

6TH WORKSHOP FOR THE ECONOMIC ASSESSMENT OF INTERNATIONAL COMMERCIAL LAW REFORM PROJECT

EXPERTS DISCUSSION ANALYSING VARIABLE D

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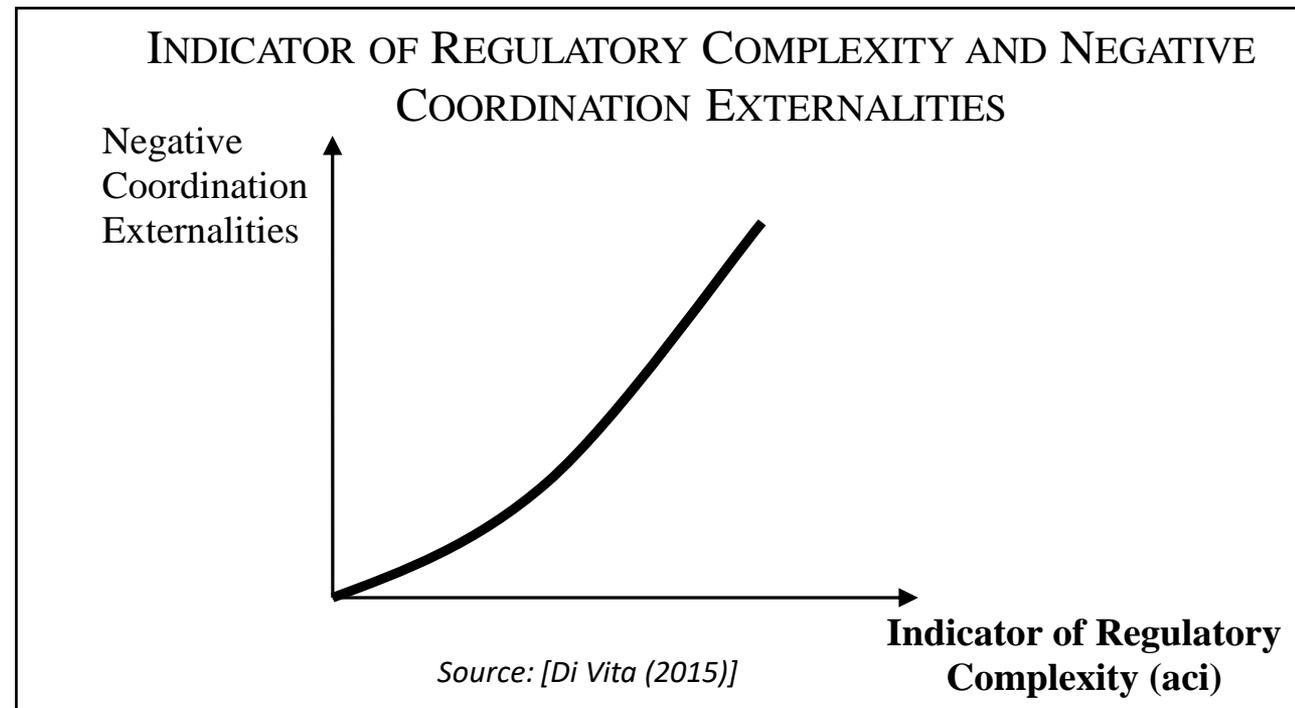
- Variable D is *“the extent, measured from 1 to 0, that new [commercial law] rules have been or will be effectively applied by courts and authorities.”*
- Based on the background documents and the discussion made by Prof. Lipson I provide two comments on the *“dynamics”* of the variable D.
 - I. *“Informational limitations”* as a risk to the effective implementation of regulation. This risk changes over time.
 - II. Regulation as a non-valuable element or as a destroyer of value.

