



REPORT OF THE TRAINING PROGRAMME

FACILITATING THE ADOPTION OF REGULATORY IMPACT ASSESSMENT FRAMEWORK IN INDIA



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Jaipur, Rajasthan, India

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BACKGROUND

CUTS International¹, in collaboration with CUTS Institute for Regulation and Competition², with support from US Embassy, British High Commission, and Jacobs, Cordova and Associates (JC&A)³, organised a rigorous four day training programme on Regulatory Impact Assessment (RIA) from 26-29 October, 2015. Scott Jacobs, Managing Director, JC&A, renowned expert on RIA, was the key resource person for the training programme.

The training programme⁴ saw participation from several government and non-government organisations, regulatory agencies, research institutions, think tanks, international consultants, and academia. Organisations represented include Central Electricity Regulatory Commission, Central Electricity Authority, Office of the Comptroller and Auditor General of India, Telecom Regulatory Authority of India, Deloitte Touche Tohmatsu India Limited Liability Partnership, Observer Research Foundation, National Institute of Public Finance and Policy, Prayas Energy Group, The Energy and Research Institute and The Tata Institute of Social Sciences. Set out below is a session wise brief report of the training programme.

OPENING SESSION

Udai S Mehta, Director, CUTS Centre for Competition, Investment and Economic Regulation, welcomed Mr. Jacobs and participants to the training programme. Participants were inquired about the expectations from the training programme, which included understanding the concepts of RIA, delving into RIA methods, and mechanisms to adopt RIA in India.

Mr Mehta introduced the journey of CUTS on regulatory reforms⁵ which led to the training programme. This includes knowledge support to the Planning Commission's Working Group on Business Regulatory Framework, assistance in drafting of the Regulatory Reform Bill to National Institution of Transforming India (NITI) Aayog, and inputs to the Expert Committee set up by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry. In addition, CUTS has undertaken projects on RIA in energy generation⁶ and financial sectors⁷ to generate evidence of utility of RIA in India. CUTS is also discussing the possibility of launching dedicated training programmes on RIA and conducting joint RIA exercises, with several state governments and regulatory agencies. The objective of the training programme was to develop a cadre of individuals who understand the RIA process and could act as ambassadors for adoption of RIA in their respective organisations.

Mr. Jacobs thanked CUTS and the fellow participants for organising and participating in the training programme. He introduced himself and the work done by JC&A on RIA. A brief overview of training programme was provided, which was expected to be highly interactive in nature. A good RIA system comprises making right choices thereby arriving at a better result. The training programme would help the participants think differently about market and regulatory failures, make choices to address these with the help of RIA tool. The objective is to reduce costs and risks that hold back economic growth, while boosting the rule of law and role of good regulations in protecting vital public interests.

¹ <http://www.cuts-international.org/>

² <http://circ.in/>

³ <http://regulatoryreform.com/>

⁴ Details of the training programme is available at <http://goo.gl/82G6M2>

⁵ http://www.cuts-ccier.org/Economic_Regulation.htm

⁶ <http://www.cuts-ccier.org/ADB-RIA/>

⁷ <http://www.cuts-ccier.org/BHC-RIA/>

SESSION I: INTRODUCTION TO RIA, ITS GOALS AND METHODS

Overview

This session comprised introduction to RIA, its benefits and adoption across the countries. Goals and scope of RIA were also discussed broadly.

Proceedings

Mr. Jacobs began with showcasing the adoption of RIA by different countries. Most of the OECD countries had adopted RIA during the early 1970s; however, non OECD countries were introduced to RIA in late 1990s. India is late entrant to RIA regime. He indicated that RIA has been adopted by 60 countries. However, most governments have been resistant to change, one of the reasons due to which RIA has not been able to make its place in several countries. Despite such resistance, Scott stated that it is popular because of several important governance reforms it brings on being rightly implemented. Economies have benefitted from RIA and now the trade rules also call for more transparent and result based regulations.



Mr. Jacobs stated that we live in the golden age of regulation, and the challenge today was not deregulation but smart regulation. Most of the governments were not aware of the consequence after the law is written. So, a bad law introduced in the society would either make the present situation worse or not produce results at all. Therefore, before the government acts, it should understand the consequences. When regulatory quality is low, regulatory systems breed corruption and abuse, which needs to be avoided. Regulation can improve our lives if well targeted, designed and implemented: to ensure that markets function properly; to create a level playing-field for companies and financial institutions, to protect workers, consumers, health and the environment.

He further mentioned that regulatory reform was a systemic issue. Hence, RIA within an appropriate systematic framework can underpin the capacity of governments to ensure that regulations are efficient and effective in a changing and complex world. The problem of regulatory stock (clean the existing bad regulations), flow (ensuring that new regulations are efficient) and accountability can be addressed through RIA.

Mr. Jacobs mentioned that a central unit for regulatory quality in government can conduct RIA, review the stock of regulations, ensure quality in flow, and also help building institutions for better regulations. A stakeholder advisory council can be set up to monitor results, and adapt changes, through public consultation.

SESSION II: GOOD REGULATORY PRACTICES AND INDIA: WHY RIA?

