



**Asia-Pacific  
Economic Cooperation**

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## **International Regulatory Cooperation Toolkit: An Overview**

Submitted by: New Zealand



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## International Regulatory Cooperation Toolkit: An overview

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### 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



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## 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

- 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



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## 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



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## 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



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## 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



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## 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



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## 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



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## 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



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## 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)



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## 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



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## 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



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