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The OECD and the Reconfiguration of the State in Emerging Economies: Manufacturing 'Regulatory Capacity'

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ABSTRACT

This article explores attempts to construct 'regulatory capacity' in developing countries, focusing on the work of the Organisation for Economic Co-operation and Development (OECD) and its role as an international standard-setting institution in regulatory governance. The article explores how the construction of specific forms of regulatory capacity, and attempts to orchestrate the adoption of regulatory reform agendas in emerging economies, reflect broader processes of political-policy transfer that impact state capacity and the ability of developing states to manage economic development. By analysing the OECD's engagement practices with third party organizations such as APEC (Asia-Pacific Economic Cooperation organization) and ASEAN (the Association of Southeast Asian Nations) and its specific engagement with emerging economies through country 'reviews' and 'audits', the author explores the implications for state capacity in terms of the adoption of regulatory systems of governance.

INTRODUCTION

By any measure, since the 1970s the modern state has undergone significant change. National capitalisms have been transcended by increasing levels of interconnectivity, whether in the form of trade, investment, or the globalization of financial markets, production and supply chains. Indeed, for many theorists the extent of this change has been epochal, signifying the transition from an era dominated by the state and its control of the 'commanding heights' of the economy to an era now dominated by markets and market society (Sandel, 2012; Yergin and Stanislaw, 2002). Theorists as diverse as Beck (1999), Braithwaite (2008), Brenner et al. (2010), Harvey (1990, 2005), Lapavitsas (2013), Levi-Faur (2011b), Majone (1997), Peck

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et al. (2012a) and Seidman and Gilmour (1986), among others, have collectively grappled with the complexity of this transformation, the forces propelling this change, its institutional and political manifestations, and its social consequences. Braithwaite, Majone, Levi-Faur, Seidman and Gilmour situate this transformation amid an ongoing series of deepening historical processes located in corporatization, securitization and 'propertization' in which the expansion of business and transactional volumes has created ever more complex needs for the management and regulation of markets, capital and fungible financial assets — with the state continuously innovating and extending regulatory systems (Braithwaite, 2008: 16–18; Braithwaite and Drahos, 2000; Levi-Faur, 2011a). Beck, by contrast, sees state transformation as an outgrowth of increased capital mobility which diminishes the taxing and fiscal ability of states, forcing them to engage in competitive taxation policies and to download previously socialized risks to the individual through marketization. For Harvey, Lapavitas, Peck and Brenner the genesis of these new political and economic configurations lies in transformations in the capitalist mode of production that result from the increasing obliteration of geography, time and space. This has transformed circuits of capital, promoted the emergence of a post-industrial mode of production premised on deepening financialization and flexible accumulation, and 'repurposed' the state in terms of 'market-disciplinary regulatory restructuring' (Peck et al., 2012b: 17, 19).

These debates, of course, resonate loudly with scholars and practitioners of public administration who have been at the 'pointy end' of this transition and forced to grapple with repurposing the instruments of government and managing new forms of governance. As Painter and Pierre note, in the West the growing emphasis on market solutions has witnessed administrative reforms which have often 'removed some of the policy capacity of the state by displacing political and institutional capacity downwards in the political system, outwards to agencies and NGOs, or upwards to transnational institutional systems' (Painter and Pierre, 2005: 1).

These same trends are apparent in developing countries, where historically a central concern of governments has been a desire to crank up state capacity as part of a larger project of nation building. In Asia, for example, post-colonial states looked toward the government and bureaucracy to cope with issues of endemic poverty and widespread privations, and saw the state as an agent of modernization, reform and economic development (Cheung, 2011: 134–5). For much of the post-colonial era, the particular meaning associated with regulation and the development of regulatory capacity thus resided in inherently statist projects; in particular, the centralization of bureaucratic capacity (especially in economic and industrial planning) as a means of mobilizing national resources around core development needs — the provision of infrastructure (electricity, water, sanitation, transportation), health, education and social protection arrangements (Carroll, 2010; Ghosh, 1984; Johnson, 1982). An essential feature of this developmental modality was the professionalization of public administration through merit-based recruitment systems, with the aim of developing a cadre of high calibre administrators and technicians who could effectively plan, monitor, implement and coordinate national development agendas (what Chalmers Johnson referred to as ‘plan rational’ development) — processes that involved the expansion of government regulation, rule-based administration and government-administrative oversight (Ayres and Braithwaite, 1992; Jayasuriya, 2005a; Johnson, 1982). Indeed, developing countries were actively supported in these efforts by multilateral agencies like the World Bank, whose country assistance programmes (both lending and technical assistance) focused on building bureaucratic and governance capacity (Alacevich, 2009).

Since the early 1970s, however, the emphasis of multilateral development institutions has increasingly focused on regulatory reform agendas designed to support market-led development (Carroll, 2010; Carroll and Jarvis, 2015, 2017; Harvey, 2005; Jarvis, 2012; Jayasuriya, 2005a; Pradella and Marois, 2014; Robison et al., 2005). Structural adjustment, conditional lending and technical assistance programmes, for example, now routinely advocate the break-up of state monopolies, privatization and the creation of market competition as core policy tools supporting economic development. Most famously labelled the ‘Washington’ and ‘post-Washington’ consensus — reflecting the policy preferences of organizations such as the World Bank, US Treasury, the International Monetary Fund (IMF) and World Trade Organization (WTO) — a broad suite of reforms are advocated. These include the dismantling of tariff and trade barriers to promote trade liberalization, the withdrawal of industry protectionism to promote domestic efficiencies, liberalization of the capital account to facilitate the movement of capital and investment, the adoption of full convertibility to facilitate profit repatriation, exchange rate liberalization to allow for the competitive valuation of currencies in order to promote exports, and the liberalization of investment regimes to facilitate foreign investment, technology transfer and domestic economic activity (Carroll, 2010; Carroll and Jarvis, 2015; Öniş and Şenses, 2005).

In essence, these reforms emphasize decentralization, flexibility and a repositioning of the state in relation to the market and civil society. Indeed, they embody a specific conception of what constitutes ‘good governance’, including the adoption of certain institutional arrangements, systems of regulatory oversight, and macroeconomic and prudential governance standards (what the World Bank refers to as an ‘enabling environment’) that otherwise chip ‘away at the old pillars of state capacity’ in favour of a reconstituted, repurposed state (Painter and Pierre, 2005: 1; see also Gerny, 1996; Johnson, 1982; Karo and Kattel, 2014; Wade, 2003). The positive, interventionist developmental state, in other words, is increasingly supplanted by attempts to construct regulatory states — new systems of governance that represent a fundamental re-orientation in the apparatus of the state, the location of authority, the constituencies of accountability, and the opportunities for democratic participation. As Jayasuriya notes, 'the most distinctive aspect of the new regulatory state is the dispersal of public governance functions — especially those concerned with the regulation of economic activity — to relatively insulated public agencies and institutions'; a process that is designed to remove such institutions and agencies from overtly political environments and the 'politics of bargaining' (Jayasuriya, 2005b: 23; see also Majone, 1996).[1] Rather, new regulatory forms of governance re-situate governance in localized or specialist sites in which technocratic authority mediates the interests of civil society, business and the state, with chains of accountability extending directly to those specific constituencies whose interests are impacted and to broader systems of national (and sometimes international) juridical authority (Jayasuriya, 2001, 2005b: 19–21; Karo and Kattel, 2014; Majone, 1997).