Overview

The second session discussed the context of “better regulation” reforms, defined RIA and highlighted some results seen in countries that have applied RIA. This session also identified the main features of a RIA framework – dividing the RIA process into several steps, from problem definition to communication of the final results to ministers and the public.

Proceedings

The steps of RIA include defining the problem and its causes, setting goals, identifying possible solutions, understanding the costs and benefits of the alternatives, comparing possible alternatives, identifying the solution that is most likely to solve the problem, and understanding how these can be implemented by the government. Each of these steps requires a method and process to be correctly implemented.

Mr. Jacobs then discussed the importance of learning for institutions in order to improve. Ministries are often risk averse and the systems are based on status-quo. It is necessary for such institutions to keep learning and innovating, to keep track with market developments. RIA is one of the ways of continuous learning as it can build in innovation standards within the process. RIA involves consultation with affected public and is one of the means of learning. However, it is important to analyse the process of consultation in terms of the questions asked, the methods of integrating information into the response received, to ensure consultation is effective and balanced.

Ministries often learn through a crisis which is very reactive but a very costly way of learning. Benchmarking is another powerful approach to learning, which is useful for instance in the Ease of Doing Business ranking by the World Bank. Some of the other methods included clarifying multiple goals, interacting with stakeholders, gathering information, evaluating the information, communicating, setting minimum qualification standards and adjusting.

RIA is an ex-ante process which is form of anticipating the consequences of actions in the future and it is done before the decision is taken. There are three principal components of RIA

- (i) Asking the right questions which can be divided into two categories – one set which are unique to the country, which is conducting RIA. For eg. Environment protection, benefit to MSMEs. The other set of questions is the core RIA questions which remains the same across RIAs. A structured format must be used to ensure minimum quality standards and also makes it easier for civil society and politicians to read the RIA. It helps create a transparent system.
- (ii) Assessing consequences, collecting data and evaluating impacts. This involves systematically and consistently examining selected potential impacts arising from government action or non-action.
- (iii) Communicating the information to decision-makers and stakeholders in a manner that is useful and presented in a meaningful manner. This should also be customised depending on the stakeholder group for instance; a minister may read only 2-3 pages and the critical aspects must be presented in a brief document.

The process adopted for RIA is critical in achieving desired results. This is based on a clearly defining process of “good regulation”. Many governments have done this through instructions issued to regulators about the quality of their regulatory decisions. A ‘good regulation’ process typically comprises a common format of these in checklists and explaining criteria for decision, and the regulators need to ensure compliance with these standards before the regulation is adopted. This process of ensuring compliance is called the quality control process.

Mr. Jacobs then went on to showcase some of the quality control standards set by different countries/ organisations such as Singapore, OECD, EU, Australia, Canada etc. He added that if the governments/ regulators cannot answer the questions/ meet the minimum criteria for a regulation, it should not be proposed. Countries are increasingly including a discussion on the compliance with the regulations proposed, as well including assessing the cost of compliance. In order to adhere to quality standards it is important to define the standards clearly and thus, such documents become important.

Thereafter, the RIA process was discussed in detailed. The first step in the RIA process is planning the RIA as time and resources are required and it is encouraged to have a one year agenda for RIA for the rules and regulations to be prepared.

Plan the RIA

1. Draft preliminary schedule & outline plan of RIA process.

Define Problem, Establish Baseline, and Set Goals

2. Define and refine the problem and its drivers to ensure the broadest possible range of potential solutions. Establish a baseline – what will happen under the status quo?
3. Set the goals for public policy

Select Options and Collect Data

4. Initially and informally consult with sectoral experts and business associations to validate problem definition, problem profiling, baseline, and goals, and to identify issues and potential options
5. Select the options to be considered
6. Select the method, scope, and depth of analysis, map data needs and collect data on detailed benefits and costs of options through business surveys and other data sources

Analyze and Consult on RIA and Draft Policy

7. Analyze, compare options, and draft RIA and policy documents
8. Present RIA and proposal to stakeholders for consultation

Finalize Proposed Policy and RIA

9. Refine and finalize RIA and policy after consultation

It is an iterative process and each stage validates the information and findings from the previous ones. The RIA Report should also have a standard structured format so the stakeholders and readers know what to expect. Another good practice would be to include compliance strategies within the report. The process is more significant and if the right process is followed the precision of data is no longer key as the worst ideas will be eliminated. A good RIA should be able to answer the following basic questions:

- ◆ What is the problem being solved, and why did it emerge?
- ◆ What will happen if the government does not act?
- ◆ What are the consequences of government action?
- ◆ Why is the proposed solution the best one, that is, best solves the problem at lowest cost to the country?
- ◆ Can the government implement the policy effectively?

Answering these key necessary questions is a key to efficient RIA, and also act as a checklist while conducting RIA.

SESSION III: GETTING IT RIGHT FROM THE BEGINNING: DEFINING THE PROBLEM AND SETTING THE BASELINE

Overview

The third session delved into the critical initial steps of the RIA process, comprising problem definition and setting the baseline. The concept of incentives was explained and regulations made in different jurisdictions were highlighted.

