

# Chapter 3

## The Craft of International Regulatory Cooperation – Practical Lessons Learned

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## CHAPTER 3

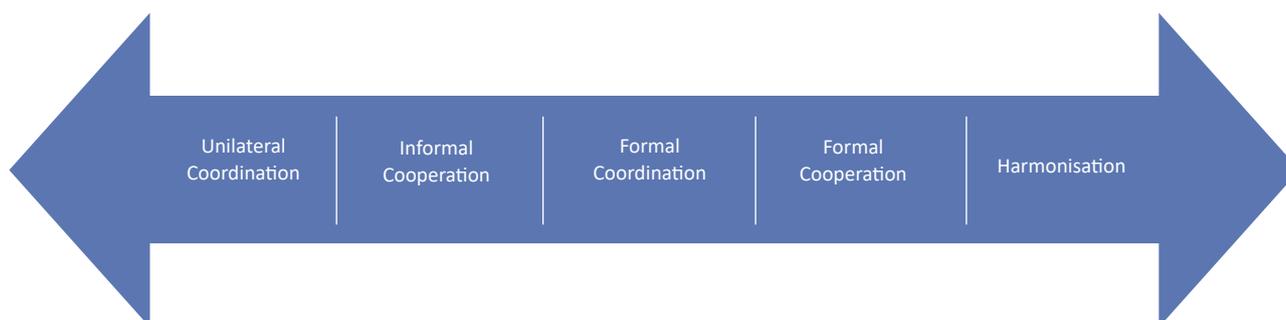
# The Craft of International Regulatory Cooperation – Practical Lessons Learned

Derek Gill and Mieke Welvaert

The previous chapters explored what international regulatory cooperation (IRC) is, how widespread its implementation is in East Asia, and perceptions about IRC barriers and enablers. This chapter turns to more practical questions about how to design, sustain, and develop IRC. Aimed more at practitioners than researchers, the style of presentation highlights more clearly the practical lessons identified by the practitioners.

As previously discussed, IRC can take many forms along a spectrum from unilateral recognition at one end, to harmonisation of policies and practices and full integration at the other (see Figure 3.1).

**Figure 3.1: The International Regulatory Cooperation Continuum**



Source: Gill D. (2018), 'International Regulatory Cooperation Case Studies and Lessons Learnt'. New Zealand Institute of Economic Research (NZIER) Report to the Ministry of Foreign Affairs and Trade, and Ministry of Business, Innovation and Employment. Wellington: NZIER; based on the Ministry of Business, Innovation and Employment International Regulatory Cooperation Toolkit (forthcoming).

When entering into IRC arrangements, countries need to make decisions at five levels:

- (i) Why take part (the different imperatives for IRC include economic benefits, regulatory effectiveness, and geopolitical considerations);
- (ii) What to cooperate on (e.g. regulatory policies [making rules], regulatory practices [interpreting, applying, and enforcing rules], and regulatory organisational management [supporting rules administration];
- (iii) How intensively to cooperate along the left–right continuum in Figure 3.1 above;
- (iv) With whom to cooperate (bilateral, regional, plurilateral, or multilateral); and
- (v) Which structure to use, from an informal network through to a range of more formal legal mechanisms (e.g., a treaty or international organisation).

To address the first four questions – why, when, how, and who – this chapter draws on the experiences of practitioners who have, both successfully and unsuccessfully, developed IRC. The chapter covers the fifth question (on structures) more lightly; the Organisation for Economic Co-operation and Development (OECD) (2015) provides a more detailed assessment of the different forms.

This chapter draws on insights from the interviews undertaken with practitioners for the review of IRC in New Zealand discussed in Chapter 5. To synthesise the lessons learned, the learnings from a series of case studies were extracted and grouped together. These lessons were discussed at a workshop with members of the New Zealand Government Regulatory Practice Initiative Steering Group. The findings were further tested at the Economic Research Institute for ASEAN and East Asia (ERIA) IRC technical workshop on 10 October 2018, and checked against other published summaries of lessons learned on IRC to ensure no major omissions or inconsistencies.

The chapter draws on four case studies prepared as part of a parallel IRC project (Gill, 2018).<sup>1</sup> The case studies discussed in this chapter concern trans-Tasman competition law, the Asia Region Funds Passport, and two Association of Southeast Asian Nations (ASEAN) examples on intellectual property and cosmetics. Several quotations from these case studies are included in this chapter. In addition, we also draw on the lessons learned from the unsuccessful attempt by New Zealand and Australia to develop a single trans-Tasman regulator for therapeutic products.