While the World Bank and IMF have historically championed these governance agendas, attracting widespread scholarly attention (Fine et al., 2003; Robison et al., 2005; Rodan et al., 2001; Soederberg, 2004), increasingly it is organizations like the Organisation for Economic Co-operation and Development (OECD) which are at the forefront of promoting regulatory reform and, more importantly, realizing the practical adoption of these agendas in emerging economies (Clifton and Diaz-Fuentes, 2011a; 2011b: 560; 2014). In part, this reflects the limited reach of agencies like the IMF and World Bank compared to the OECD, whose membership base and engagement strategies with 'key partner' countries and regional organizations have made it a strategic 'connector' of national regulatory bodies, facilitating international regulatory coordination, information exchange, and thus the emergence of the organization as a leading global forum and standard-setting institution in regulatory issues related to market activities. In comparison to the IMF and World Bank whose practices of 'conditional lending' produced wide political opposition (Carroll, 2010; Carroll and Jarvis, 2015), the OECD enjoys a high level of legitimacy through consensual participation, committee-level decision-making processes, professional peer-to-peer engagement, and recognized technical authority through its various analytical and diagnostic tools for the design, implementation and management of regulatory systems.

In this article I explore the increasingly dominant role of the OECD in the orchestration of an international agenda designed to realize the adoption of 'regulatory restructuring' and the construction of 'regulatory capacity' in emerging economies. I argue that the transplantation of a specific form of

1. Another conceptualization of this transformation is suggested by van Waarden and Hildebrand (2009). For them, systems of corporatism, in which the state orchestrated the mobilization of capital and labour through state-led mediation, using tax, social protection and other incentive-based redistributive mechanisms to effect governance, has now been transcended by the rise of what they term processes of 'lawyocracy' and 'juridification'. These represent an alternative means of conflict management and resolution, favouring, in essence, American styles of litigation and adversarial legalism which form the constitutive basis of regulatory systems of governance (Kegan, 2007).

regulatory capacity reflects broader processes of political-policy transfer which sublimate governance as politics with market and technocratic rationality, broadly designed to discipline politics to market instrumentalism. I focus my analysis on the role of the OECD and its comprehensive engagement with third party organizations such as APEC (the Asia-Pacific Economic Cooperation organization) and ASEAN (the Association of Southeast Asian Nations), and its specific engagement through country 'reviews' and 'audits' with important emerging economies such as Indonesia. These engagements, I argue, represent a broad series of processes that privilege market-led development and pro-market policy, reduce the political discretion of the state in terms of direct intervention into the economy, and define a standard or norm of what constitutes 'regulatory capacity' and 'good regulatory governance'.

The article is organized into four parts. In the first section I briefly address the emergence of the OECD as a global standards setter for 'regulatory governance' and 'regulatory capacity', along with the engagement strategies deployed by the organization to realize national alignment with OECD regulatory standards. In the following section I address the construction of regulatory capacity in terms of the emergence of a shared set of ideational values throughout the OECD's cascading committee structures and their codification among a series of key documents. The third section then examines processes of policy transfer in which specific conceptions of regulatory capacity and regulatory reform are transmitted in the context of the OECD's engagement strategies with regional associations such as APEC and ASEAN, and through country engagement programmes such as those with Indonesia. In the final section, I analyse how the transfer of OECD regulatory standards and notions of regulatory reform to emerging economies is privileging market-led development agendas and usurping specific forms of state capacity, particularly in areas of economic management, direct state intervention into the economy and the management of key variables related to market entrance, foreign investment, profit repatriation, taxation, convertibility and the trans-border movement of goods and services.

THE OECD: POLICY TRANSFER, INTERNATIONAL 'HARMONIZATION' AND STANDARDS SETTING

The OECD was created in 1961, comprising 20 founding member economies that subsequently expanded to 34, with the European Union (EU) having a specific status within the organization without being an official member.[2]

2. The original founding members were: Austria, Belgium, Canada, Denmark, France, Germany, Greece, Iceland, Ireland, Italy, Luxembourg, The Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States. Japan, Finland, Australia and New Zealand became member states in the 1960s and 1970s; Mexico, Korea, the Czech Republic, Hungary, Poland and the Slovak Republic joined between

Despite its limited membership base, the organization has a global reach, with Article 1 of the OECD Convention stating that the 'Organisation is to contribute to sound economic expansion in member as well as non-member countries', while Article 12 allows the OECD to 'invite non-member Governments or organisations to participate in activities of the Organisation' (OECD, 1960). Consequently, some 80 non-member economies participate in the OECD's various fora with the OECD also operating a close cooperative set of arrangements with five 'key partners' — Brazil, China, India, Indonesia and South Africa (Kauffmann and Koenig, 2014: 50). The OECD thus not only enjoys an expansive international reach but in effect operates one of the largest global fora connecting developed and key emerging economies through its extensive committee platform.

Complementing its international reach are the organization's distinctive structure, consultation and decision-making processes, combined with the availability of binding instruments and the use of surveillance, data collection and peer-review mechanisms that help facilitate the implementation of OECD decisions and recommendations. Indeed, the organizational structure of the OECD is remarkably simple and comprises three essential components. First, a governing council made up of a representative from each member country and the EU determines the organization's key priority areas through consensus ratification at an annual ministerial level meeting. Second, a secretariat based in Paris (and consisting of 2,500 staff) provides technical and professional support to the OECD committees as well as coordinating with each of the national delegations (Clifton and Diaz-Fuentes, 2011a: 309; 2014: 25; Pal, 2012). And, third, a series of committees each focuses on a specific issue area (transportation, taxation, nuclear energy, trade and agriculture, science, technology and innovation, for example). Currently, the committees comprise some 19 substantive issue areas (directorates) branching into a further 250 specialist committees, working and expert groups that involve a total of 40,000 senior officials from national administrations who participate in the ongoing work of the committees through regular meetings, peer networks, and information forums (see Figure 1).[3]

The bottom-heavy structure of the OECD and its system of engagement of national officials within discrete issue areas drives the work of the OECD. Importantly, the memberships of the committees, working and expert groups include powerful epistemic communities consisting of senior-level national administrators who typically hold leadership positions or are key decision makers in their home organizations. This provides a mechanism for senior input into the formulation of recommendations but also facilitates their adoption at the committee level and ensures that authoritative national champions

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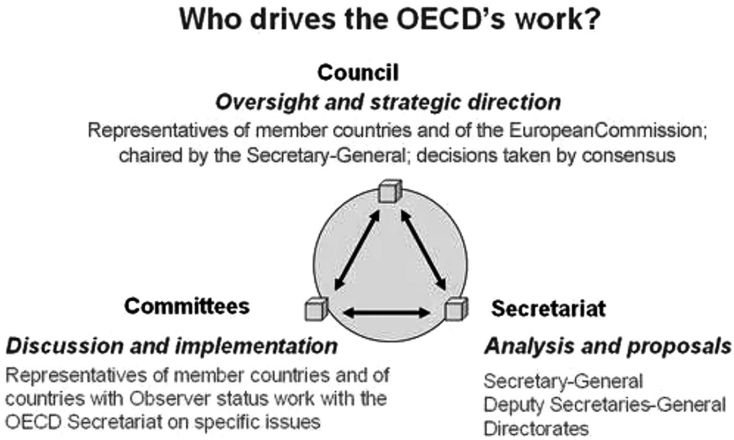
1995 and 2000, while Chile, Estonia, Israel and Slovenia joined in 2010 (Kauffmann and Koenig, 2014).

3. See the OECD web page 'Who Does What': www.oecd.org/about/whodoeswhat/ (accessed 27 February 2015).

Figure 1. OECD Organizational Structure



Source: OECD web page: www.oecd.org/about/whodoeswhat/

are able to transmit committee decisions and recommendations back to home institutional contexts. Further, the decision-making processes of the committees, working and expert groups are consultative and consensual (or what the OECD refers to as 'mutual consent' which is practically interpreted as 'adoption without a vote in the absence of objection by any member'). This particular style of decision making among peers, committee, working and expert group members reduces the potential for the emergence of voting blocs or factions, and tends to result in collective decision making.