Proceedings

Mr. Jacobs started this session by highlighting the importance of problem definition in the RIA process. Better problem identification can help in avoiding various pitfalls at later stages in the RIA, and wrong problem definition is one of the most common reasons why regulations fail to achieve their goals. He discussed how such failures can be reduced through RIA.



He gave an example of fast driving on highway and how regulation can be changed to increase voluntary compliance. The cell phone ban case of California was discussed in detail, and it was highlighted that despite the ban on use of hand-held cell phones, the number of accidents had increased. Mr. Jacobs highlighted that the government incorrectly defined the problem as ‘hand held cell phones’ while the problem was ‘talking on phones while driving (and not merely hand held cell

phones, as people started using handsless phones)’, and there could have been solutions like cutting off the signal on speed going above a particular limit, or denial of insurance in case of accident while driving while talking on phone. This case study highlighted the importance of correctly defining the problem.

Factors such as technology, information and awareness about the law, insurance etc. need to be taken into account while analysing human behaviour and devising regulatory alternatives. Law tends to regulate human behavior and sanctions are used as an incentive in the law. Pricing is seen as one of the most important factor in changing behaviour of the people. We need to look at different incentive options while devising regulation. Incentives and the example of US financial crisis incentives help in understanding the results of the regulation.

Another case of children being poisoned by eating pills from bottles in their homes was also discussed in detail. Various perspectives were suggested by the participants including trade-offs and behavioural issues. The regulator had adopted bottle caps that were difficult to close and open. The pills were used by elderly and inconvenience in opening caps led to elderly not closing the bottles. This caused more deaths and there was moral hazard problem also as the parents became more complacent and did not keep bottles properly (out of reach of children). The case also highlighted the intricate relationship between human behaviour and incentives.

While discussing such case studies, issues for correctly defining problem were also discussed, including the tendency of regulatory agencies narrowly defining the problem. Sometimes agencies define problem narrowly so that it fits in their expertise area and they can have fast solutions. However, this might not be the correct approach, and a multidisciplinary perspective to define the problem needs to be taken. In the earlier discussed example of child poisoning, this can be done by including lot of stakeholders including child psychiatrist, and also conducting widespread stakeholder consultation. Thus, a broader problem definition helps to take into account multitude of solutions and thus is pivotal in the RIA process.

SESSION IV: BASIC RIA CONCEPTS

Overview

The purpose of this session was to review basic analytical concepts important to understanding the application of RIA. Few specific questions were addressed in this session i.e. what are regulatory costs and benefits? How do we know them when we see them? How do we measure them? What are opportunity costs? How do we deal with dynamic effects that cannot be quantified? What happens when benefits and costs are asymmetric? How do we deal with calculating costs and benefits over time?

Proceedings

At the start of the session, Scott emphasised that benefits and costs must be calculated separately because the two often fall on different people and the structure of the two effects are different. Economic, environmental and social costs and benefits are the three basic forms of impacts estimated in the RIA - economic benefits being valued in the market. These can be monetized or discussed qualitatively. Non-economic benefits can also be quantified (number of species saved from extinction). These can be presented in a metric or monetized and non-economic benefits that cannot be quantified (such as, more social justice) should also be presented.

Few examples of Regulatory Benefits include: to *Consumers* (a reduction in pain and suffering; increased access to information; lower prices; improved safety of products, workplaces, services etc); to *Business* (reduction in plant or property damage; a reduction in lost production time; reduced compliance costs; less anti-competitive behaviour in the market or greater regulatory transparency, certainty and predictability); to *Government* (streamlined regulatory processes and requirements; reduced monitoring and enforcement costs) and to *Community* (improved environmental outcomes; safer workplaces; greater access to services or opportunities for the poor or disabled; more economical use of resources and higher economic growth; increase in the standard of living and quality of life).

Scott then went on to explain ways to value benefits and costs. According to him, in competitive markets, prices and wages provide direct measures of benefits and costs that can be used for the purposes of cost-benefit analyses and in non-competitive markets or where no markets exist, value can be judged by estimating the social value through either a revealed preference or stated preference approach. In terms of costs, he emphasised that the real costs of government policy are the social costs to a country, which, in the most accurate analysis, would be measured as opportunity costs. The government uses policy to allocate national resources from one use to another use (for example, buying a more costly fuel-efficient car rather than a cheaper car and a new television). Because we cannot easily measure social opportunity costs, RIA mostly uses a proxy for social costs to greatly simplify the RIA: direct compliance costs to businesses and citizens.

Scott emphasised that RIA assesses three kinds of costs - *Direct compliance costs*: Compliance costs are the direct additional costs to businesses of performing tasks to comply with government regulation. In two categories - Administrative and other operating costs; and Capital costs such as buying new equipment. Costs also include: *Reduced market opportunities for innovation and expansion, reducing the value of business assets and eliminating opportunities for higher returns, Regulations that close markets through monopolies or other barriers to entry; slow innovation by prescribing technologies; reduce business flexibility in labor hiring and firing and Increased policy risk of investment through unpredictable or anti-market government actions, increasing the cost of capital.*

To conclude the session, Scott provided certain important tips while undertaking RIA: *Break down the policy into major decisions*: a complex regulation is rarely a yes/ no decision. Instead, you will want to identify which part makes sense. This requires a series of mini-RIAs. *For each decision, identify the options and the major costs and benefits (impacts) for each option; For each impact, develop a formula for assessing its direction and magnitude (use Excel); For each formula, identify the data needed; and; Collect the data and plug into the formula.*

SESSION V: PUTTING RIA INTO PRACTICE: CHOOSING THE ANALYTICAL METHODS AND PRESENTING THE ANALYSIS

Overview

The next session focussed on available analytical methods for RIA including their strengths and weaknesses and the kind of problems and situations to which each is suited. Further, means to compare impacts of each option in the RIA to enable decision-makers to make relevant policy decisions, was also discussed.