Successful IRC programmes share several common factors, as follows:

- (i) All participants see the IRC programme as a win-win situation;
- (ii) The programme design is clearly focused on what to cooperate on to foster mutual gain, 'starting small and growing forward';
- (iii) The intensity of IRC is aligned with what is required, and the least demanding type of IRC that achieves the objective is chosen;
- (iv) Participants keep tabs on the key drivers (membership, leadership, secretariat, relationships, trust, and commitment); and
- (v) Facilitating enablers (political and legal mandate, addressing power imbalances, resourcing, capability, and stakeholder management) are in place.

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<sup>1</sup> The authors would like to acknowledge the Ministry of Foreign Affairs and Trade and the Ministry of Business, Innovation and Employment, the New Zealand Government departments that sponsored this series of case studies, and to thank the people who made themselves available for interviews and to review an earlier draft of the case. The authors retain responsibility for any remaining errors and omissions.

**Figure 3.2: Critical Success Factors**



Source: Authors.

## **1. International Regulatory Cooperation Needs to Be a Win-Win for Participants**

There are three very different drivers of IRC: mutual economic benefit through liberalised trade and investment, states' strengthened ability to deliver regulation effectively, and geopolitical and strategic imperatives that make IRC a 'win' for the countries involved. Economic benefits arise from reduced non-tariff barriers, which facilitate international trade and investment and participation in value chains; as well as improved regulatory quality, which reduces the cost of doing business. Regulatory effectiveness can arise from increasing the reach of regulation across borders, which manages international spillovers; and from improving cost effectiveness as regulators share resources (this is particularly important for smaller and less developed countries facing capability problems, including achieving minimum critical mass). Finally, IRC inevitably involves strategic and geopolitical considerations. The 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'.

The key precondition for the success of IRC is that it is perceived as a win-win by participating countries. While countries may have a different mix of reasons (e.g. strategic, economic, and/or regulatory effectiveness) for taking part, all participants must see the value proposition. Without this, participants lack incentive to continue their support. In short, every participating country must know why they and their counterparts are taking part in IRC.

## **2. The Reasons for Participating Can Be Different for Different Countries and Those Can Change over Time**

During the interviews undertaken on IRC in New Zealand (see Chapter 5), several interviewees referred to the failed attempt to establish a joint regulator between Australia and New Zealand (the trans-Tasman therapeutics agency). Despite sustained support from each country's prime minister, this endeavour was abandoned in 2014 after over a decade of sustained effort since 2003 when the treaty was signed establishing the framework for the regime, but before it came into force. In the interim Australia achieved its objective, a seat at the international regulators' table, with the formation of the International Medical Device Regulators Forum in 2011. However, the protracted length of time taken by the negotiations meant that Australia's 'win' was eroded to the point that the gains had been eroded (or, more technically, that the participation constraint was breached). This is discussed further in Box 3.1.

### Box 3.1: A Bridge too Far

Trans-Tasman Therapeutics	
What was it?	A proposal for a joint regulator for pharmaceuticals, health products, and medical devices. This joint regulator would have replaced the Australian and New Zealand regulators. Ultimately this project was abandoned.
	After over a decade of negotiation, participants ultimately chose not to proceed as: <ul style="list-style-type: none"> <li>• new government leadership in Australia opposed the programme, and</li> <li>• the 'win' for Australia had disappeared, as Australia had already achieved the geopolitical gains that the programme was meant to provide.</li> </ul>
What were the potential wins for each participant?	
	The key 'wins' for New Zealand were: <ul style="list-style-type: none"> <li>• Regulatory effectiveness: a joint regulator would have more capacity and capability, and geopolitical advantages.</li> <li>• The 'win' for Australia was: geopolitical: a seat at the table with the leading international health product regulators.</li> </ul>
Lessons learned	
	IRC needs to be a win-win
	Use the 80/20 rule—select the least demanding type of IRC that gets you over the line, rather than 'shooting for the moon' and missing all together.
	Move faster—events morph and momentum is difficult to regain once lost.
	Joint sovereignty is hard—equal decision rights did not reflect power imbalances.
	Joint bureaucratic commitment is essential.

IRC = international regulatory cooperation.  
Source: Authors.

