

## Key Messages:

- **IRC is highly pervasive in ASEAN:** AMS are embedded in a complex web of arrangements with regulatory agencies often involved in a mix of bilateral, sub-regional, and regional links as well as an international organisation.
- **IRC takes a wide range of forms:** much of this cooperation occurs outside of formal free trade agreements and the WTO Technical Barriers to Trade regime in informal trans-government engagements, such as communities of practice.
- **IRC has grown:** the last 40 years have seen rapid growth in international regulatory cooperation as governments increasingly work together.
- **The imperative for IRC is heightened:** looking ahead most long-term drivers of IRC will continue to operate while COVID-19 has highlighted the importance of the role IRC can play.

## Under the Radar: International Regulatory Cooperation in ASEAN and New Zealand

Derek Gill and Edo Setyadi

*International Regulatory Cooperation (IRC) refers to a diverse range of ways government regulators from different countries work together on developing and enforcing regulations. IRC can occur through formal arrangements such as ASEAN Mutual Recognition for Professional Services, international organisations such as the WHO, or more informal networks and communities of practice. It has grown rapidly over the last 40 years but is little understood because much of it occurs beneath the radar. IRC is important for the AEC as tariffs have come down to near zero in ASEAN for many areas of trade, and multilateral liberalisation has stalled. New research shows that ASEAN countries, along with the New Zealand Government, are deeply imbedded in a complex web of international regulatory cooperation arrangements. In ASEAN, these arrangements are predominately Multilateral (the UN system, for example) Bilateral and Regional (ASEAN and APEC). In New Zealand, bilateral arrangements with Australia predominate. Much of this cooperation occurs outside of formal free trade agreements and the Technical Barriers to Trade regime under the WTO. Instead regulators often work directly with their foreign counterparts through informal networks. The experience of COVID-19 has underlined the value of cooperative activities between states like information gathering and exchange. Dealing effectively with three of the principal issues confronting public policymakers – pandemics, climate change, and effective governance of the digital environment – all require extensive international cooperation.*

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## The Last 40 Years Have Seen Rapid Growth in International Cooperation as Governments Increasingly Work Together

Cooperation amongst regulators is longstanding as regulators have been working across jurisdictional boundaries for well over a century. The International Telegraph Union was established in 1865, just 21 years after Samuel Morse transmitted the first electronic message and before the first patents for telephones were filed. What is new is the extent and intensity of International Regulatory Cooperation (IRC). Countries in East Asia have a history of actively engaging in IRC of various types.

A new ERIA publication on IRC (Gill, 2020) reports key findings from case studies, interviews, and an elite survey of key decision makers and opinion leaders in Association of Southeast Asian Nations (ASEAN) Member States (AMS), as well as New Zealand as a comparator. The book is dedicated to the memory of Ponciano Intal Jr (1949–2019), a much loved and valued staff member of ERIA.

## International Regulatory Cooperation Takes a Diverse Range of Forms

The New Zealand Ministry of Business, Innovation and Employment defines IRC as ‘the different ways that regulators from different countries work together to discuss, develop, manage or enforce regulations’. IRC is like art: people know it when they see it, but it is hard to define its boundaries. IRC can range from unilateral recognition by adopting another country’s regulatory settings or standards at one end of the spectrum, through to harmonisation of policies and practices at the other. There is a range of forms, shown in Figure 1, that increase in difficulty as one moves from left to right. The easiest types of IRC to support are relatively informal trans-government engagements, such as communities of practice. More structured formal intergovernmental agreements, such as mutual recognition agreements covering standards and conformity assessments or mutual recognition of rules, require more investment and support going forward.

**Policy Recommendation 1:** *Look for the lowest common denominator* – Cooperation is costly, and costs increase markedly with the intensity of IRC while the marginal benefits diminish.

IRC can take a bewildering variety of forms depending on the following elements:

1. ‘Why’ – the imperative for IRC;
2. ‘Who’ – the number of actors (arrangements can be bilateral, sub regional/regional, plurilateral, or multilateral);
3. ‘What’ – the areas on which the cooperation focuses: regulatory policies (making rules), regulatory practices (interpreting, applying, and enforcing rules), or regulatory organisational management (supporting the administration of rules);
4. ‘How’ – how intensive the cooperation is: informal networks of national regulators, mutual recognition agreements, and formal regulatory partnerships, amongst others; and
5. ‘Which’ – the structure of the legal form or other mechanism adopted.