Proceedings

Mr. Jacobs began the session by emphasising that the RIA analyst needs to be reasonable, make logical judgements based on available data and ensure transparency by using clear metrics, explaining assumptions and providing explanations. He also highlighted that good solutions could be identified through imprecise analysis if validated through public consultation. In order to decide on the type of analysis to be undertaken, the decision criteria must be chosen and these are based on the values of society to determine how analysis adds value to policy decision.

RLA Methods

The costs include (i) Operating Costs, (ii) Capital costs and (iii) Efficiency costs while the benefits include (i) Monetised benefits, (ii) Metric of benefits and (iii) qualitative benefits. These can be measured using the following tools -

Cost-Benefit Analysis (CBA)

CBA = Benefits - Costs

This is a purely mathematical model and both figures (benefits and costs_ need to be in the same metrics. It compares overall negative and positive impacts and asks 'if' an action should be taken (do the benefits exceed the costs). However, the most common issue with this method is the difficulty to establish monetary values to some non-marketed impacts. Also, relevant data may not be available or be expensive to collect and it may not be possible to present some impacts in terms where people are able to make reliable trade-offs against money.

Further, CBA does not always need monetisation. This was illustrated with an example of cost per statistical life saved and beyond a certain cost the options were rejected as the resulting benefits were not considered significant with respect to their costs. These resources could be better spent on other issues.

Cost-Effectiveness Analysis (CEA)

$$CEA = \frac{\text{Cost}}{\text{Benefits}} \quad \begin{array}{l} \text{(Monetised)} \\ \text{(metric such as lives saved)} \end{array}$$

This tool does not address the 'if' question but asks 'what kind' of action maximises the results for any given expenditure. It compares alternative ways to produce similar outputs, thus, is useful to compare programmes with similar goals. It is tough to implement for programmes with multiple categories of benefits as the cost-effectiveness calculation is based on the quantity of a single benefit category. The benefits need to be reduced to a single number.

Multi-criteria Analysis (MCA)

This tool addresses 'what kind' of action would produce the largest expected utility combining several consequences. This can also develop quantified, non-monetised metric through a technique of weighting and scoring. It involves assigning weights to criteria and scoring options in terms of their performance against those weighted criteria. These weighted scores are then summed which can be used to rank options. A simpler method is to list out the required performance criteria (critical success factors) and assess the options in terms of whether they can meet these criteria. The goal is to provide an overall ordering of options.

However, these weightings are subjective and it is important to obtain inputs from a variety of professionals (as a single person can bias the results), have the implementation methodology monitored and reviewed. The weighting methodology should also be published to maintain transparency. These checks are necessary to ensure credibility of MCA.

Standard Cost Model (SCM)

SCM = Hours to comply X Cost per hour X Frequency per year X Number of businesses

This is one of the most important tools of RIA as it calculates ‘how much’ the red tape requirement costs businesses in the country each year. Red tape has significant impacts on society and affects all businesses, particularly SMEs and start-ups. However, some of the shortcomings of this tool are that the benefits are not considered, costs to citizens or government is also missing and only costs of information obligations are accounted for. It also does not consider other costs created by reducing administrative burdens and assumes 100 percent compliance.

Weakness in these methods

None of the methods can provide answers to all the governments’ questions such as the distributional issues to specific groups, uncertain future effects (such as technical changes etc.) and political concerns.

Good and Bad Practices in comparing RIA Options

Good Practices

A tabular presentation which provides a clear statement of qualitative and quantitative benefits and costs of the proposed or planned action should be given. It should be in a manner so as a person without technical knowledge can also comprehend it easily. The uncertainties should be presented and similar information for reasonable alternatives should be provided. Good qualitative comparisons are better than uncertain quantitative comparisons.

Bad Practices

Statements in text format which are imprecise or which compare options unsystematically using unclear benefits or which compare either only costs or only benefits should be avoided. Claims should not be made without a statement of uncertainties or unknowns. Another bad practice is discussion of only one option, concluding one option is superior without proper comparison.

Communication of Results

Mr. Jacobs presented a few cases using different types of data and presentation formats. Causal Mapping, a tool which can be used effectively to understand cause and effects can help make decisions. Options are also compared and presented using smiley faces or positive and negative signs to signify the extent and impact of the option. These can help policy makers easily identify more suitable options. A pure numerical representation can also help calculate the total net value and arrive at the most optimal solutions. Thus, the method of communication should be such that it is clear, concise and easy to understand as decision makers often do not have the time or the technical knowledge to go through the complete document.