### 3. International Regulatory Cooperation Should Have a Clear Focus

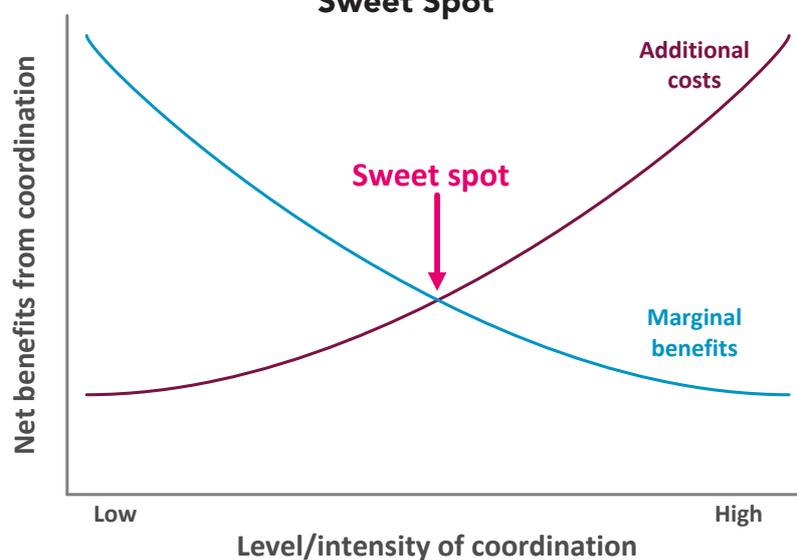
This section is about developing IRC with a clear focus on what to cooperate on and what not to. The design principle 'keep it simple stupid' summarises this criterion for creating successful IRC. The creation of successful IRC involves focusing on the mutual gain between parties and avoiding the addition of more aspects that are likely to be sticking points for

participants. This focus requires those developing IRC to be selective and to pick the specific areas with the greatest mutual gains for the parties. As a result, successful IRC will often 'start small and grow forward'. Starting with a clean slate is easier than starting with a range of well-developed regulatory regimes. We discuss these features in more detail below.

### 3.1. Be Selective – Concentrate the International Regulatory Cooperation Effort on 'the Sweet Spot'

The clear lesson from all of the cases was the need to concentrate the IRC effort on 'the sweet spot', that is, the specific areas with the greatest mutual gains. This means aiming for the point where the marginal benefits just outweigh the additional costs (see Figure 3.3). Any development beyond this point adds more complexity with little extra benefit, increasing the risk that participants will become gridlocked and frustrated, and will give up on the IRC.

**Figure 3.3: The Goal Is Finding the International Regulatory Cooperation 'Sweet Spot'**



Source: Authors.

### 3.2. 80/20 – Seek the Lowest Level of Coordination Required to Get the Most Benefits

Harmonisation is not the final goal: IRC has many pathways and many destinations. In the case of trans-Tasman competition law, New Zealand and Australia have deliberately stopped short of full policy or administrative harmonisation. As a result, the two countries still have different competition policy regimes and separate competition authorities for enforcement. Avoiding policy convergence enabled stakeholders to reap the maximum benefit of cooperation without the complex demands entailed in establishing a joint regulator.

Similarly, in the case of the Asia Region Funds Passport, there was,

'a deliberate choice to focus on mutual recognition of licensing requirements and to limit the funds it applied to. Coverage was limited initially to "plain vanilla" funds by eligible fund managers that met specific criteria.... A more ambitious approach would have been to aim for full interoperability which raised a wider range of complex technical legal interface issues such as rules on disclosure, distribution, disputes and redress procedures'. (Gill, 2018)

### 3.3. Start Small and Grow Forward

In interviews conducted for the study of IRC in New Zealand, a number of regulatory practitioners discussed the advantages of starting with a smaller scope to get things off the ground before broadening the scope over time. An initial focus on informal cooperation, such as sharing information, helps lay the groundwork for moving into more formal arrangements like enforcement cooperation or other options like harmonisation. ASEAN intellectual property cooperation and trans-Tasman competition law are both good examples of this 'grow the way forward' approach.

In the case of trans-Tasman competition law, cooperation started with a narrow policy question (removal of anti-dumping), which later led to cooperation on selected enforcement practices, as Australian and New Zealand law regimes are very similar. Similarly, in the case of ASEAN intellectual property, 'the ASEAN bottom-up approach focused on interoperability, with gradual policy convergence' (Gill, 2018), with international norms by individual countries ratifying international treaties.

**Figure 3.4: International Regulatory Cooperation Choice of Focus**

Scope of IRC	case studies				
	ASEAN Intellectual property	APEC Asia Regions Funds Passport	Trans-Tasman competition law	ASEAN cosmetics	Tasman theurapeutics
Other regulatory practices					
Enforcement					
Policy					

APEC = Asia-Pacific Economic Cooperation, ASEAN = Association of Southeast Asian Nations, IRC = international regulatory cooperation.  
Source: Authors.

### 3.4. It Is Easier to Start with a Clean Slate

It is easier to cooperate on new or greenfield domains where no regulatory policy regime is in place than in areas where existing regulatory policy regimes and practices are well entrenched, since there are fewer bureaucratic obstacles and the political economy is generally easier to manage. In the case of ASEAN cosmetics, some 'member states faced the legal difficulties of aligning existing standards, definitions, and processes of cosmetics with the European model' (Gill, 2018). In contrast, 'countries with no existing regulation...were able to implement the ASEAN Cosmetics Directive more quickly' (Gill, 2018).

