

THE ECONOMIC ASSESSMENT OF INTERNATIONAL COMMERCIAL LAW REFORM: OVERVIEW

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Discussion Aims



- Understanding the importance of quantifying economic benefits in international commercial law reform.
- Harmonising best practice data collection and empirical methodologies which include ex ante and ex post evaluation.
- Discussing the need for centralised expert oversight of a best practice economic assessment framework.
- Evaluating how such a framework might be implemented in order that international commercial law reform achieves stated aims.

High Level points of Agreement

- The current system is far from optimal and needs to be changed to include more objective analyses and EA processes.
- We need to take into account political issues. Economics and the political economy are linked, through distributional effects/impacts.
- There is a large gap between theory and practice in this area, as rigorous economic assessment (EA) processes are not consistently used in regulatory decision making.
- There should be more focus on this topic generally and more ex ante assessment is needed.

High Level Questions to be addressed

1. What is the appropriate role of EA in the decision making process? Should it be a permanent part of the process?
2. Should there be one global EA process or is that not possible or desirable?
3. Alternatively, is a country specific EA process preferred?
4. How do EA and non-economic factors interact and relate?

Agency Responsibility



- Who will complete the EA?
 - ▣ An independent or government agency?
 - ▣ Who will gather and/or pay for the relevant data?

EA Timing

- When will the EA take place?
- Ex ante and ex post?
- If ex ante, at what point? During negotiations, prior to ratification, or at a preliminary stage?
- If ex post, how long after implementation?
- Note data constraints and empirical modelling challenges.

Quantitative vs Qualitative

- What can/can't and should/shouldn't be quantified?
- What is the desirable degree of quantitative assessment?
- This should include a disclosure of possible data and/or analytical limitations.

Scope of EA

- What is the scope of assessment?
- Can this be used with facilitative regulation/soft law, or will a different EA framework be required?
- Should this be about impact assessment or economic impact assessment?
- Should this focus on a proposed law, or groups of related laws, or both?

Role of EA



- What is the role that the EA process takes in the decision making process?
 - To support a proposed law?
 - As a permanent part of the process?
 - To assist in choosing between possible courses of action?

Achieving measurable Economic Benefits through International Commercial Law Reform

- Forms of Economic Benefit:
 - Microeconomic
 - Macroeconomic
 - Developmental
 - Assumptions relating to implementation, compliance and enforcement

EA Process Aims

- Various forms of EA are used across fields to determine whether new laws should be implemented. This necessitates the timely provision of information, among other factors:
 - Whether any economic benefit will outweigh identified costs.
 - A structured decision making framework that is practical and functional.
 - Modelling how effective the intended action will be in achieving policy goals.
 - Using the results to support consultation and policy development.

Appropriate Methodological Frameworks

- There is a need to identify and utilise suitable analytical measures, such as:
 - Break-even analysis
 - Cost-benefit analysis
 - Multifactorial risk-assessment tools
 - Suitable criteria weightings and valuation methods
 - Discounting
 - The application of a risk premium
 - Net present value and internal rate of return calculations
 - Sensitivity analysis

Methodological Challenges

- Relevant methodological challenges include:
 - Setting suitable threshold tests to validate the economic assessment.
 - Data limitations and application of assumptions.
 - Analysing impacts on specific macroeconomic variables.
 - The inclusion of complex economic methodologies based on research.

EA Challenges in Practice

- Difficulty in fully taking into account all of the relevant costs and benefits of proposals.
- Common failure to give adequate consideration to feasible alternatives.
- Failure to calculate monetary impacts of regulatory reform.
- Need to avoid manipulation and the use of EA to justify a predetermined position, rather than a true exploration of alternatives.

EA Challenges in Practice

- Insufficient analysis of economic costs and benefits, whether due to inadequate training or a belief that empirical analysis will not materially change politically driven regulation.
- Ensuring that rigorous EA is incorporated into the culture of policy making.
- The need to reject weak regulatory proposals regardless of opponents, and to encourage analytical rigour.
- The possibility of implementing a two-stage economic assessment process.

EA Challenges in Practice



- Limits of available data within required timeframes.
- Lack of agency resources.
- Analytical shortfalls based on a lack of expertise.

Political Dimensions of Regulatory Reform

- Despite the focus on economic benefits, the regulatory process is largely political.
- Regulation is influenced by political forces, even if seldom acknowledged in practice.
- This requires the reduction of political risk in order to achieve regulatory aims.
- Importance of understanding the role of politics, at national and international levels.
- At the international level, harmonisation can result in adjustment costs, which must be understood from a national political standpoint.

Draft Best Practice Economic Assessment Guidelines

1. A two-stage EA process should be implemented, requiring ex ante and ex post review;
2. EA should be broad enough to take into account multiple risks and multiple forms of economic benefit, both quantitative and qualitative;
3. Broader EA scope will be beneficial for assessing soft law instruments. Necessarily, a different methodology must be applied, given data constraints and the inability to assume compliance;
4. There should be centralised expert oversight of the EA process so that assessments will be reviewed by an objective party with technical expertise, and results will carry greater weight in influencing national governments and reducing political risk;

Draft Best Practice Economic Assessment Guidelines

5. Divergent use of discount rates in EA calculations should be harmonised across countries. Regular ex post evaluations should take place based on ensuing interest rate and market conditions;
6. Quantitative analysis should be utilised wherever possible, including ex ante. However, it is recognised that data will be limited prior to implementation;
7. Sensitivity analysis should be undertaken wherever substantial uncertainty exists regarding the value assigned to a variable. Particularly ex ante, when the variable in question is likely to have a large impact on outcome;
8. Ex post evaluation should involve a feedback loop which results in timely provision of information which can drive policy revisions. The second stage of the EA should inform revisions to ex ante data collection and analysis, and result in process improvements.