SESSION VI: ADMINISTRATIVE BURDENS AND THE USE OF THE STANDARD COST MODEL: CONCEPTS AND INTERACTIVE CASE STUDY

Overview

This session involves administering a case study to estimate administrative costs of regulations using the standard cost model. The participants were divided into different groups to discuss the problem. Each group presented their solution, which was followed by an open floor discussion.

Proceedings

The problem administered involved revision of EU Directive on Safety of Toys. The revisions involve labelling and reporting requirements. The case study involved estimating costs of familiarizing with both obligations, adjusting existing data for the label, retrieving data for new reporting requirements, training staff about both new regulations, holding internal meetings to review information to be reported, and submitting and filing required information on toys in food to the health and safety authorities.

The questions included: sequence of steps that would be used to estimate the administrative burden; likely administrative burdens for stakeholders of the information required; and alternatives need to be examined to reduce costs of information.

The sequence of steps used to estimate administrative burden include:

1. Identification of the law;
2. Identification of information obligations;
3. Identifying: i) time in hours for 1 business; ii) tariff (salary cost of time); iii) target group (number of businesses); and iv) frequency per year, for each administrative action.
4. i) The cost of administrative action is $3(i) \times 3(ii)$; (ii) The yearly number of administrative actions is $3(iii) \times 3(iv)$.
5. The administrative burdens involve $4(i)$ (cost of administrative action) \times $4(ii)$ (yearly number of administrative actions).

Alternatives to regulation include voluntary code of practice, removing information obligations, exempting groups or sectors of stakeholders from the obligation, consolidating different regulatory requirements, simplifying the terminology etc. Simplification mechanisms also include removing unnecessary forms or data requests, reducing time taken to fill out the forms, by improving design and quality, prioritising resources by less inspection of stakeholders with good record, reducing the frequency of information requests, etc.

Information, Communication and Technology (ICT) mechanisms could be used to reform regulations. These include: making forms and data requests available on internet, pre-populate forms, make forms interactive/ intelligent so that they do not request irrelevant data, and make all ICT solutions available at one-stop shop.

SESSION VII: ASSESSING ALTERNATIVES TO TRADITIONAL REGULATION

Overview

This session dealt with developing and assessing alternatives to traditional regulation and Mr Jacobs emphasised that such alternative options should be considered in RIA. Examples of regulatory alternatives developed in different jurisdictions, including which alternatives can work in what situations were also highlighted.

Proceedings

Ministries in government have a control mentality and they believe that control is inherently good. However, it must be understood that control mentality reduces regulatory options and is not good as a starting point of regulation. Citing an example of ferry regulation in Greece, Mr. Jacobs pointed out how government control stifled innovation and improvement in quality, and resulted in loss of public good.

There are various alternatives, other than control, to achieve the objectives of the law. Such alternatives include information campaigns, performance based regulation, voluntary commitments, process regulation, contractual arrangements, co-regulation, deregulation, self-regulation, insurance schemes, taxes and subsidies and tradable permits, which can influence the behaviour and incentivise performance. Increasing prices has direct effect on the market and human behaviour.

Regulations act as incentive instruments so effective design of regulation is crucial. Various types of incentive instruments were discussed in the session. Providing example from the EU voluntary standards for airline passenger service commitment, the importance of defining good problem definition was emphasised by Mr. Jacobs. Further it was shown how sometimes sharing of information leads to more competition and benefit for consumers by adopting voluntary standards for passenger service commitment. Though it was also added that in case of safety concerns, government will have more justifications for not allowing voluntary safety standards.

There are limitations in governing high technology markets with high innovation index and thus regulation of such markets can be counterproductive at times. Example of EURO-NCAP (New car assessment programme) a rating system for car safety was also discussed in detail. Different points of view, for and against minimum safety standards for cars were discussed.

The importance of performance based regulation as one of the important alternatives in regulatory design was also emphasised. EU requires that every RIA to have a performance based alternative. The aim in performance based regulation is not telling what to do but to tell what to achieve. This approach does not stifle innovation and encourages quality improvement. It was highlighted that standardisation of regulation focuses on inputs while the performance based approach focuses on outputs. However, it is harder to enforce the performance based rules compared to standardised rules.

Mr. Jacobs mentioned that sometimes consumer might not be in a position to take informed decision, because of technical nature of the sector, where it is not possible for consumer to make a choice without relying on the expert advice. Example of medical device regulation in Japan was given where two years' were taken to approve a new medical device for the market. However, market innovation was stifled as a result. Thus freezing technology implies freezing the business and thus decreasing their innovation index and competitiveness. A number of options came up during the discussions like quality issue, trials, setting minimum standards, safety, innovation, approval time by regulators.

Importance of economic incentives and market trading schemes were also discussed. Example of global carbon emission and trading mechanism was discussed as to how it can help in allocation and usage of best resources. Debate also surrounded on whether to use such alternatives when traditional regulation has been used. The importance of involving all alternative options was discussed and how RIA takes into account this was highlighted. Example of proposed ban on fancy helmets was given which showed that standardising the helmet would have retrograde step as far as compliance is concerned.