I “INFORMATIONAL LIMITATIONS” THROUGH TIME

- (“Factors”) that contribute to political risk and/or the risk that legal authorities will fail to apply law (...). (c) Informational limitations (...) “*not understanding the new rules, thus not effectively apply them*”.
- This is a dynamic factor. Users of the rules (and enforcement institutions) may need time to learn their content. D would increase over time
 - This learning factor may be different in each country.
- If the content of the rules is sufficiently planned and “advertised” prior to their formal adoption, this “delay” may not be relevant.
 - The Spanish Constitutional Court has numerous rulings in which it has pointed out tax rules that are sufficiently “predictable”.
 - STC 9/2019 ... (...) ... STC 97/1990
- **Generally, in terms of economic analysis, rules have a lagging impact on the economy.**
 - This element can be estimated/taken into account using econometric techniques (Matea Rosa and Mora-Sanguinetti, 2012).

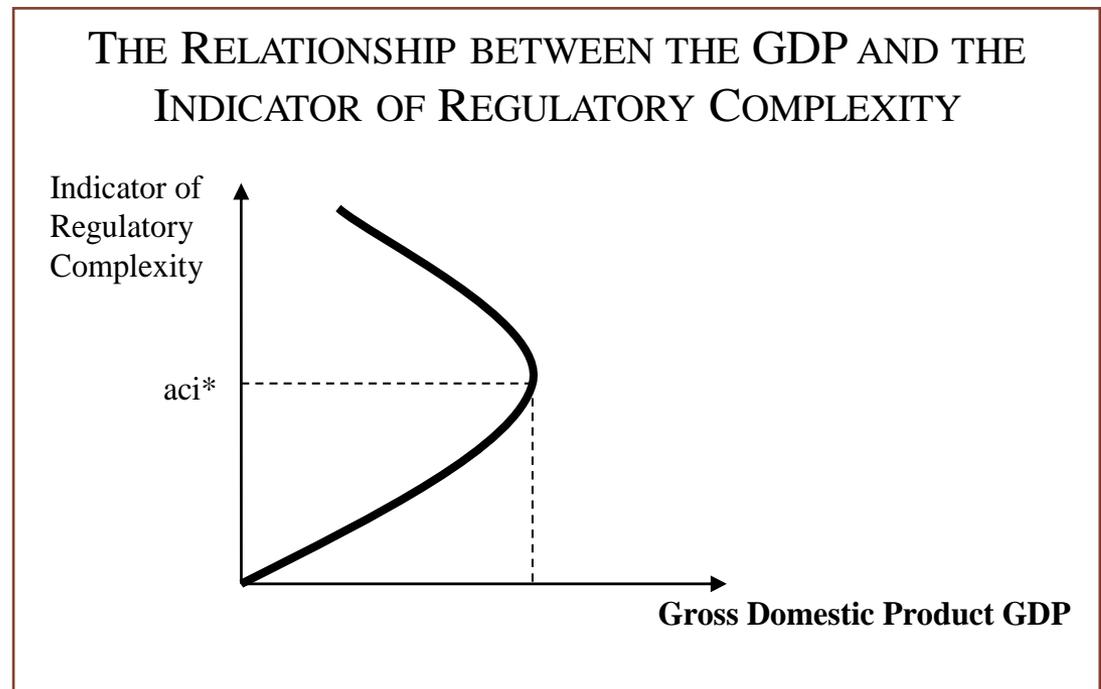
- ***“(…) law is a product, and the consumers of that product expect it to have positive value. While they may sometimes be disappointed, it seems implausible that law systemically adds no value (as a coefficient of 1) or destroys value (as a coefficient of anything less than one).”***
- **I generally agree. Regulation does not generally destroy value.**
- **It may not reach its potential because of poor design/obsolescence/etc (North 1981, 1990 and 1999).**

- **However, there is a widespread view in economic literature that "deregulation" can be good for generating value.**



- **Laffont and Tirole (1993)'s "New theory of regulation"**:
 - Market failures constitute a necessary, though not sufficient, condition for regulation. Poor design of the regulation may lead to increased transaction costs (see also Helpman (2008) and Mora-Sanguinetti and Pérez-Valls, 2020).
- **One possible way to reconcile the perspective usually found in both legal and economic literatures is the figure below (Di Vita, 2015). "U interaction".**

- **Regulation generates beneficial effects until a certain level of "complexity" is reached.**
- **Too "complex" (difficult to use, difficult to implement) regulations are inefficient.**



Source: [Di Vita (2015)]

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