Perhaps most importantly in terms of the transfer, adoption and implementation of OECD policy positions, however, is the existence of binding instruments, non-binding instruments and recommendations.[4] Under Article 5 of the OECD Convention, for example, 'decisions' are 'legally binding' on members, requiring their formal adoption and implementation by member countries (OECD, 1960).[5] While it is possible for a member country to abstain from the adoption of a particular decision, thus rendering that decision non-binding on the member, in practice these exclusion options are rarely

4. In addition to these, the OECD also has other legal instruments at its disposal, including: a) 'Declarations', which outline policy commitments subscribed to by the member countries, but which are not legally binding; b) 'Arrangements and Understandings', which are negotiated and adopted by the OECD but in respect of specific member countries and which are not legally binding; c) 'International Agreements', which are adopted in the OECD framework and legally binding on the signatories. See the OECD web page 'Legal Instruments': www.oecd.org/legal/legal-instruments.htm (accessed 27 February 2015).
5. As of the end of 2013, the OECD had adopted a total of 252 binding legal instruments. See the web page 'Legal Instruments': www.oecd.org/legal/legal-instruments.htm (accessed 27 February 2015).

exercised (Kauffmann and Koenig, 2014: 59). Committees may also make 'recommendations', of which there had been some 203 as of 2016, which are non-binding but provide what is described as an extensive body of 'soft law' and 'best practice', carrying significant influence as an international standard or benchmark. OECD committees, for example, have established a vast 'array of governance concepts, including "Codes", "Best Practices", "Guidelines", 'Standards", "Norms", "Principles" and "Criteria"', which, once established, are used by OECD committees to evaluate policy practice (Clifton and Diaz-Fuentes, 2011a: 306).

Finally, the unique system of surveillance, monitoring and peer review associated with the work of the OECD, particularly in the area of international regulatory governance (IRG), serve as powerful mechanisms promoting ideational formation, standards setting and policy transfer. Surveillance processes consist of discrete but interlinked practices in the regulatory cycle ranging from national-level country data collection (including thick descriptions of national regulatory systems, practices, coverage, laws and institutions), the development of a common nomenclature (including typologies and classifications to 'stabilise language' and support international regulatory harmonization, especially in areas concerning chemicals and harmful substances), analytical and 'policy guidance' reports that identify standards and best practices in regulation, and practitioner 'tool kits' that provide step-by-step implementation guidelines designed to sequence policy processes leading to regulatory reform (Abbott, 2014: 31).

This work is further supported by the use of country benchmarking and peer reviews which provide one of the most powerful mechanisms for realizing national alignment with OECD practices and standards. The Economic Development and Review Committee (EDRC), for example, 'is the core of the OECD's peer pressure mechanism'. Composed of representatives from each of the 34 member economies and the European Commission, the EDRC conducts high-level surveillance of member economies every two years, assessing economic trends, macroeconomic performance, growth trajectories, policy directions and key policy challenges, and offers policy options for 'improving the country's overall economic performance' (Kauffmann and Koenig, 2014: 55–8, 60–2).[6] Originally focused on broad macroeconomic issues, the work of the EDRC now increasingly focuses on structural issues related to the operation of labour and financial markets, productivity, competition policy and the role of the public sector.[7] Beneath the EDRC the cascading range of directorates (19) and committees (250) use these same surveillance mechanisms in respect of their specialist foci, utilizing peer reviews, country audits and performance assessments, and developing

6. See also the OECD web page 'Peer Review in Economic Surveys: The Role of EDRC': www.oecd.org/site/peerreview/peerreviewineconomicsurveystheroleoftheedrc.htm
7. See the OECD web page 'Peer Review in Economic Surveys: The Role of EDRC': www.oecd.org/site/peerreview/peerreviewineconomicsurveystheroleoftheedrc.htm

standards, benchmarks and protocols on quality assurance and procedures as a means of encouraging compliance with OECD prevailing standards.

As the OECD itself recognizes, systems of peer review are not, nor are they intended to be, benign. They are undertaken with the political intention of inducing reform and policy change, and cultivating adherence to OECD standards — what the OECD terms its 'disciplinary powers' (OECD, 2011a: 29; see also Clifton and Díaz-Fuentes, 2011b: 555). The biannual EDRC reports, for example, are recognized as a particularly 'effective form of pressure on the country concerned' through the high-level interest they generate in the media, within markets, and among civil society more generally (Kauffmann and Koenig, 2014: 62). The purpose of peer reviews is thus instrumental; they are designed to exert 'soft persuasion' through 'a mix of formal recommendations and informal dialogue' in order to encourage the 'State to change, achieve goals and meet standards'.[8]

THE OECD AND THE CONSTRUCTION OF REGULATORY CAPACITY

The OECD's focus on regulation and regulatory capacity has grown in significance in line with broader ideational changes concerning the role of government in market building and the emphasis on market-led development through the construction of pro-market 'enabling environments'. By the early 1990s, these issues were resonating among member countries of the OECD, prompting the Public Management Committee on Regulatory Management and Reform at its meeting in May 1993 to commence a process of identifying best practices in regulatory governance.[9] This led to the publication of the 'Design and Use of Regulatory Checklists in OECD Countries' (OECD, 1993) and its subsequent adoption as a 'Recommendation' on 'Improving the Quality of Regulation' — the first international standard on regulatory quality (OECD, 1995). The 1995 document proposed a checklist of 10 key questions, each designed to 'guide regulators in making better decisions', defined in relation to objectives such as 'establishing more orderly and predictable decision making processes, identifying existing regulations that are outdated and unnecessary, and making government actions more

8. See the OECD web page 'Peer Review in Economic Surveys: The Role of EDRC': www.oecd.org/site/peerreview/peerreviewineconomicsurveystheroleoftheedrc.htm
9. The Public Management Committee on Regulatory Management and Reform has since been subsumed under the Directorate for Public Governance and Territorial Development, Public Governance Committee (PGC). The directorate 'serves several unique fora for top officials responsible for the central management systems of government — budgeting and performance management, policymaking, regulatory reform, strengthening government–citizen connections, human resources management, ethics, and territorial development, including . . . [the] Working Party on Regulatory Management and Reform'. See the web page www.oecd.org/gov/thepublicgovernanceandterritorialdevelopmentdirectorategovnetworks.htm

transparent' by recommending that decision makers justify if 'government action' is required and 'if regulation is the best form of government action', and applying a cost-benefit rationale in order to assess the potential benefits of regulation relative to compliance costs (ibid.: 9–10). In the broader context of creating enabling environments conducive to market development, the objectives of the document were clear: reduce the discretionary space for capricious political decision making, simplify regulatory environments, and reduce the regulatory burden on market actors.

As the OECD itself notes, the 1995 recommendation was seminal in as much as it commenced a process that has yielded a 'rich picture of progress . . . in the regulatory quality agenda over the last twenty years', including the adoption of several key recommendations and guidelines that have established international benchmarks for regulatory quality and 'regulatory capacity'. These include:

- 1997 OECD Report to Ministers, establishing a comprehensive blueprint for action on Regulatory Reform
- 1997 OECD Report on Regulatory Reform
- 1998 Recommendation of the Council concerning Effective Action against Hard Core Cartels
- 2005 OECD Guiding Principles for Regulatory Quality and Performance
- 2005 Background Document on Regulatory Reform in OECD Countries
- 2012 Recommendation of the Council of the OECD on Regulatory Policy and Governance.

All of these reports and recommendations represent major milestones in the evolution of OECD policy in respect of regulation, and of emergent standards guiding regulatory practices in developed and developing economies.

