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International Regulatory Cooperation Toolkit: An Overview

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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

- 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



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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.



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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)



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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)



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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

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



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carmen.mak@mbie.govt.nz

julie.nind@mbie.govt.nz