Regulatory rigidity can be self-defeating, at times. Citing comparative example of nursing home industry from USA and Australia, detailed analysis was undertaken as how result oriented general standard was better than process oriented result standards. USA had 500 federal nursing home standards which increased compliance costs also and were self-defeating in nature.

SESSION VIII: MAINSTREAMING RIA IN THE POLICY PROCESS: INSTITUTIONAL STRATEGIES

Overview

The session comprised discussion on various mechanisms adopted by countries to mainstream RIA. Successes and failures in mainstreaming RIA were discussed and checks and balances required to ensure effective RIA were discussed. In addition, different placement model of RIA units were conducted, and advantages, disadvantages of different models were also highlighted.

Proceedings

Mr. Jacobs mentioned that mainstreaming of RIA is an optimistic move, as it contributes towards enhancing public policy. However, mainstreaming raises new issues and concerns, as it becomes more responsive to political concerns such as highly visible paperwork burdens. Also, it requires involvement of civil servants to deal with analytical techniques for which they have not been adequately prepared.

He gave instances of the challenges countries face while implementing RIA as each state, nation or government are different from one another and there is no rule that fits all. However, three basic requirements are necessary for an effective RIA system:

- Legal principles which involves mandate for RIA, regulatory principles and rules and procedures.

- Institutional design which involves institutional architecture, location of a RIA body and units in ministries and agencies
- Incentive framework which involves administrative procedure, roles and responsibilities, capacities at agency level, and resources

Explaining the relevant steps in RIA process, Mr. Jacobs suggested integrating RIA with the policy decision making in a country like India will result in better rules and policies. RIA can produce results with the presence of quality control system. There are tools for quality control of RIA which includes clear allocation of tasks statements of clear criteria for 'good regulation', ministerial accountability, monitoring and reporting of RIA quality by central institutions, RIA quality control and monitoring by other institutions, expert scrutiny from scientific peers. With these tools, the regulators themselves must be responsible for preparing RIA when they begin developing new policy. In this way they can improve ownership of RIA as well as integrate the RIA into decision making from the beginning.

However, many problems of RIA quality arise as government fail to start early enough i.e., before a draft is written as it results in good legislation. There are countries which adopt RIA, however, fail to properly implement in true sense which leads to failure of RIA. For instance, Vietnam adopted RIA in 2009, however, by 2013, little RIA was actually carried out. Most of the funds were allocated to the drafting process and only one percent to conduct RIA. Transformation was proposed where 50 per cent of the funds were allocated to the planning phase and rest 50 per cent were allocated on drafting and review of the final legal text as well implementation and its feedback. Other reasons for failure of RIA to result in adequate benefits include: insufficient institutional support and absence of staff with appropriate skills to conduct RIA, limited knowledge and acceptance of RIA within public institutions and civil society, rigid regulatory bureaucracy and vested interests that oppose reforms, lack of reliable data necessary to ground RIA.

Mr Jacobs suggested that the Ministries have to organise themselves to carry out RIA. He gave the example of Australia where each Australian Government department and agency has appointed a senior executive officer to champion sound policy development processes. Also, United Kingdom has robust departmental processes including Better Regulation Units in each department, access to training through Better Regulation Units, internal sign off mechanisms, peer group review by economists at an early stage, to maintain quality in RIA process. In UK, Statement of New Regulations (SNR) is published every year, twice in July and December. It reports on whether the Government is achieving its deregulatory targets and how Departments are performing against One-In, Two-Out (OITO) (i.e. for every pound of costs added through regulation, two pounds of costs existing through regulation need to be removed). It also informs business of regulatory changes and tracks the Government's performance against its deregulatory targets.

Introduction of RIA at an early stage results in the drafting of proper framework, after which lies the implementation that engines the reform which involves the following three steps:

- institutionalise political will for reform
- assign operational responsibility for oversight and management
- finance an expert technical secretariat to support the reforms

Thereafter, for implementing good regulation, RIA has to be institutionalised in the political and ministerial level bodies for regulatory reform. A dedicated and expert RIA unit at the centre of government along with ministerial level can help the law fulfil its objective. Also, the government must have the political will to sustain through good program design which can be performed as mentioned below:

- linking reform goals to the country's development goals and to international commitments, such as WTO compliance and other trade agreements;
- ensuring accountability for clear results through settling targets and monitoring progress;
- engaging wide range of stakeholders in the planning and monitoring process

Apart from this, Mr Jacobs explained the need for a ministerial level body for regulatory reform to oversee reforms at the political level and insist on ministerial action. Inter-ministerial coordination has to be developed as part of both processes. Apart from this, the real challenge lies with RIA watchdog that has to assess the quality standards for RIA. Also, central unit should be established to review the entire process. A ministry unable to comply must be in a position to explain with adequate reasons for being unable to meet minimum standards. He provided instances of vigilant watchdog that include countries such as Kenya, Netherlands, United States.

Mr Jacobs explained the two basic models of watchdog: decentralised and centralised along with their merits and demerits. Countries such as Ireland, Chile follow decentralised model whereas OECD countries, Korea follow centralised model. The former model is based on self-assessment whereas the later model is based on checks and balances.