The 1997 Report to Ministers, in particular, was significant on several levels (OECD, 1997). First, it consolidated the ideational agenda of 'regulatory reform', conflating this with competition policy and in turn with national economic performance and competitiveness — in essence, defining it as a necessary governance attribute for employment and productivity growth, economic efficiency, investment, innovation and economic adaptability. As the Deputy Secretary-General of the OECD observed, 'regulatory reform that *enhances competition and reduces regulatory costs* can boost efficiency, bring down prices, stimulate innovation, and help improve the ability of economies to adapt to change and remain competitive' (ibid.: 2, emphasis added). This was significant not least because it represented a hardening of the language and objectives of regulatory reform, which now focused less on technical issues associated with governmental oversight, surveillance, monitoring and compliance and increasingly on structural reform of state–market relations, competition policy and market openness. Second, the 1997 report constituted a 'plan for action' prioritizing regulatory reform as a ministerial-level initiative of the OECD, and outlining the commencement in 1998 of country-level reviews of regulatory reform efforts by member countries. Third, it committed OECD member economies not just to the implementation of the 1997 OECD report recommendations but, henceforth, to subsequent recommendations and, more importantly, to OECD regulatory benchmarking and standards-setting exercises; in effect, it institutionalized processes of peer review and the use of 'peer pressure' to achieve regulatory reform in member economies (OECD, 1997). And fourth, it commenced an interrelated series of efforts to define and codify 'good' regulatory practices, 'regulatory capacity', the technical means via which regulation should be costed and its 'impact' measured, on which economic actors' regulatory impact should be assessed, and what the role of government and regulation should be within the broad ambit of market operation.

The members, working and expert groups within the regulatory policy committee, the Directorate of Public Governance and Territorial Development, were effectively internalizing competition policy and market openness as a regulatory standard and 'stabilising language' so that the objective of regulatory reform was defined in relation to a specific normative set of principles. Importantly, this also 'stabilised' language in respect of 'regulatory quality' and 'regulatory capacity' — nomenclatures which now denoted how effectively reform initiatives repositioned the state in relation to markets through the adoption of policy instruments such as deregulation, liberalization, the dismantling of protectionist measures, and integration into global markets (Zhang, 2010).[10] The following quotes from the 1997 report highlight some of the benefits attributed to regulatory reform:

- 'Reform that reduces business burdens and increases transparency of regulatory regimes supports entrepreneurship, market entry, and economic growth, that, in turn, should produce high-paying, high quality jobs' (OECD, 1997: 6).
- 'Regulatory reform promotes the free flow of goods, services, investment and technology that benefits consumers, brings domestic firms up to international standards of performance, allows more efficient allocation of resources, and boosts GDP' (ibid.: 7).
- 'Regulatory reform has directly improved government capacity to get better results from public policies by using regulatory resources more effectively, exploiting private sector innovativeness in the public

10. As the OECD notes, 'Regulatory Reform is used in the OECD work to refer to changes that improve regulatory quality, that is, enhance the performance, cost effectiveness, or legal quality of regulations and related government formalities. Reform can mean revision of a single regulation, the scrapping and rebuilding of an entire regulatory regime and its institutions, or improvement of processes for making of regulations and managing reform. Deregulation is a subset of regulatory reform and refers to complete or partial elimination of regulation in a sector to improve economic performance' (OECD, 1997: 2).

interest, putting into place powerful market incentives, and improving responsiveness to change' (ibid.: 17).

- 'Improving government credibility and effectiveness in achieving important public policy goals through more effective and lower cost regulatory approaches or alternative policy tools is another core objective of regulatory reform' (ibid.: 7).
- 'The benefits of more efficient and innovative economies are more fully realised in an expanding global economy, and are shared by both domestic and foreign producers of goods and services, as well as investors' (ibid.: 16).

The 2005 documents (OECD, 2005c, 2005d) were equally important, repositioning regulatory reform as a larger governance reform project beyond simply addressing standards for regulatory efficiency by specifying the appropriate mix of institutional endowments or techno-legal procedures and administrative systems necessary for effective regulatory performativity. Rather, the 2005 documents conflated regulatory reform with structural economic reform and the 'difficult task of moving forward with the transition to market led growth to maintain economic performance in response to technological innovations, change in consumer demand, and interdependencies in regional and global markets' (OECD, 2005c: 4). Regulatory reform in fact entailed supply-side reforms, the dismantling of government monopolies (energy, transportation, telecommunications, etc.), privatization and deregulation — reforms the OECD deemed 'central to effective economic policy' (ibid.). The document elaborates: 'Regulatory policy is today a key part of a much broader framework on governance, the goals of which are transparency, legitimacy, accountability, trust in government, efficiency and policy coherence. To achieve these goals, the link between regulatory policy and the promotion of regulatory quality with other horizontal policies, such as competition policy and market openness, is fundamental' (ibid.).

Regulatory reform was thus an expansive project, in part to reduce what the OECD termed the 'scale of government' (OECD, 2005d: 1), but more fundamentally to reposition government in relation to citizens, society and markets:

> In general, OECD countries have been immersed in the transition from a stage dominated by a single policy maker (at different levels of government, according to the nature of the country's institutions) to a stage with several actors engaged in policy making, implementation and the use of market mechanisms for allocating public goods and services. Increasingly, OECD countries consider that it is not only necessary to change the relationship between government, citizens and parliaments, but also the functioning of government itself. (Charbit and Vammalle, 2010: 213; see also Meloni, 2010)

The adoption of the 2012 Recommendation of the Council of the OECD on Regulatory Policy and Governance (OECD, 2012g) represented the culmination of these efforts, with the language of regulatory reform and regulatory capacity now formally codified as 'regulatory governance' and recommended as a standard for member economies. Specifically, for example, the 2012 recommendation elevates governance by regulation as core to market operation and economic well-being: a 'well-functioning regulatory framework' is necessary for 'transparent and efficient markets' and is core to market signalling in terms of setting the 'right incentives'. By definition, 'good' regulatory policy was defined in relation to performance- or incentive-based regulation, in which market instruments were adopted as best practice, as opposed to punitive or sanction-based regulation. As the 2012 recommendation notes, 'Regulatory policy should include a preference for performance-based regulation, and should facilitate the efficient operation of the market' (ibid.: 7). Quality regulatory frameworks were thus defined exclusively in terms of incentive-based regulatory systems, with governments urged to adopt 'whole-of-government' reform agendas in order to dismantle command-and-control regulatory systems (legal or mandated sanctions, punitive regulatory measures, audit and reporting cultures, compliance and inspection systems, for example) otherwise seen as inefficient, burdensome, costly and depressing market-based activity. A key objective of the 2012 recommendation thus resided in transforming regulatory cultures from Weberian systems of bureaucratic centralization (inspection-based regulatory regimes) to systems of *regulatory governance*. As the 2012 recommendation notes, albeit in a language that tends to diminish its political significance:

> Governments must be actively engaged in assuring the quality of regulation, not reactively responding to failures in regulatory quality. In advanced countries this concept, which implies the need to link the evaluation of existing regulations as they operate to the design of new regulations, is evolving into regulatory governance. Regulatory governance is grounded in the principles of democratic governance and engages a wider domain of players including the legislature, the judiciary, sub-national and supranational levels of government and international standards setting activities, including those of the private sector. Regulatory policies, tools and institutions make up the elements of the analytical framework that the OECD has advocated for a successful approach to regulatory governance. (ibid.: 22)

THE OECD AND POLICY TRANSFER: REGIONAL AND COUNTRY ENGAGEMENT

Attempts to repurpose and reposition the state in emerging economies have been fostered principally through the OECD's engagement with key partner countries (Brazil, China, India, Indonesia and South Africa), as well as formal arrangements with regional associations, particularly with APEC and ASEAN (see Supporting Information Table S1 in the online publication). Indeed, in recent years the OECD's engagement initiatives have expanded, illustrative of the organization's increasingly influential role as a standard-setting institution in global regulatory issues (Clifton and Diaz-Fuentes, 2011a: 307). Important among these have been the OECD's ability to cultivate regulatory reform as a high-priority initiative among regional organizations such as APEC (commencing in 2000) and ASEAN (commencing in 2010), building policy momentum through a series of sustained dialogues and formal declarations which have been designed to ensconce regulatory reform as a key governance agenda in each of the organization's member countries.