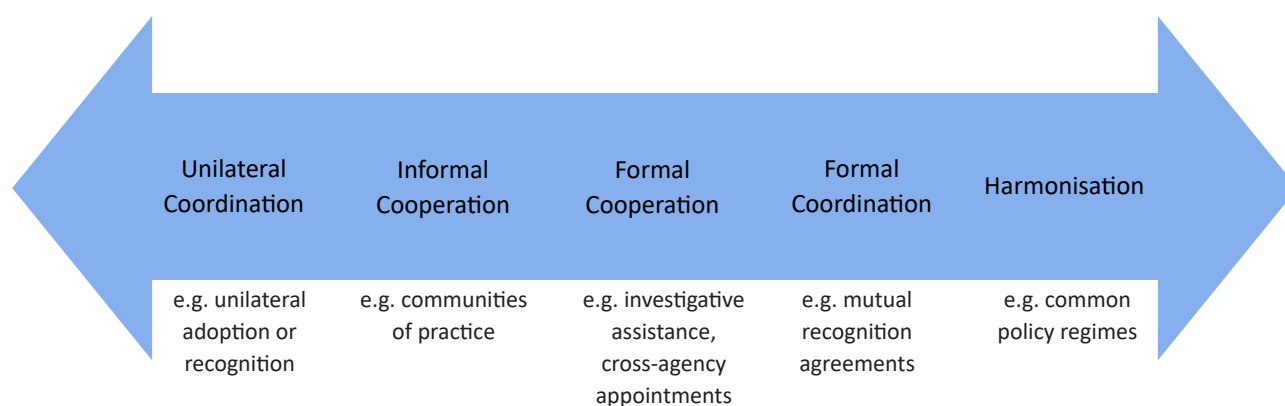
## Why Undertake International Regulatory Cooperation?

The growth of IRC reflects a range of factors. There are economic drivers, such as the growth in global supply chains driven by globalisation and the rise of multinational corporations, technological developments such as digitisation and the emergence of the Internet, as well as geo-political imperatives. Different countries may have a varying mix of objectives for participating in a particular IRC initiative.

### Mutual Economic Gains

Much of the literature focuses on the economic gains from improved coherence through reduced non-tariff barriers (NTBs). Regulatory diversity was a growing policy concern as tariffs have come down to near zero in ASEAN for many areas of trade, and multilateral liberalisation has stalled. In ASEAN countries a key driver is improving regulatory coherence by removing unintended and unnecessary barriers to trade, thus facilitating international trade and investment and participation in global supply chains.

**Figure 1. The International Regulatory Cooperation Continuum**



Source: Gill (2018).

## Strengthen Regulatory Effectiveness

There are other logics at play for IRC beyond the economic logic of reducing NTBs. Somewhat paradoxically, one of the major drivers of IRC is strengthening the ability of states to deliver regulation effectively. There are a range of circumstances where regulatory effectiveness encourages countries to participate in IRC, including (i) increasing the reach of regulation across borders, which manages international spill overs; (ii) improving regulatory cost effectiveness as regulators share resources (this is particularly important for smaller and less developed countries facing capability problems, including achieving minimum critical mass); and (iii) improving regulatory quality, which reduces the cost of doing business.

For example, in the case of competition law, there has been a very large increase in the number of countries with a domestic competition law since the 1960s. Without competition law, there is no need for IRC. However, with a competition law regime in place, there is a need to develop IRC to manage spillovers between jurisdictions. A range of transgovernmental, intergovernmental, and a few supranational arrangements emerged as a result (Petrie, 2013).

## Strategic and Geopolitical Dimensions

Finally, IRC inevitably involves strategic and geopolitical considerations. Foreign policy objectives of IRC include geopolitical gains, soft power through regulatory export, development assistance through technical cooperation, and obtaining 'a seat at the table'. For AMS, the ASEAN Economic Community (AEC) Blueprint 2025 creates an imperative for good regulatory practice (GRP), which covers improving IRC. IRC complements GRP in the AEC Blueprint 2025 and supports the drive to achieve regulatory coherence within ASEAN.

**Policy Recommendation 2:** *The participation constraint* – understand the objectives of all the countries participating so everyone sees the IRC programme as a win-win situation

## Who is Involved in International Regulatory Cooperation?

IRC is highly pervasive, with all AMS along with New Zealand deeply embedded in a complex web of IRC arrangements. For AMS this is a mix of bilateral, regional, and multilateral agreements whereas plurilateral arrangements are less common.