### Box 3.2: Trading Up, Starting with a Clean Slate for Some

ASEAN Cosmetics Directive	
<b>What was it?</b>	The ASEAN Cosmetics Directive was set up to allow all ASEAN member states to adopt the main features of the regime of technical standards for cosmetics ingredients in the European Union Cosmetics Directive.
<b>What happened?</b>	Harmonisation of cosmetics regulation across the ASEAN member states was achieved through a two-phase process: <ul style="list-style-type: none"> <li>• The first phase was in partnership with industry and dominated by voluntary action. Progress in the voluntary phase was driven by ASEAN cosmetics regulators working closely with cosmetics industry associations.</li> <li>• The second phase involved a more formal commitment by governments to harmonise fully. This phase was mainly pushed forward by government regulators.</li> </ul>
What was the focus?	
<b>What was the ‘sweet spot’?</b>	The main focus was on consumer safety, by establishing harmonised systems for following up on adverse effects of cosmetics.
<b>Did it start small?</b>	While not small; it was one of the first instances of intensive economic integration between ASEAN countries.
Lessons learned	
	Focus IRC where the gains are greatest—this is a case study of full policy harmonisation to achieve access to major export markets and improve consumer safety (full harmonisation is not essential—it just happened to be the ‘sweet spot’ in this case).
	Consider ‘trading up’ when access to major export markets is the primary objective—setting high technical standards from the start may be easier than trading up later.
	Partnership with industry can lay the groundwork to facilitate faster implementation and a simpler approach—industry is well placed to see the opportunities to reduce the burden of compliance without compromising future options.
	Political mandate helps but is not sufficient—commitments to freer trade and consumer safety brought industry and regulators together and provided legitimacy to what was initially an initiative in partnership with industry.
	Context and capability matter—IRC between different countries at different levels of development and pre-existing regulation can be particularly difficult, but progress can still be rapid when there is a burning imperative.

ASEAN = Association of Southeast Asian Nations, IRC = international regulatory cooperation.  
Source: Authors.

#### 4. Consider the Intensity of International Regulatory Cooperation

Choosing how to cooperate is critical as there is a variety of types of IRC from which to choose. Options range from informal groupings, such as networks of regulators, to the more formal, such as mutual recognition agreements or full harmonisation. Similarly, considering how intensively to cooperate is key. In the case of trans-Tasman therapeutics, officials opted for full harmonisation when less intense cooperation may have met each country's needs. Figure 3.5 illustrates the different degrees of intensity of IRC using the case studies.

**Figure 3.5: Different Levels of Formality and Intensity in International Regulatory Cooperation**

Types of IRC	Unilateral coordination	Informal cooperation	Formal cooperation	Formal coordination	Harmonisation
	Unilateral adoption or recognition	Communities of practice	Investigative assistance, cross-agency appointments	Mutual recognition agreements	Common policy regimes
ASEAN IP					
APEC Asia Regions Funds Passport					
Trans-Tasman competition law					
ASEAN cosmetics					
Trans-Tasman therapeutics					