The OECD and APEC

Cooperation between APEC and the OECD began in 1999 off the back of the APEC Leaders' Declaration (APEC, 1999) and in a context where global markets had been hit by the Asian Financial Crisis (mid-1997) with financial reverberations felt in Russia and Latin America (UNCTAD, 1998). The APEC Leaders' Declaration thus emphasized 'improved competitiveness through ongoing reform' as the 'road to recovery and sustainable growth', committing member economies to strengthening markets through a combination of policy initiatives focused on enhancing competition, broadening market participation by private enterprise, improving the quality of regulation, reducing compliance costs and deepening trade and international investment (APEC, 1999). This focus was reflected in the APEC-OECD Agreement on joint work in regulatory reform adopted at the APEC Ministerial Meeting in November 2000, in which the OECD was formally invited to participate in regulatory reform initiatives and update APEC member economies about best regulatory practice.[11]

Initial cooperation commenced with the preparation of an APEC-OECD checklist on regulatory issues coordinated by the APEC Competition Policy and Deregulation Group and the OECD Programme on Regulatory Reform, which cemented competition policy as a central concern of regulatory reform. Allied with this, a series of Workshops of the APEC-OECD Cooperative Initiative on Regulatory Reform was also initiated, with a total of eleven joint workshops being held between 2001 and 2008 in APEC member economics.[12]

The workshops were not symbolic but substantive events, setting in place policy and reform agendas among senior officials of APEC member economies and instilling common understandings concerning 'regulatory capacity' and the objectives of regulatory reform. At the first workshop, for example, senior decision-making and ministerial-level participants dealt with issues such as designing and sustaining regulatory reform programmes, simplifying business regulations, implementing good regulatory principles, improving competition policy, 'integrating competition policy into

11. See OECD web page 'APEC-OECD Co-operative Initiative on Regulatory Reform': www.oecd.org/gov/regulatory-policy/apec-oecd-initiative-regulatory-reform.htm
12. See OECD web page 'APEC-OECD Co-operative Initiative on Regulatory Reform': www.oecd.org/gov/regulatory-policy/apec-oecd-initiative-regulatory-reform.htm

regulatory reform programmes', and 'creating effective regulators for public utilities' (APEC-OECD, 2001: 4, 7, 33).

By the second and third workshops (held in 2002), the forums were attracting not only senior-level participants from the public and private sectors, but also key institutional actors within APEC economies and the participation of other multilateral organizations such as the Asian Development Bank and World Bank. Importantly, the workshops were often followed by a high-level conference, as with the workshop in Jeju, Korea in 2002, where future steps for the APEC-OECD Co-operative Initiative on Regulatory Reform were agreed upon, including initiatives on regulatory transparency and regulatory reform in the financial, telecommunication and electricity sectors. Similarly, agreement was also struck to enhance the APEC-OECD Integrated Checklist for Self-assessment on regulatory, competition and market openness policies commenced in 2000, and to implement APEC and OECD regulatory principles in member economies (APEC-OECD, 2002; OECD, 2005b: 1).

Subsequent workshops held between 2002 and 2005 thus served as important platforms for coalescing reform agendas around regulation, competition policy and market openness, including the emplacement of self-assessment cultures designed to encourage member economies to self-evaluate and self-benchmark their regulatory systems, reform objectives and competition policies. This culminated with the adoption of the APEC-OECD Integrated Checklist on Regulatory Reform by both APEC and the OECD in 2005, a document that codifies regulatory and competition standards for APEC member economies (see Supporting Information Table S2 in the online publication) (OECD, 2005b). As the OECD notes, if represented schematically:

> [The] *Integrated Checklist* can be seen as an edifice in which a 'pediment'[13] is supported by three pillars. The whole edifice is made up of 39 normative, open ended questions (11 on 'integrated' policies; 8 on regulatory policy; 12 on competition policy; and 9 on market openness policy) that national authorities should answer when considering the adoption or revision of regulatory, competition or market openness policies. (OECD, 2005b: 35; see also Supporting Information Table S2)

Although it is a non-binding, voluntary tool for self-assessment, the document has proven instrumental as a standard-setting tool signalling how policy and governance practices should be assessed. The checklist, for example, equates regulatory reform with reform in competition policy and market openness, and procedurally with the emplacement of transparency, participation and accountability mechanisms broadly concurrent with regulatory systems of governance. Perhaps most importantly, however, the checklist defines certain state capacities and policy practices negatively. Historically, for example, state policy practices associated with infant industry protectionism, import-substitution industrialization, and the use of state-directed

13. 'The "pediment" includes all "shared" and general issues concerning the three policy areas that most support regulatory reform (regulatory, competition, and market openness)' (OECD, 2005a: 35).

credit have been strategically deployed by developing states as a means of augmenting markets and economic development. Amsden's famous quip that South Korea's success was due in part to the fact that it deliberately got 'relative prices wrong' venerated interventionist industrial policy, state-led investment decision making and selective industrial targeting strategies ('picking winners') over 'market conforming' (i.e., minimal government intervention) developmental approaches (Amsden, 1989: 139, 141). By contrast, the checklist admonishes such policy practices, defining reform as a whole-of-government effort to embrace market-led initiatives (OECD, 2005b: 35). Reform is thus characterized as policy practices which dismantle government monopolies, infant industry protectionism, trade barriers, non-tariff and technical barriers, restrictive or discretionary customs practices, and discriminatory government procurement practices that privilege domestic industry. Regulatory efficiency is also measured against normative assumptions about how effective regulatory regimes *integrate* national economies into international market systems (particularly in respect of reduced barriers to entry for foreign investment, goods and services), and the degree to which regulatory burdens are diminished on commercial operators. Positive, interventionist state measures, in other words, are defined as market distorting, reducing market openness to foreign ownership and investment.

The impact of the checklist was immediate, with five APEC economies (Taiwan, Hong Kong, Korea, Australia and the USA) undertaking a self-assessment of regulatory reform efforts by 2006, each reporting modification to their regulatory regimes in respect of transparency and accountability mechanisms and/or the establishment of new regulatory bodies or new administrative arrangements for the management and coordination of whole-of-government reform of competition policy and market openness (APEC-OECD, 2008). These initiatives were also supported with the launch of the OECD/Korean Policy Centre Competition Programme in 2004, a joint venture with the Korean government which gave the OECD a formal presence in Asia, training facilities and a secretariat to coordinate workshops, and seminars designed to help competition authorities develop and implement 'sound competition law and policy' across three core programme areas: taxation, competition and public governance (OCED/Korea, 2014). The OECD was thus uniquely positioned, able to actively convene meetings, set agendas and forge high-level engagements (for example, heads and senior administrators of national competition authorities, judges, regulators, and senior bureaucrats in ministries of trade, commerce and investment) with rapidly emerging economies at various stages of modernizing their institutional and governance environments (OECD/Korea, 2016). As the OECD observes, Cambodia, Hong Kong (China), India, Indonesia, Malaysia, Mongolia, Pakistan, People's Republic of China, Philippines, Singapore, South Korea, Taiwan, Thailand and Vietnam have been some of the most 'frequent participants in the Centre's activities', putting the organization in a unique position to ferment ideas and shape institutional approaches to regulatory reform (OECD/Korea, 2016).