The choice of multilateral, plurilateral, or regional IRC should not be interpreted as mutually exclusive alternatives. Rather they can be complementary: an 'and' not an 'or'. The case studies (Gill, 2018) showed how regional groupings, such as ASEAN IP cooperation and ASEAN Cosmetics harmonisation, led to convergence

with international standards. Similarly, plurilateral 'coalitions of the willing' can add to multilateral rules and procedures while remaining compatible with them.

A regulatory agency was typically involved in a range of cooperation activities at a number of levels:

- domestically with local government, and with other regulators
- sub-regionally with local partners
- in the wider Asia-Pacific region
- internationally as part of an international organisation.

Getting the right countries on board helps get the IRC moving. Multilateral or plurilateral processes especially face the risk of going at the pace of the slowest member. One of the case studies was the Asia Region Funds Passport which has enabled fund managers in participating Asia-Pacific Economic Cooperation (APEC) economies in the Asian region to offer their products to retail investors in other passport member economies. To avoid the slowdown, the Asia Region Funds Passport established a small working group of the core committed countries. (Gill, 2018)

**Policy Recommendation 3:** *Membership* – getting the right people in the room is key  
Having the right countries and the right people from those countries discussing IRC is vital.

## What Does International Regulatory Cooperation Focus On?

IRC is narrowly focused on specific areas of common interest – the 'sweet spot' of mutual gain. IRC can be targeted on regulatory policy, regulatory practices such as enforcement, or regulatory management such as research. The development of IRC is highly path-dependent with quite different arrangements in apparently similar sectors. Research participants highlighted the need to concentrate the IRC effort on the sweet spot – the specific areas where the mutual gains are greatest – and then look to grow the way forward.

**Policy Recommendation 4:** *Be selective* – focus cooperation on the sweet spot of mutual gain, starting small and growing forward.

How intensively do countries work together?  
While IRC takes a range of forms, countries often work together through networks, as informal regulator-to-regulator communities of practice are preferred over formal supranational or government-to-government agreements. Indeed, one author described regulators as the new diplomats (Slaughter, 2005). Over time, these arrangements might become more formal as trust and engagement increase within the network.

The research investigated how intensively different countries cooperate by exploring the frequency of the different forms that IRC can take. Figure 2 ranks the types of IRC from high to low. It draws on a survey of key decision makers and opinion leaders in all ASEAN countries along with New Zealand.

It shows the percentage of respondents who reported that there were many (i.e. more than five) for each major type of IRC for ASEAN as a whole and contrasts that with New Zealand. Harmonisation is not the final goal: IRC has many pathways and many destinations. In the case of the Asia Region Funds, there was a deliberate choice to focus on mutual recognition of licensing requirements only and limit the coverage to 'plain vanilla' funds. A more ambitious approach would have been to aim for full interoperability, but this raised a wider range of complex technical legal interface issues such as rules on disclosure, distribution, disputes, and redress procedures.