intensity of cooperation **low** **high**



formality of cooperation **informal** **formal**

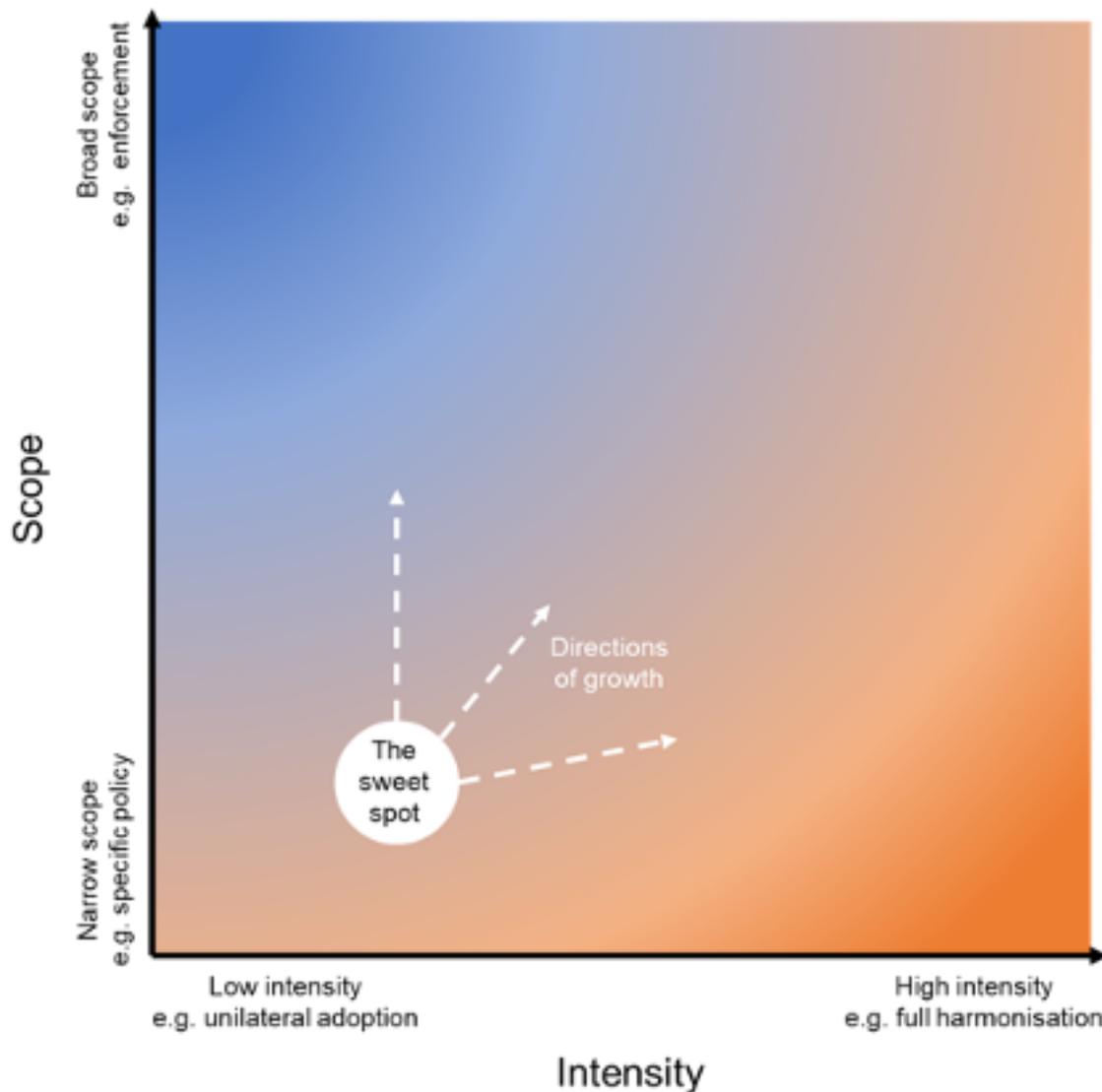
APEC = Asia-Pacific Economic Cooperation, ASEAN = Association of Southeast Asian Nations, IP = intellectual property, IRC = international regulatory cooperation.

Source: Authors.

A useful rule of thumb is 'form follows function'. 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.

Another rule of thumb is to select the least demanding type of IRC that gets you over the line, rather than 'shooting for the moon' and missing all together. While the previous section discusses starting small in terms of scope, this section discusses starting with the minimum level of IRC to get the programme across the line. This is because cooperation is costly, and it is better to start small in terms of both scope and intensity, and to grow outwards from there (see Figure 3.6).

**Figure 3.6: 'Starting Small and Growing Forward'—Starting With The Least Demanding Type of International Regulatory Cooperation Possible**



Source: Authors.

Cooperation on intellectual property within ASEAN illustrates the difficulties of starting with full harmonisation. The 1995 Framework Agreement on Intellectual Property Cooperation had an ambitious agenda aimed at exploring full harmonisation. A lack of sustained progress and certain external events, including the impacts of the global financial crisis and accession of new, less developed member countries to ASEAN, led ASEAN leaders to conclude that 'ASEAN countries can't go at the same pace at the same time on IP [intellectual property]'. We discuss this further in Box 3.3.<sup>2</sup>

Trans-Tasman competition law illustrates how choosing a less demanding type of IRC improves chances of success:

'The 2004 Australian Productivity Commission (APC) report examined and rejected the case for full harmonisation. This highlighted how the law of diminishing returns also applies to IRC. It found that increasing cooperation imposed increased costs while the benefits were marginal.... coordination need not inevitably lead to full harmonisation'. (Gill, 2018)

However, every rule of thumb has exceptions. In the case of ASEAN cosmetics, full harmonisation enabled access to major export markets and improved consumer safety. This case highlights that, when access to major export markets is the primary objective, setting high technical standards from the start may be easier than trading up later.

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<sup>2</sup> Please note, sections of text enclosed in single quotation marks without an in-text citation are un-attributable quotes from interviews conducted during the research portion of this project.