These developments helped ensconce the OECD as the 'gold standard' for regulatory knowledge and best practice in regulatory reform, while also succeeding in galvanizing regulatory reform as a central priority of APEC and member economies. APEC member economies thus increasingly turned to the OECD for technical and expert assistance in regulatory issues. Vietnam, for example, which commenced a wide-ranging three-year Master Plan to simplify administrative procedures of the State Government (Project 30) in 2007, formally invited the OECD to evaluate the Master Plan, provide guidance on implementation, and set out a 10-year strategy on regulatory reform; this commenced with 258 administrative reforms being implemented in 2010, along with the establishment of the Administrative Procedure Control Agency which monitors and assesses new reforms and determines if they meet with international best practice (OECD, 2011b; Schwarz, 2016). At the same time, the OECD was able to extend the number of APEC signatories to various of its conventions, with Australia, Singapore, Canada, Chile, Japan, New Zealand, Korea, Philippines, Malaysia, India, China and Indonesia, for example, joining the Convention on Mutual Administrative Assistance in Tax Matters, and adopting practices and benchmarks associated with multinational corporations and transfer pricing, and taxation conventions on income and capital, among others.[14]

This cascading series of engagements with APEC and its member economies reflected the expanding footprint of the OECD in the region and, more broadly, its influential role in the diffusion and transfer of policy ideas and regulatory reform agendas impacting state–market relations. This culminated in 2011 at the APEC Leaders' Summit in Honolulu, where the Honolulu Declaration formally committed APEC member economies to the *implementation* of the principles of the 2005 APEC-OECD Integrated Checklist on Regulatory Reform, elevating the checklist from a voluntary tool for self-assessment to a recognized standard and set of best practices (OECD, 2005b).[15] Indeed, OECD approaches to regulatory reform and the construction of regulatory governance were largely sublimated into APEC's core mission, with two of the four Annexes of the Declaration (Annex A — Promoting Effective Non-discrimination, and Market Driven Innovation Policy; and Annex D — Strengthening Implementation of Good Regulatory Prac-

14. See OECD web page 'Convention on Mutual Administrative Assistance in Tax Matters': www.oecd.org/ctp/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm. Other APEC member economy signatories include Australia, Canada, Chile and New Zealand.
15. A first phase of the APEC-OECD initiative was completed in 2002 at the High Level Conference held in Jeju, Korea, where it was agreed that further elaboration and a formal APEC-OECD Integrated Checklist was needed for self-assessment 'on regulatory, competition and market openness policies' as a means of facilitating APEC and OECD principles (OECD, 2005b).

tices), for example, reiterating verbatim the standards of the checklist, committing member economies to regulatory reform that promotes open, non-discriminatory, market-driven development. Significantly, this also consolidated the work of APEC around key reform agendas, a central component of which focused on 'structural reform' which, as with the OECD, implied market-enhancing reform processes: 'Structural policies . . . that affect the operation of markets and the capacity of international businesses to access those markets and operate efficiently' (APEC, 2014: 1). APEC's agenda is thus increasingly synergized with that of the OECD, with APEC noting that a key component of its 'work to promote free and open trade and investment in the region' now rested in 'building high quality regulatory environments in APEC economies' to be achieved through regulatory reform (ibid.).

The OECD and ASEAN

The OECD's engagement with APEC and its emergence as a global standard-setting institution was not accidental. It reflected the organization's attempts to transform itself (OECD, 2014b). The global distribution of power in the post-war period, for example, which had centred on a North American–European axis and was reflected in the organization's restrictive 'rich man's club' membership, was now seen as problematic (Clifton and Diaz-Fuentes, 2011a: 307). Global economic power was becoming more diffuse off the back of rapid economic development in the BRIC (Brazil, Russia, India, China) economies, and substantial growth in other non-OECD member economies such as Indonesia, Malaysia, Vietnam, Argentina and South Africa. By the OECD's own reckoning, for example, the G20 non-OECD members' share of global economic output would climb to 36 per cent by 2030, while the share of global economic output of existing OECD member economies would shrink from approximately 60 per cent in 2000 to 43 per cent by 2030 (Clifton and Diaz-Fuentes, 2011a: 307). For the OECD, this structural transition in the global economy required greater engagement with non-member states if the organization was to remain relevant (see OECD, 2014b).

The OECD's pivot toward Southeast Asia and ASEAN in the 1990s, however, met initially with a lukewarm response, in part a reflection of the fallout of the Asian financial crisis, the suspicion of many Asian states toward neoliberal policy agendas which were blamed for the crisis, and concerns that the OECD viewed state participation in the economy negatively (Clifton and Diaz-Fuentes, 2011a: 307). Historically, the state in Southeast Asia had assumed a lead role in economic development and modernization, actively developing industry and key export sectors through government-linked entities, with many — Singapore, Malaysia, Thailand and Indonesia — subsequently enjoying rapid growth (Carroll and Jarvis, 2014). In the post-financial crisis period, however, Southeast Asia's traditional growth drivers came under stress. The 'twenty-year long incorporation of China into the world market system' (Woo, 2007: xiii) was diverting increasing amounts of foreign investment and low value-adding manufacturing away from Southeast Asia, undermining its export-driven growth model. Relatedly, Japanese capital which, since the Plaza Accords of 1985, had been a huge driver of export-led investment into Southeast Asia (in particular, the same four countries mentioned above), was also being drawn to China (Rodan et al., 2001: 15; Stubbs, 2009).

The OECD's historically modest engagement with ASEAN was recognized in 2007, with the Council identifying Southeast Asia as a strategic priority for the organization and calling on the 'Secretary-General to explore ways to expand the OECD's relations with the region, with a view to identifying countries for possible membership' (OECD, 2014a: 2). Consultations led to the identification of six initial areas to engage regional policy networks, comprising what was termed the OECD Southeast Asia Regional Programme (SEARP): (i) tax, (ii) investment, (iii) education and skills, (iv) small and medium-sized enterprises, (v) regulatory reform, and (vi) connectivity and public–private partnerships (PPPs) for network infrastructure (ibid.: 3).

As with APEC, these engagements focused on the diffusion of ideational agendas, the provision of expert technical and policy assistance, and inculcating cultures of review as a means of encouraging regulatory reform and adherence to OECD standards. In practical terms these manifested across several platforms. The first was a series of issue-focused capacity-building engagements with ASEAN, in part reflecting the informal operating culture that pervades the association's approach to engagement. The second was a series of 'bilateral policy reviews', training programmes, and related technical support activities. Bilateral policy reviews commenced with Vietnam in 2010 (Review of Administrative Simplification), and continued with Indonesia in 2012 (Regulatory Reform), Malaysia in 2012 and 2013 (Good Regulatory Practices, Investment Policy Reviews), Brunei Darussalam, Malaysia, Myanmar, the Philippines and Thailand in 2013–14 (Product Market Regulation), Malaysia in 2013–14 (Implementing Good Regulatory Practice in Malaysia), and an OECD-ASEAN Secretariat comparative assessment programme reviewing SME policies among member countries on access to finance and benchmarking through an OECD 'Scoreboard on Financing SMEs and Entrepreneurs' in 2012 (OECD, 2014a: 4).[16] The third form of engagement was through what the OECD terms 'horizontal initiatives, e.g. measur-

16. The OECD's engagement with Southeast Asia pre-dates its more formalized recent engagements with ASEAN, commencing in 2000 on issues broadly related to regulatory reform. Other engagement initiatives have included education and skills development, the Economic Outlook for Southeast Asia reports (produced in conjunction with the ASEAN Secretariat), as well as engagement in areas such as 'strengthening collaboration' on trade, innovation, and gender initiatives (see OECD, 2014a).

ing well-being, green growth, development strategy, engagement in policy dialogues on natural resource-based development and PISA[17] for development' (OECD, 2014b: 9), with a few countries (Malaysia, Indonesia, Singapore) joining OECD bodies as Associates and Participants, and adopting OECD legal instruments and being incorporated into OECD databases. The fourth platform was the development of a regional policy network, the ASEAN-OECD Good Regulatory Practices Network (GRPN), formally launched in 2015 in Kuala Lumpur, Malaysia, bringing together 40 senior regulatory officials from ASEAN and OECD member countries. Operating along the same lines as the OECD peer review networks, the GRPN works under the OECD's Regulatory Policy Committee as part of the OECD's SEARP programme (OECD, 2014a). As the OECD notes, the GRPN is designed to 'build up a community of best practices based on the realisation that good regulatory practices are instrumental in achieving open and competitive markets, as well as improving economic efficiency and consumer welfare' (OECD, 2014a: 4).