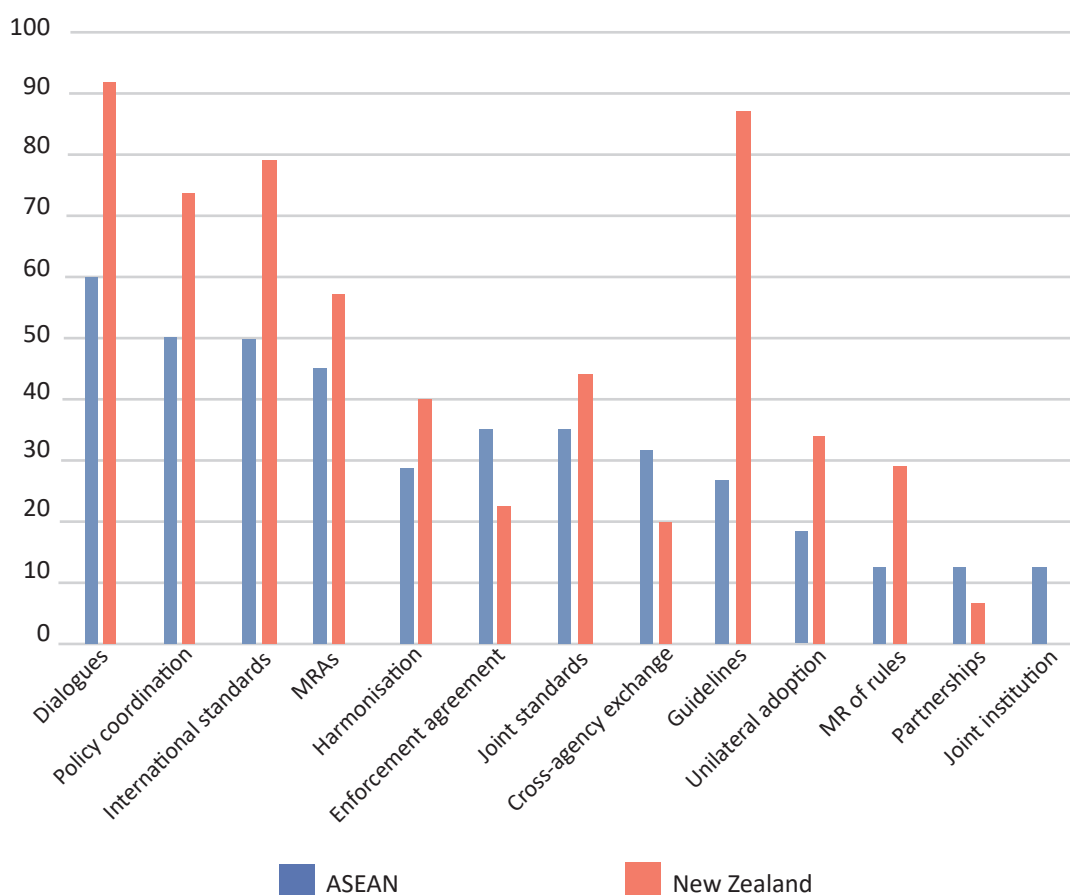
**Policy Recommendation 5:** *Look for the 80/20 solution – the lowest level of coordination required to get most of the benefits.*

## Which Type of International Regulatory Cooperation is Used?

IRC practitioners need to take a 'horses for courses' approach to choosing structures as different approaches are required in different situations. The type of IRC adopted depends on the sector in question, the partners involved, and the perception of what works best (Table 1). The survey research showed there was high willingness to consider all potential types of IRC, especially dialogues, transgovernmental networks, adoption of international standards, and mutual recognition agreements. Support was still present, but lower for the unilateral adoption of policy or harmonisation through a supranational body.

The degree of formality of the IRC should match the intensity and type of regulatory coordination needed to achieve the regulatory outcomes sought. For example, communities of practice can be developed through informal cooperation, whereas Mutual Recognition Agreements require formal legal instruments.

**Figure 2. Main Forms of International Regulatory Cooperation in East Asia**



ASEAN = Association of Southeast Asian Nations, MR = mutual recognition, MRAs = mutual recognition agreements.

Source: Gill (2020), p.22.



**Table 1. Examples of International Regulatory Cooperation Involving the Association of Southeast Asian Nations**

Type of mechanism	Illustrative examples
Harmonisation via supranational bodies	Basil Committee for Banking Supervision International Accounting Standards Board
Specific negotiated agreements (treaties and conventions)	ASEAN Trade in Goods Agreement, ASEAN Framework Agreement on Services
Regulatory partnership between countries	ASEAN Consultative Committee on Standards and Quality
Intergovernmental organisations	International Civil Aviation Organization
Regional agreements with regulatory provisions	ASEAN Comprehensive Investment Agreement
MRAs	ASEAN MRAs for Professional Services
Transgovernmental networks	The Chiang Mai Initiative (Multilateralization)
Formal requirements to consider international regulatory cooperation when developing regulations	Comprehensive and Progressive Agreement for Trans-Pacific Partnership
Recognition of international standards	The Philippines adopting ISO 9001 stand-ard and applying it to government offices and their systems
Soft law	ASEAN Economic Community Blueprint 2025
Dialogue or informal exchange of in-formation	Asia–Pacific Economic Cooperation ASEAN Business Advisory Council

ASEAN = Association of Southeast Asian Nations, ISO = International Organization for Standardization, MRAs = mutual recognition agreements.

Sources: Gill (2020), p.4.

**Policy Recommendation 6: *Start Small*** – Select the least demanding type of IRC that gets you over the line, rather than shooting for the moon and missing all together.

## What is the Future for IRC in ASEAN?

The research participants developed some speculative propositions about how IRC may play out in the future in ASEAN. In the box below these are organised under the five key IRC questions of ‘why’, ‘who’, ‘how’, ‘what’, and ‘which’ (Table 2).

