International Regulatory Cooperation Toolkit: An Overview

Submitted by: New Zealand
International Regulatory Cooperation Toolkit: An overview

Carmen Mak and Julie Nind
Principal Policy Advisors, Trade and International Environment

Outline

• Introduction to the toolkit
• Unilateral coordination
• Informal cooperation
• Formal cooperation
  • Cooperation on regulatory process
  • Enforcement cooperation
  • Mutual recognition
  • Harmonisation
• Enabling institutions and mechanisms
• Lessons learned
• The regulatory maze
Motivation for the toolkit

• New Zealand’s experience with Australia in regulatory cooperation
• Australia NZ School of Government (ANZSOG) report
• Desire to document our experiences and lessons learnt, as a resource for domestic policymakers and regulators
• Desire to enrich the resource by drawing on diverse experiences of other economies, particularly in the Asia-Pacific
• The toolkit is at draft stage – feedback, views, ideas
• End outcome – a web-based toolkit which is useful, relevant, and will be of pragmatic use to the region

Reasons for cooperating

• To lower barriers to trade and investment
• To enhance regulatory capacity and capability, and build confidence and trust
• To increase policy and regulatory effectiveness
The cooperation spectrum

- Spectrum of options:

Unilateral coordination → Informal cooperation → Formal cooperation

Unilateral Coordination

- Unilateral adoption:
  - Basing policies on those of another economy

- Unilateral recognition:
  - Compliance with laws of one economy deemed to satisfy requirements of another

- Benefits:
  - Maximum flexibility in determining regulatory settings
  - Reduces costs for firms
  - Makes effective use of developments undertaken by others
  - Supplements domestic capacity and capability
Unilateral Coordination continued

• Issues:
  • Does not provide for mutuality
  • Limited ability to influence policies or laws in other economy
  • Impact of reduced domestic capability
  • May miss out on information about emerging problems or other developments

• Examples:
  • ASEAN Cosmetic Directive (based on EU regulation)
  • NZ – competition law based on Australia
  • NZ motor vehicle standards

Informal Cooperation

• Key features:
  • Policy coordination/information sharing/cross agency appointments
  • May be recorded in an MOU or less formally
  • Does not create binding obligations
  • Can be implemented administratively and does not require a domestic legislative basis

• Benefits:
  • High flexibility to determine settings
  • Efficiency gains from sharing resources
  • Information flows support mutual learning
  • Strengthens trust and confidence so formal arrangements are more likely.
Informal Cooperation continued

• Issues:
  • May provide for some but not full mutuality
  • May not be as durable as formal arrangements – need to maintain goodwill and strong relationships

• Examples:
  • Competition law MOU between the Philippines and Japan
  • Cross-agency appointments between Australian and New Zealand agencies, e.g. on the Takeovers Panel in each country

Formal Cooperation

• Key features:
  • Recorded in an MOU, arrangement or treaty
  • Creates obligations that are binding or have strong moral force
  • Requires domestic legislation to implement

• Benefits:
  • Strong mutual commitment
  • Greater certainty of outcome
  • More durable

• Issues:
  • Reduced ability to determine own policy/regulatory settings
  • Can be difficult to exit
**Cooperation on regulatory processes**

- **Scope:**
  - Information or assessment from one regulator is used by another to fast track or simplify the regulatory process

- **Benefits:**
  - Speeds up regulatory process which benefits applicants (lower costs and faster to market)
  - Shares resources and helps build capability

- **Issues:**
  - Can be an administrative challenge if there are lots of different (bilateral) arrangements in place

- **Example:**
  - Patent Prosecution Highway/ASEAN Patent Examination Cooperation

---

**Enforcement cooperation**

- **Agreement between regulatory agencies to provide:**
  - Mutual assistance in gathering evidence, sharing information or other investigative assistance
  - Alerts to emerging issues in one market that may affect others

- **Benefits:**
  - Helps manage the effective enforcement of laws
  - Reduces the incidence of non-compliance