With efforts to improve the quality of regulation, RIA might as well fail. Thus, the central offices must make efforts to control bad RIA. In Canada, if there are issues with RIA, Regulatory Affairs Directorate (RAD) may request additional information from the regulator and ensures that all questions are answered before the regulation goes to the Ministers. Similarly, in European Union, the Impact Assessment Board publishes public independent opinion.

SESSION IX: CONSULTATION AND DATA COLLECTION TECHNIQUES FOR RIA

Overview

Stakeholder consultation is an important tool for quality control and data collection. This session discussed the means of consulting and communicating with stakeholders as part of carrying out the RIA, and means of avoiding the pitfalls of poor consultation.

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Mr. Jacobs began the session by highlighting the importance of preparing and planning ahead for data collection. There is usually a large quantity of data already available; however it is important to extract the information that is relevant to the particular problem. The first priority is to map all the information available and apply it to the problem at hand. Subsequently, ascertaining the gaps in data and determine the data collection methodology as per the resources available is necessary. He gave an example of the European Commission that developed a guide for all the databases held by the European ministries. The quality of data is also critical and standards of data acceptability should be defined in advance along with the quality control process for use of data. For instance, in many places survey results can only be submitted along with the complete database.

Data Collection Techniques

Literature searches and existing databases: Problems facing a country are very rarely unique and thus, some information and direction would be available from other jurisdictions. Experts could help identify the material available and this can be a fast and cheap method. It is also credible as it draws on scientific expertise. However, it may be challenging to sort through the available information and also it may not be able to answer specific questions for particular regulation in a country.

Meta-studies: This involves combining several studies into one big study to analyse the data collectively. This method can compensate for weaknesses in individual studies however; it is limited in terms of the range of information available. Further, the reliability is suspect, the costs could be high and exploring options could be a challenge.

Experts from science committees, academia and industry: The experts can be made part of the RIA process and this method would be fast and cost effective. It could also provide good quality data in

response to specific queries and allow for assessing alternative approaches. However, this method is vulnerable to bias and existing knowledge which is not specific to the regulation. It becomes necessary to diversify the sources.

Passive Consultation: The necessary material is published for comments by stakeholders. If used effectively it can be a fast and cost-effective method for collection of a wide variety of data and ideas about better regulation. However, this is vulnerable to bias, poor data as well as data gaps. In a country like India where internet penetration is weak and a large proportion of the population is uneducated such a method often leaves out important stakeholders. Additionally, often the legal text is published which limits access for most people and also gives an impression that the decision has already been reached. It is beneficial to publish consultation documents with open ended questions and RIA document.

The methods below are active forms of consultation -

Business Surveys: This is a fast data collection method and can help collect information otherwise unavailable. However, this is limited in the range of information, the reliability is suspect, costs can be high and it can be difficult to explore options.

Focus Groups: This method can be a quick approach to provide a wider range of cost and benefits data which also helps explore alternatives and options easily. However, data quality could pose to be a problem and it requires preparation as well as often good relations with stakeholders.

Model enterprises that “represent” the affected population: Some examples of this approach are the World Bank Doing Business rating which is comparable across countries. It is a fast and cheap method to collect cost data but must be widely consulted. This method can be simplistic and vulnerable to errors in assumptions.

Modeling: This could include econometric modeling, input-output, general equilibrium models, environmental impact assessment models, microsimulation models among others. It is one of the best approaches for estimating welfare changes for particular groups, and for estimating second-order effects through the economy. However, this is costly and vulnerable to assumptions. Macro models lack detail on micro interventions and unless an existing model is available, analysts have limited access to the tools and resources needed to adopt a modeling approach. Further, it is difficult to use economic models to collect benefits data.

In case of unavailability of adequate and valid data it is necessary to form clear assumptions which are based on benchmarks, few data points, extrapolation or expert opinion. It is important to maintain transparency and provide detailed explanation of the approach. This process is not a public opinion poll and analysts must guard against “data capture”. Since the data will be provided by stakeholders there is risk of it being biased which can be managed by diversifying sources. The document for consultation must be published on a widely accessed platform and stakeholders must be given sufficient time to respond. If required multiple consultations could also be conducted.

Further, data quality standards must be set in advance which can enhance the credibility and reliability of RIA, the absence of which leaves room for discretion. Some of the common quality standards include transparency in raw data and assumptions, use of best available data, reproducibility, acceptance by independent experts, following good statistical practices while collecting data and presentation of best estimates reflecting expected values.

Mr. Jacobs then presented few examples of good practices from other nations such as Singapore which has a single portal for all consultations by the government and Hong Kong which has a standard brief table which gives concise information about the specific consultation among others.

SESSION X: INTERACTIVE CASE STUDY: RIA ON INDIAN LAW

Overview

This session comprised a group exercise on an existing problem faced in India, arising as a result of inefficient regulation. The participants were divided in different groups and were required to respond to the questions on problem definition, identifying data requirements, development and comparison of alternatives.

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The problem related to the civil aviation sector and focused on the issue of minimum eligibility criteria for Indian carriers to fly international. A minimum of five years' experience of continuous operation of domestic scheduled air transport services and a fleet of twenty aircrafts is required for domestic carriers to fly internationally (5/20 rule). The participants were divided in three groups to read, analyse, discuss and present their viewpoints.