### Box 3.3: Interoperability and International Alignment

ASEAN Intellectual property	
<b>What was it?</b>	The first ASEAN intellectual property framework dealt with all the Trade-Related Aspects of Intellectual Property Rights (TRIPS) (mandated intellectual property rights).
<b>What happened?</b>	Over time, proposals to establish one set of regional intellectual property laws for patents and trademarks and a regional intellectual property office were put on the backburner. This made way for a more flexible cooperation model that emphasised intensified cooperation in selected areas, with several different countries taking the lead on specific initiatives with defined performance measures.
What was the balance point?	
	Realising that a move to full harmonisation (as initially investigated) was an unachievable initial goal, the IRC participants decided instead to aim for greater convergence of intellectual property regulation by adopting World Intellectual Property Organisation treaties and cooperating in selected areas.
Lessons learnt	
	IRC can be selective—cooperation on specific regulatory practices, such as sharing practices, and unilateral adoption does not require moving to harmonising policy regimes
	Start small—full harmonisation was an unachievable initial goal; instead, select the least demanding types of IRC rather than the most ambitious, which carry the risk of being unsuccessful.
	The importance of leadership—different countries have taken the lead on individual workstreams, but this was underpinned by the catalyst role of Singapore as thought leader keeping the flame alive
	The role for mandated targets—demanding but achievable goals and targets provided commitment to achieving progress on a handful of narrowly focused activities
	Mandate matters—aspirational leaders' declarations that were regularly refreshed were useful attention-focusing devices that provided a reference point of engagement for the different countries' intellectual property offices.
	IRC, like most good things, takes time—after 20 years of continued effort and steady progress, harmonisation is back on the agenda.
	Context and capability matters—IRC between countries at different levels of development can be particularly difficult, and voluntary adoption is easier than harmonisation or mutual recognition of conformity assessments or rules and standards.

ASEAN = Association of Southeast Asian Nations, IP = intellectual property, IRC = international regulatory cooperation. Source: Authors.

## 5. Key Drivers that Make or Break International Regulatory Cooperation

Critical success factors are a mixture of hard and soft factors. Some hard factors are:

- (i) Membership: Having the right countries and the right people in the room from those countries.
- (ii) Leadership: Having leadership is crucial, but the style of leadership can vary.
- (iii) Secretariat: A good secretariat provides vital glue and continuity.<sup>3</sup>

However, IRC is fundamentally about relationships, and it is the soft factors like trust and relationships that are the hardest to build and sustain. Key 'soft' factors are:

- (i) Relationships: 'It's a hearts and minds game; relationships underpin the network'.
- (ii) Trust: 'It's critically important to choose partners where there is mutual confidence..., or at least good prospects for building it'.
- (iii) Sustained commitment: IRC, like most good things, takes time and ongoing commitment.

We discuss each of these factors and examples below.

### 5.1. 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. Getting the right countries on board helps get the IRC moving. Multilateral or plurilateral processes in particular risk going at the pace of the slowest member. To avoid this slowdown, the Asia Region Funds Passport established a small working group of the core committed countries. These countries were 'willing to build up momentum and carry [the programme] forward' (Gill, 2018). Keeping the working group small and restricted to the most motivated participants helped the IRC development and implementation process move more quickly.

The Asia Regions Funds Passport case also shows the advantages of selecting the right people. The case study notes that 'keeping the group at the technical expert regulator level meant the parties were able to cut through a host of small prickly issues' (Gill, 2018). In this case, the technical experts did not have an excess of other agendas contending with IRC, making it easier and faster to cooperate.

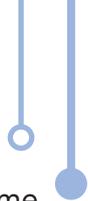
### 5.2. Leadership

Leadership is crucially important for getting initiatives over the line and sustaining momentum going forward. In these cases, leadership came from within the bureaucracy. As discussed further below, the role of political leaders was largely symbolic, lending legitimacy to the IRC with public endorsement but without actively championing the initiative.

Leadership can vary in terms of how many people are leaders, at what levels, and what roles they take on. In our cases, leadership came in a variety of forms, as outlined below:

- (i) The Asia Region Funds Passport was championed by the Australian Treasury, which acted as a public entrepreneur and developed and nurtured the initiative through critical phases.
- (ii) ASEAN intellectual property had distributed leadership and individual country champions.
- (iii) Trans-Tasman competition law and ASEAN cosmetics both had a revolving leadership.

<sup>3</sup> For a more detailed examination of these hard factors, see Abbott, Kauffmann, and Lee (2018), who studied the operation of 144 transgovernmental networks of regulators. Their study focuses on membership, governance structure, operations, and legal powers.



One key contrast is the difference in leadership styles between trans-Tasman competition law and the Asia Region Funds Passport. For trans-Tasman competition law, the programme 'has no heroes but is the culmination of hard work by a wide range of officials who worked issues through to an actionable practical agenda' (Gill, 2018). In the case of the Asia Region Funds Passport the Australian Treasury played a significant role with 'one key person in that organisation [the Australian Treasury], who championed the initiative in the region and kept it moving forward' (Gill, 2018).