To consolidate these activities, the OECD announced the establishment of its first Southeast Asian regional office in Jakarta in 2015, designed to leverage off a more intensive set of collaborations with Indonesia, an OECD 'key partner' country, provide a regional base for direct political engagement with ASEAN countries and the ASEAN secretariat (also located in Jakarta), and as a means of elevating the OECD–ASEAN relationship to what the organization terms a 'more strategic level' (OECD, 2014b: 9).

It has been the OECD's work at the country level in Southeast Asia, however, which has been the most extensive and aimed at realizing the transfer of specific regulatory reform agendas. As one of five non-member 'key partner' countries, Indonesia has been the most extensively reviewed country under the *OECD Reviews of Regulatory Reform: Indonesia 2012* (OECD, 2012c), a process that comprised five sector-specific reviews:

- government capacity to assure high quality regulation
- competition law and policy
- market openness
- regulatory and competition issues in ports, rail and shipping
- public–private partnership governance: policy, process and structure.

For each of these sectors, a 'background' review was produced (which then became a chapter in the final publication) comprising a detailed, diagnostic stocktaking of existing institutional arrangements, sector performance (particularly in relation to infrastructure provision in ports, rail and shipping), governance effectiveness, policy and regulatory coordination, assessments of institutional/sector capacities, together with a series of recommendations

17. An education quality measurement tool.

for regulatory enhancement. These include recommendations that reiterate the benefits of 'regulatory reform', the efficacy of 'whole-of-government' reform approaches, and suggested frameworks for the establishment of independent regulatory institutions designed to 'support co-ordinated implementation of policy and foster regulatory quality' (OECD, 2012b: 6, 7–9, 54).

The ideational objectives of the OECD's review of regulatory reform in Indonesia remain consistent with previous OECD recommendations and designed to realize the construction of market-enabling environments, the repositioning of government from being a provider of services to a facilitator of private sector participation in the economy, and the reduction of the regulatory burden on market actors by limiting the scale of government. As the Foreword to the OECD review of Indonesia observes, 'reducing and reforming regulations are key elements of a broad programme of regulatory reform' (OECD, 2012c: 3). These include specific recommendations concerning the implementation of public–private partnerships and attempts to limit the involvement of government and government-linked organizations in the economy. In particular, the OECD recommends the exclusion of 'SOEs from the bidding process' on government procurement contracts, infrastructure provision, and the provision of other goods and services. As the review notes, 'not allowing SOEs to bid against private firms will prevent a conflict of interest that would undermine the legitimacy of the bidding process' — because of the relationship of SOEs (state-owned enterprises) to government (OECD, 2012f: 36). Similarly, the review recommends greater private sector participation in ports, shipping and rail, with detailed recommendations on the repeal of specific laws to create the appropriate legal framework for private sector participation, while other recommendations stress the adoption of a 'fully effective competition law' (OECD, 2012a: 24) specifying the prohibition of anticompetitive and 'monopolistic practices' for both private and state-owned enterprise (ibid.: 25) and mechanisms to enhance whole-of-government awareness in all aspects of government business decision making (OECD, 2012h: 41–2).

Equally, the review of Indonesia's market openness stocktakes recent developments in the mining and multi-model transport sectors noting increasing liberalization, while reviewing restrictiveness measures (including licensing requirements, sanitary, phytosanitary and technical barriers, and import/export restrictions, such as pre-shipment inspection requirements, BULOG[18] and state agency requirements, and limitations on the port of entry) and benchmarking Indonesia's performance against the OECD FDI Regulatory Restrictiveness Index (OECD, 2012e: 32–6). As the review urges, 'better linking Indonesia to world markets will spur trade, which in turn

18. BULOG (Persero) was established in Indonesia in 1967 and is a state body engaged in food logistics and responsibility for national food security (guaranteeing stock, quality and affordability).

will help boost domestic production, with positive knock-on effects for employment and domestic consumption. Access to a wider variety of imported inputs will also decrease costs for consumers and producers, as well as encourage productivity gains via technology transfer' (ibid.: 44).

While it is difficult to establish direct causality between the recommendations of the OECD and the adoption of specific reforms it is clearly the case that ideational approaches to regulatory reform and governance are being impacted in Indonesia. Marketization agendas, for example, continue to enjoy traction, while policy agendas focused on public–private partnerships, private sector financing and private-led development are now *de rigueur*. New network infrastructure, for example, is being expanded though a spate of public–private finance initiatives such as the three 'Fast Track Programmes' which will add an additional 42 gigawatts of generating capacity to the Indonesian power grid between 2015 and 2019, with over half of the US$ 30 billion cost being secured through private sector participation (Tharakan, 2015: 19). The monopoly historically enjoyed by key SOEs such as PLN PT Perusahaan Listrik Negara (State Electricity Corporation) is being increasingly displaced by private independent power producers, with PLN relying on the private sector to provide the majority of coal-fired electrical generation over the next decade (ibid.: 27). Indeed, across the upstream electricity-generating sector (thermal, small scale hydropower, solar, wind power, gas, coal), the Indonesian government has set in place various regulations, laws and tariff regimes designed to replace public sector financing with private sector participation, including rolling back energy subsidies (electricity and petroleum) which had been introduced originally to ensure equity of access. Transportation infrastructure has similarly been impacted by the adoption of regulatory governance regimes designed to create market spaces for private-led development, including the recently launched high-speed rail link between Jakarta and Bandung along with 20 other rail projects across Indonesia, while the development of toll roads is being spearheaded through a widening use of concessions granted to private operators (Zhen, 2016).

These developments reflect accelerating reforms in the regulatory framework supporting private sector participation through PPPs and reforms to competition policy. New presidential regulations issued in 2012, for example, announced the establishment of the Indonesia Infrastructure Guarantee Fund (IIGF), a single-window mechanism providing government guarantees for PPP infrastructure projects in order to defray private sector risk, as well as mechanisms for land acquisition, planning approvals and related mechanisms supporting PPPs (GBG, 2014). These were followed with the release of the Medium Term National Development Plan 2015–2019 by BAPPENAS (Ministry of National Development Planning) in September 2014, announcing the formation of a high-powered team to review 6,000 regulations annually in terms of their impact on business and competition, and an allied announcement by the government that it was immediately deregulating 134 rules as part of the first package of policy reforms measures (Nur, 2016). The value of PPPs in rail, toll roads, bridges, water supply, sanitation, ports, airports and power generation grew to US$ 51 billion in 2015, representing a substantial reorientation in the way infrastructure will be developed in the country (BAPPENAS, 2015). Perhaps more importantly, however, the Indonesian government has renewed a commitment to expand the number of PPPs not only as a primary means of financing development but also as a means to incentivize service delivery and to mainstream the use of performance-based regulation — in essence the adoption of New Public Management (NPM) agendas and marketization as a primary instrument of public sector reform (Ray, 2014).