All the groups presented their views to the questions raised in the problems. Some of the groups compared impacts on old and new operators, while others estimated impacts on economy, environment and society. Uneven playing field between domestic and foreign players was also discussed. As a result of restrictions to operate internationally, lack of development of connecting routes was also highlighted. Participants applied the knowledge and techniques learnt during the earlier sessions and gave their different perspectives to the questions raised. One of the groups by using technique of displaying the effects in smiley charts discussed various policy options and their effect and relation on all the stakeholders including market players and the consumers.

SESSION XI: DRAFT RIA TOOLKIT

Overview

This session involved discussion on draft RIA Toolkit prepared by CUTS International, on the basis of its experience of conducting RIA in electricity generation and financial sector in India.

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The methodology of conducting RIA is not standardized, is flexible among methods, and can be modified depending on the requirements and resources available. Though this tool is widely employed in most developed nations, many developing nations are still unaware of its benefits, and thus, its use is limited. Almost all regulations increase costs for stakeholders involved, and it is important to identify those where the benefits justify those costs, and where they do not. The draft toolkit provides a detailed guide for evaluating such proposals to arrive at the most optimum solution. It is well-suited for use by stakeholders; it is tailor-made to account for the specific critical aspects prevalent in developing nations.

The structure of the toolkit, which is divided into three sections, was discussed. The first chapter provides a basic understanding of RIA, its need and benefits. The second chapter explains the step-by-step approach for conducting such impact assessments while the third chapter deals with the adoption of RIA in the country. The critical tools were discussed in detail while a brief about the other tools was provided in the annexures.

The step by step process detailed in the toolkit was also presented along with the example of the study undertaken by CUTS which showcased its application. The RIA process can be broadly classified in the following steps:

1. Defining the problem and determining the cause
2. Identifying and understanding baseline
3. Developing regulatory alternatives

4. Selecting optimal alternative(s)
5. Public Consultation

SESSION XII: CLOSING SESSION

Scott Jacobs thanked the participants for their active involvement in the training workshop. He added that they could become ambassadors for RIA to reduce the mystery around the concept. He mentioned that over time there will be a cadre of very talented people that would be able to change the acceptability towards RIA. He concluded by saying that India had the capacity to undertake RIA and only the decision to move forward was needed to be taken.

The participants expressed their appreciation and mentioned that the training programme had been enriching and opened them up to an entire body of literature. They also said that they would take the lessons learnt back to their institutions and attempt to apply them to their areas of work. Further, they added that this had been an important opportunity to learn from the practitioner and the cases discussed throughout the course.

Udai S Mehta thanked Scott and added that it had been a great learning experience for all the participants including the CUTS team. Further, he mentioned that the last four days had given us food for thought and greater understanding to engage with the policy makers. He also appreciated the work done by the CUTS' and CIRC team in putting this event together. He concluded by saying that CUTS and Jacobs, Cordova and Associates would be partnering to deepen their engagement within India.

ANNEXURE I

PARTICIPANT FEEDBACK REPORT

Overall Programme Evaluation

Post the completion of the training programme, feedback was sought from the participants on its various aspects. Overall, a majority of the participants found the training programme to be “excellent” with 14 out of 18 selecting this option. Close to 80 percent of the respondents felt that the quality of the speakers as well as the organisation of the training programme was excellent. In terms of the quality of programme materials, all the respondents found them to be above average. A majority of the respondents believed the programme as well as its content was appropriate and the class room interaction including case studies, toolkit was excellent.

Programme Contents

All the sessions of the training programme were rated above average by the participants. Among these, the sessions on “What is RIA? Its goals and methods” and “Basic RIA Concepts” scored slightly better than the others. The participants mentioned that this training programme was *“very informative, descriptive and practical”*. Few sessions, which were ranked slightly lower than others (higher score for “Good” and “Average”) were “Good Regulatory Practice and India: Why RIA?”, “Defining the problem and Setting the Baseline”.

Additional Inputs

Almost all the participants indicated that they would use the knowledge gained in the training programme in their everyday job - *“I would like to see how I can use it to improve upon my policy recommendation”*. Additionally, they were also positively inclined towards attending another such programme to further deepen their understanding and increasing their knowledge about the subject.

The participants mentioned that the training programme helped increase their understanding of the application of RIA, its inclusion in regulatory structure, its importance and impacts – both positive and negative. Further, inclusion of cases and global practices were also mentioned as positive aspects of the training programme - *“the need for transparency and analysis while implementing regulations and the importance to think out of the box while drafting”*.

Some of the specific changes that the participants stated included tailoring the course to suit the Indian context with specific examples, incorporating more cases and examples even of instances where RIA helped a nation recover from policy/ market failures. Additionally, another aspect stated by various participants included greater focus and on the tools as well as methods and selection of tools - *“It can be followed up with workshop on cost modelling, quantitative methods”*.

All the participants indicated that they would recommend such a training programme to their colleagues it is a very relevant subject and such a concept has great potential for development - *“it is a good alternative to modelling based policy making as it discusses other costs and it is simple to explain”*