### 5.3. Secretariat

A well-functioning secretariat is critical for sustaining the IRC operations by providing coordination, undertaking planning, and acting as an honest broker. Sustaining IRC once established is a critical challenge. Having a well-functioning secretariat provides the vital glue as 'what happens after the IRC meeting is over is just as important as what happens in the meeting'. Institutions create strong vertical lines of accountability and control, and cooperation requires working across these vertical silos. A robust process backed by a good secretariat can offset vertical accountability and create horizontal loyalties and collective responsibility for the IRC. This was particularly important for plurilateral and multilateral IRC. Having a capable 'honest broker' undertake the secretariat role strengthens the 'glue' between members.

### 5.4. Relationships

Building and sustaining IRC requires ongoing interaction over time. Relationships are critical to supporting this interaction. As one interviewee observed 'it's a hearts and minds game; relationships underpin the network'.

### 5.5. Trust

Relationships rely on the building and sustaining of trust. In the case of trans-Tasman competition law, 'mutual trust was crucial: it is critically important to choose partners where there is mutual confidence in the institutions and the people in them... or at least good prospects for building it' (Gill, 2018). In this particular case, 'formal input from the New Zealand Government into the review [of Trans-Tasman competition regulatory policy] was very limited', because the government trusted that the process could go through without any added formality on their part (Gill, 2018). This trust stemmed from the high degree of trust that Australian and New Zealand policy officials had in key personnel of the Australian Productivity Commission and the Australian Competition and Consumer Commission.

### 5.6. Sustained Commitment

IRC, like most good things, takes time and sustained commitment. Three cases illustrate how long participants might need to remain committed to implementing IRC:

- (i) Cooperation on ASEAN intellectual property has been developing since 1995.
- (ii) The Asian Regional Funds Passport initiative was announced at the Asia-Pacific Economic Cooperation in 2010, and was launched in 2019.
- (iii) Cooperation on trans-Tasman competition law has gradually deepened and widened since the late 1980s.

Distance limited the frequency of meetings for the Asia Region Funds Passport programme. 'The project required getting key people with busy day jobs from the 5 or 6 economies together for two-day meetings with some people facing a day of travel on either side. This limited the project to a schedule of 2–3 meetings a year' (Gill, 2018). Working around these constraints can make IRC a slow and protracted process, meaning that it is necessary to choose people who can ensure continuity of contact over time and, better yet, are willing to stay for the long term.

### Box 3.4: Building a Coalition of the Willing

APEC: The Asia Region Funds Passport	
<b>What was it?</b>	The aim of the Asia Region Funds Passport initiative is to streamline the regulatory processes for cross-border mutual funds offerings by enabling mutual recognition of fund licensing.
<b>What happened?</b>	The Australian Financial Centre released a report (the 2010 Johnson report) arguing for greater financial services exports of Australian-managed funds. The proposal was explored by a core group of APEC countries interested in developing the concept. By early 2019 the Asia Region Funds Passport became operational. As a result, a fund manager in one of the participating APEC economies in the Asian region is now able to offer their products to retail investors in other passport member economies.
What were the key people and personal characteristics involved?	
<b>Membership</b>	A small group of technical expert regulators
<b>Leadership</b>	A public entrepreneur from the Australian Treasury
<b>Relationships</b>	Having the right people in the room and on the journey
<b>Trust</b>	A group of technical regulatory experts were able to cut through the issues and work through the blockages
Lessons learnt	
	Build a coalition of the willing—plurilateral negotiations amongst diverse economies are difficult to close out. Establishing a small core working group of committed countries moved the initiative forward.
	Start small—select the least demanding type of IRC (in this case licensing) that gets you over the line rather than ‘shooting for the moon’ and missing altogether (disclosure, distribution, and disputes).
	The key role of a public entrepreneur—willing to champion the initiative personally and go the extra distance to push it through.
	Have the right people in the room—keeping the group at the technical expert regulator level meant the parties were able to cut through a host of small prickly issues.
	IRC like most good things take time—it took 8 years of sustained effort to get the launch in place.
	Political mandate helps but is not sufficient—the APEC banner provided legitimacy and a political mandate that was helpful but never enough on its own.
	Context and capability matter—IRC between economies at different levels of development can be particularly difficult when mutual recognition of other regimes is required.

APEC = Asia-Pacific Economic Co-operation, ASEAN = Association of Southeast Asian Nations, IP = intellectual property, IRC = international regulatory cooperation.  
Source: Authors.

## 6. Facilitating Enablers and Avoiding Potential Derailers

Discussions with New Zealand practitioners identified several conditions that support, but are not critical to, the success of IRC. These are (i) having a political mandate, (ii) having a legal mandate, (iii) having adequate resourcing, (iv) partnering with industry, (v) managing power imbalances, and (vi) building in and on cultural context. Similarly, some conditions can derail IRC progress (but do not guarantee failure). These are (i) countries involved having different levels of capability, and (ii) ambiguity about the role for mandated targets. We discuss these enablers and derailers further below.

