. Reductions in documentary formalities have been minimal in recent years, and costs have actually increased in many countries. Many countries have scope to further reduce delays and improve supply chain performance by rationalising red tape burdens.

Key legislation that may affect businesses in warehousing industry includes customs licensing, warehouse licensing, qualifications to store/transport certain goods or services (e.g. food, waste) and approval of transport security plans. The more necessary to register as a warehouse provider in particular when dealing with dangerous goods or when establishing a bonded warehouse.

For e.g. in Singapore, all business premises need to be approved by the Urban Redevelopment Authority for the intended use. For logistic companies, the premises need to follow the 60-40 rule, i.e. at least 60% of the gross floor area is to be used for industrial or warehousing activities e.g. storage of goods, while the remaining 40% being used for offices and other support functions. In Thailand, a company wishing to set up a bonded warehouse need to apply for permission with the Customs Department, and are subject to a security bond, bank guarantee and other requirements, as well as a yearly license fee. The criteria vary by the type of bonded warehouse to be established.¹³

Thus for the warehouse industry to remain competitive in the global market, to ensure processes are efficient, and to keep up with regulatory environment and addressing regulatory compliance in line with the changing roles and functions of warehousing is always challenging.

12 Aid for Trade and Value Chains in Transport and Logistics (OECD & WTO, 2013).

13 <http://www.enterpriseone.gov.sg>; <http://www.customs.go.th> <http://www.customs.gov.sg>