## Most Long-term Drivers of IRC Continue to Operate

The growth of IRC since World War II has been driven by the combined impact of 1) globalisation, 2) technological change, and 3) geopolitical developments. Looking ahead, beyond COVID-19, for the next decade many of these drivers will continue to operate. These include:

- economic (growth in global supply chains, growth in multinational corporations, pressure for business to reduce technical barriers to trade (TBT));

- technology (the fourth industrial revolution driven by the combination of digitisation, artificial intelligence, cloud technology, big data analytics, and high-speed mobile).

The need to manage international spillovers will increase the need for cooperation on regulatory policy design and the enforcement. Cooperation is more likely to develop in newer ‘greenfield’ areas such as emerging technology, as starting with a clean slate is much easier, both technically and politically, than cooperation on ‘brownfield’ areas where different countries’ regulatory policy regimes and practices are much more entrenched.

## Geopolitical Tensions Will Continue

On the geopolitical side, there is significant potential for discontinuity, however, with the slowdown in the growth of world trade, lack of progress on further multilateral liberalisation, ongoing strategic competition between the United States and China, and US disengagement from its traditional leadership role on international economic issues. The erosion of public support for globalisation in developed countries will also be a factor. As a result, there will be less impetus for IRC from the multilateral agreements that provide for widening and deepening regulatory cooperation.

AEC 2025 provides a focus for GRP and IRC efforts in ASEAN region. The Closer Economic Relationship and the vision of a Single Economic Market between New Zealand and Australia have driven a lot of the trans-Tasman IRC initiatives. Similarly, the ambition of the AEC should be to become a strong driver of IRC in the region. In addition, there are other overlapping regional trade and regulatory initiatives that might help drive the future of IRC in the region including:

- regulatory provisions in the FTAs between ASEAN and six countries in the region (Republic of Korea, Japan, China, India, New Zealand, and Australia)
- APEC with its Agenda on Structural Reform that includes a number of ASEAN countries (Brunei Darussalam, Indonesia, Malaysia, the Philippines, Singapore, Thailand, and Viet Nam)
- Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) which currently involves 11 countries in the Asia-Pacific region including Brunei, Malaysia, New Zealand, Singapore, and Viet Nam
- Regional Comprehensive Economic Partnership (RCEP), which includes 10 members of ASEAN plus the five of six countries with which ASEAN has free trade agreements (FTAs).

## IRC in ASEAN post-COVID-19?

In the futures space, it is important to bear in mind the old Danish proverb that 'It is difficult to make predictions, especially about the future'. That said, it is easy to overestimate the impact of major events. While the COVID-19 pandemic may accentuate some of the trends underway, it does not appear that the pandemic has fundamentally changed the drivers of IRC.

The experience with COVID-19 has highlighted the value of cooperative regulatory activities like standardisation and information gathering and exchange, even if at times it's been by their absence. Dealing effectively with three of the principal issues confronting public policymakers – pandemics, climate change, and effective governance of the digital environment – all require extensive international cooperation.

**Policy Recommendation 7:** Increasing imperatives for IRC – the COVID pandemic has not fundamentally changed the drivers of IRC: rather the experience of COVID-19 is underlining the value of cooperative international activities.

**Table 2. The Future of IRC in ASEAN**

<b>Why undertake IRC?</b>	To gain economic benefits, and improve regulatory effectiveness, and achieving geo-political imperatives such as the AEC Blueprint 2025 for AMS
<b>Who will countries cooperate with?</b>	Less multilateral and more regional and plurilateral arrangements, the latter built on coalitions of the willing
<b>How intensively will countries cooperate?</b>	Full regulatory integration will be the rare exception to the rule. Rather IRC will start at the less intensive cooperation end of the spectrum, but intensity will grow over time – while stopping short of regulatory integration
<b>What will they cooperate on?</b>	IRC will occur across the spectrum of regulatory policy and practices and, to a lesser extent, regulatory governance. IRC will expand but based on a selective case by case organic evolution rather than big push. Cooperation will be more likely to develop newer 'greenfield' areas, such as fourth Industrial Revolution for example, than on 'brownfield' areas with more entrenched regulatory regimes.
<b>Which structure will they use?</b>	Growing emphasis on more informal, below the radar IRC mechanisms, such as Trans-Governmental Networks. FTAs and formal trade agreements will have limited role in shaping IRC beyond TBT/SPS. However, IRC will remain important in the TBT/SPS space whereby cooperation can occur as part of the wider regulatory agenda.

AEC = ASEAN Economic Community, AMS = Association of Southeast Asian Nations Member State, IRC = international regulatory cooperation.

Source: Gill (2020), p.45.

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