- **Issues:**
  - Legislative authority may be required
  - May need more to ensure effective enforcement

- **Example:**
  - Agreements between Australian/New Zealand competition authorities
Mutual Recognition

• Scope:
  • Two or more economies retain their own rules and institutions, while recognising the rules or decisions of institutions of the other economy
  • An economy accepts conformity assessments issued by bodies in another economy, and vice versa

• Benefits:
  • Allows each economy to maintain its own set of rules/standards but reduces compliance costs
  • High level of certainty for firms operating in both markets
  • Can be used as a building block towards harmonisation – e.g. ASEAN MRA for Electrical and Electronic Equipment (ASEAN EE MRA) and Agreement on the ASEAN Harmonized Electrical and Electronic Equipment Regulatory Regime (AHEEER)

Mutual Recognition continued

• Issues:
  • May be viable only where a high level of convergence or shared regulatory objectives
  • Needs a level of trust and confidence in each other’s institutions
  • Needs to be supported by ongoing policy co-ordination but that may reduce flexibility to determine domestic settings
  • Requires buy-in from regulators

• Examples:
  • ASEAN EE MRA
  • ASEAN MRAs on professional services
  • Trans-Tasman MRA
  • EU "New approach" (Reg. 764/2008)
Harmonisation

• Scope:
  • Two or more economies harmonise standards or rules (substantially the same but may not be identical)
  • Two or more economies jointly develop standards that can apply in both (can be voluntary or mandated through legal processes in each jurisdiction)

• Benefits:
  • Provides high level of certainty to firms
  • Enables sharing of resources
  • Increases pool of experts available for developing standards, improving their quality

Harmonisation continued

• Issues:
  • May limit an economy’s ability to determine its own policy and regulatory settings
  • May be highly resource intensive
  • May favour the larger partner in the arrangement
  • May result in the ‘highest common denominator’, leading to over-regulation
  • Some risks can be managed through opt-out provisions and creating dual regimes.

• Examples:
  • AHEEER
  • ASEAN Cosmetics Harmonized Regulatory Scheme
  • Food Standards Australia New Zealand
Enabling institutions and mechanisms

• Scope:
  • Trans-national institutions that provide leadership and structures within which cooperation is promoted and coordinated. Can take two forms – high-level institutions that provide overall governance and direction, and subject or area specific institutions.

• Benefits:
  • Can provide momentum to develop mutually reinforcing regulatory cooperation initiatives across government.
  • Can build capacity across participating economies

Enabling institutions continued

• Issues:
  • Participating in and servicing trans-national institutions may be resource-intensive and time-consuming.
  • Requires a high level mandate to gain sufficient traction with domestic players

• Examples:
  • US-Mexico High Level Regulatory Cooperation Council
  • ASEAN Consultative Committee on Standards and Conformance (ACCSQ)
  • Latin American and Caribbean Network of Regulatory Improvement and Competitiveness (LATIN-REG)
Lessons Learned

• Be clear about problem or objective
• Mutual trust and confidence are essential
• Importance of high-level goals and political leadership
• Value in trialling new initiatives
• Benefits for economies with no regulatory regimes or those wanting to improve
• Roles of private sector and donors
• Need for promotion of initiatives
• Be mindful of barriers
• Think outside the box

Navigating the “regulatory” maze

• Mutually reinforcing relationship with regulatory quality management:
  • Consider impact of domestic regulation on international trade and investment
  • Trigger in domestic process (eg TTMRA flag in RIA process)
  • Awareness of best practice options, opportunities for further alignment, regulatory competition
• Supports “ease of doing business” initiatives through red tape reduction and simplification (eg PPH)
• Fosters institutional, people-to-people and physical connectivity
• Regulatory systems performance initiatives - standards
• Best way to address issues of regulatory reach
International Regulatory Cooperation Toolkit: An overview

Carmen Mak and Julie Nind
Principal Policy Advisors, Trade and International Environment
carmen.mak@mbie.govt.nz
julie.nind@mbie.govt.nz