The OECD's engagement with Indonesia is by no means unique in ASEAN. Similar and equally extensive engagements with countries such as Malaysia are also in process. In 2013, for example, the Malaysian government invited the OECD to review the country's regulatory management system and provide technical advice and support for piloting and implementing the National Policy on the Development and Implementation of Regulations — a whole-of-government programme to review and reform existing regulations, and formulate new regulations in order to align them with OECD regulatory standards (OECD, 2015). Clearly, the extent of the OECD's engagement in the region is deepening, highlighting the ongoing series of efforts to cultivate reform agendas which embrace regulatory systems of governance and which are designed to reposition government in relation to markets.

CONCLUSION: TRANSFERRING REGULATORY CAPACITY TO DEVELOPING ECONOMIES

The OECD has been at the forefront of regulatory policy and regulatory reform for the past decade, establishing extensive international networks of regulatory officials, public sector managers, administrators and decision makers who operate in important national institutional and regulatory contexts (OECD, 2012d). The organization's work through knowledge exchange, peer review, audits, international benchmarking and institutional reviews of regulatory practices, laws and administrative systems has both deepened and expanded over the last few decades, with the OECD establishing programmes and offices in emerging regions and with non-member economies. This has seen the OECD emerge as a global standard-setting institution, enhancing the impact of its work in terms of the adoption of regulatory reform agendas designed to deepen market activity with consequent implications for the role, scale and position of government in relation to markets.

For developing countries, however, the ideational values associated with the work of the OECD and the specific recommendations and policy reforms that arise have to be understood amid specific economic, political and institutional contexts. Much of the OECD's work on regulatory reform, for example, arises from contexts specific to advanced, industrial economies in the global North (particularly in Western Europe and the newly independent states of Eastern Europe), which in the late 1980s and early 1990s were seeking regulatory and public management knowledge as they implemented pro-market policies associated with the divestiture of state assets (electricity, rail, ports, airports, water and telecommunications), the creation of sustainable markets with new governance systems able to balance public and private sector interests, and the introduction of NPM agendas (outsourcing, PPPs, corporatization, user chargers, transferable permits, etc.). The creation of the Public Management Committee (PUMA)[19] of the OECD was expressly designed to provide a peer network and a practical resource for public sector managers grappling with privatization, regulatory and market design, and in many instances the management of regulatory and market failure in newly privatized sectors. But as Common notes, while constituted as a public good to facilitate policy learning, knowledge transfer and expert advice, this same community of practitioners also became an 'embedded policy strata' operating at a global level (Common, 2001: 71). More importantly, this policy community came to reflect a shared and long-term commitment to a specific 'set of governing arrangements', regulatory reform and restructuring practices, and a specific image of the role of the state in relation to markets — and more broadly to economic management. Once embedded, the extension of such practices into other political, economic and institutional contexts has become manifest.

The initial adoption of reform practices associated with market building and NPM occurred in administratively sophisticated environments with strong traditions of administrative law (in both common and civil law contexts), combined with a thick suite of institutional endowments and related capacities. For developing states, however, the institutional endowments necessary to support complex systems of regulatory governance and effective market operation, and to ensure the appropriate allocation of risks and rewards, are often impaired. Patrimonialism, clientelism and embedded social traditions associated with economic informalities in relation to property rights, business and economic practices, for example, render regulatory systems of governance problematic. The series of market and regulatory failures that littered emerging economies in the 1990s and 2000s, particularly in infrastructure sectors such as energy, water and transportation (for example, Philippines, Indonesia and Thailand) — as developing countries emulated

19. The Public Management Committee was subsequently renamed the OECD Public Governance Committee under the Public Governance and Territorial Development Directorate. See the OECD web page 'The Public Governance and Territorial Development Directorate (GOV) Networks': www.oecd.org/gov/thepublicgovernanceandterritorialdevelopmentdirectorategovnetworks.htm (accessed 15 April 2015).

governance practices in Western Europe — exposed emerging economies to sectoral failures, huge public liabilities, and worsened sector outcomes (Carroll, 2010; Jarvis, 2012). Equally, as Painter notes, reforms focused on the commercialization of public service delivery (for example, NPM, contracting out, user-pays models) in emerging economy contexts often exacerbate opportunities for rent seeking, abuse and corruption. This was the case in Vietnam and China, where commercialization measures witnessed growing public dissatisfaction as service delivery quality declined and costs to end users increased (Painter, 2014: 214; see also Schick, 1998).

Perhaps more fundamentally, however, the broad suite of pro-market agendas entailed in regulatory systems of governance relocate the politics of development away from the state, in effect reducing state capacity over the commanding heights of the economy. Regulatory systems of governance and processes of agentification assume an increasingly judicial form, 'an emphasis on institutional accountability secured through a process of public reporting and transparency of the decision-making process' but where the 'accountability of self-regulating institutions is based on fidelity to institutional objectives rather than a responsiveness to the broader interests of the citizenry' (Jayasuriya, 2001: 120). Rather than empowering state capacity to manage developmental objectives, coordinate institutional actors and marshal institutional resources necessary to mobilize development, regulatory systems of governance fragment the architecture of state and state capacity.

These concerns should resonate loudly among policy makers in developing states. Asia's record in mobilizing development (however uneven), for example, has been achieved singularly off the back of strong developmental states whose capacities in planning, central coordination and the mobilization of resources have achieved remarkable success. Outside of Japan, South Korea, Taiwan and Singapore, no other Asian state has managed the transition to high-income GDP per capita 'developed' status, and only two other Asian states have managed the transition to 'middle income' status in terms of GDP per capita (Malaysia and China).[20] Common to all these transitions has been the role of the state, the coordination of industrial policy, the use of state-directed credit, and the orchestration of corporatist bargains struck between labour, industry and the state. Development, in other words, has been managed top down, not realized through bottom-up, uncoordinated growth with markets left to their own devices.

Ironically, these lessons sit increasingly at odds with the standards now emanating from the OECD, the regulatory reform agendas promoted in its

20. These definitions derive from the World Bank: 'low-income economies are defined as those with a GNI per capita, calculated using the World Bank Atlas method, of $1,045 or less in 2013; middle-income economies are those with a GNI per capita of more than $1,045 but less than $12,746; high-income economies are those with a GNI per capita of $12,746 or more. Lower-middle-income and upper-middle-income economies are separated at a GNI per capita of $4,125' (World Bank, 2015).

name, and the regulatory capacities which processes of peer-to-peer review, benchmarking and country reviews are attempting to transplant as best international practice and a 'gold standard'. These have potentially severe implications for state capacity in terms of orchestrating developmental agendas and state-led development programmes. The use of government-linked businesses and SOEs which historically have helped to spearhead industrialization in key economic sectors are now branded as protectionist and anti-competitive, with the OECD recommending they be dismantled and replaced by private sector market participation. Targeted government procurement practices, soft loans, and other preferential government policies designed to nurture domestic industrial/economic capacity and produce 'national champions' able to compete in the international market, are likewise labelled as discriminatory and market distorting. Dirigiste developmental policies emanating from and coordinated by the state, in other words, are now identified as the problem to be overcome through 'regulatory reform' and reform to competition policy.

The diffusion of such 'standards' is remaking the state in developing economies. On the advice of the OECD, through its peer-review processes, emerging economies are now evaluated in terms of how effectively the state is being repositioned in relation to markets, how open the economy is to international competition, and how effectively governance by regulation is being adopted. For emerging country governments, this narrowing of the policy space to market-conforming instrumentalities has far-reaching implications for patterns of state ownership, state interventionism and how the state has historically shepherded industrialization and economic development. More obviously, it has ongoing implications for how economic development is manifesting in terms of the institutional contexts that exist in emerging economies, the informal economic systems that often operate, and how markets and market access are captured and by who.

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SUPPORTING INFORMATION

Additional supporting information may be found in the online version of this article at the publisher's website:

Table S1. Selected OECD Engagement Initiatives with APEC, ASEAN and Asian Countries
Table S2. APEC-OECD Integrated Checklist on Regulatory Reform