### 6.1. A Political Mandate Helps

In the workshop with New Zealand IRC practitioners, political mandate and legitimacy came through as a useful but not critical supporting condition. A shared public commitment, such as a leaders' declaration that is refreshed regularly, provides support and helps secure resources and support. In the case of the Asia Region Funds Passport, 'A central organising concept lends legitimacy and keeps up the momentum on IRC', and 'the APEC [Asia-Pacific Economic Cooperation] banner provided legitimacy'.

Almost all of the case studies involved transgovernmental networks that were strongly driven out of the respective regulatory agencies. These connections were even more direct in the case of trans-Tasman competition law, which involved direct, bilateral, regulator-to-regulator engagement. What was crucial to the success of the IRC was the bureaucratic champion(s) driving the initiative forward.

The survey results (discussed in Chapter 2 above) suggested that political mandate was seen as more important by IRC practitioners in ASEAN countries. Over 80 percent% of ASEAN country respondents agreed with the proposition that, 'Without strong political will and support, IRC cannot be sustained', while 46 percent% of New Zealand respondents disagreed. This probably reflects a combination of cross-jurisdictional differences and the survey question not clearly distinguishing between the largely symbolic role of political leaders lending legitimacy to IRC and political leaders providing the drive and impetus required to get IRC over the line.

### 6.2. A Legal Mandate Matters

If the regulatory regime explicitly enables IRC, then it is easier to make progress. Having a legal mandate to cooperate in place provides a positive signal to regulators and is more likely to result in cooperation. In contrast, legal frameworks that do not provide flexibility and the mandate to cooperate can act as a binding constraint (Mumford, 2018).

### 6.3. Resourcing Encourages International Regulatory Cooperation

Cooperation involves additional work and often utilises resources that could be applied elsewhere. Extra resourcing was made available to encourage IRC in only one case (trans-Tasman competition law). However, the key resource constraint is often key peoples' time. One practitioner observed 'it's not about available funds, it's more about the scarcity of appropriate people resources and the fact that when they are doing IRC, means that they are not doing their normal regulatory functions'.

### 6.4. Partnering with Industry Can Facilitate Faster Implementation

Although all of the cases were largely driven at the regulator-to-regulator or official-to-official level, working with industry and other stakeholders can lay the groundwork to facilitate faster

implementation. This is illustrated in the ASEAN Cosmetics Directive, where the cosmetics industry was already working to meet overseas cosmetics standards and strongly encouraged alignment with international standards within the ASEAN region.

### 6.5. Managing Power Imbalances Avoids Holdups

IRC is more likely to succeed when the parties manage conflict effectively and use mechanisms to address power imbalances. In the case of ASEAN intellectual property, participants used the ASEAN way of working with 'no one country playing a dominant leadership role' and where secretariat responsibilities revolve around member countries. If one dominant country has an effective veto, the IRC will need to be selected and designed carefully.

### 6.6. Building in and on Cultural Contexts Helps Smooth the Process

Contextual differences in cultures, traditions, and institutions shape the way officials engage and behave. ASEAN intellectual property adopted 'the ASEAN way', which involves 'working in an informal, non-adversarial, cooperative and consensus-based way' (Gill, 2018). It was important to participants that everyone involved acknowledged and respected, 'the extent of diversity across legal traditions, political systems, stages in development, size, administrative capacity and capability, and religious and cultural traditions' (Gill, 2018).

In the case of New Zealand and Australia's competition law, there were several 'conditions that supported increased trans-Tasman cooperation on competition law', as follows:

- (i) 'a shared history, language and values, and a similar culture, political, legal and economic institutions';
- (ii) 'political commitment to greater economic integration'; and
- (iii) 'close geographic and economic links' (Gill, 2018).

Furthermore, 'New Zealand unilaterally adopted a competition law framework largely modelled on what is now named the Australian Competition and Consumer Act' (Gill, 2018).

### 6.7. Different Capabilities Require More Flexible Coordination

Coordinating IRC can be difficult when the countries involved have different levels of economic development and national capability. This is especially true when IRC is aiming for mutual recognition between regulatory regimes. In the case of ASEAN intellectual property, 'ASEAN used a form of non-binding mutual recognition based on voluntary adoption' for patent search recognition. This built a system where 'the patent search and examination results of one office may be used as a reference in the search and examination process of other national IP offices' (Gill, 2018). This allowed flexibility for some countries, like Cambodia, to recognise patents from other countries automatically (Singapore, Japan, the European Union, and China), while other countries choose not to adopt the system.

### 6.8. Ambiguity about the Role for Mandated Targets

In some of the cases (for example, ASEAN intellectual property) 'demanding but achievable goals and targets provided commitment to achieving progress on a handful of narrowly focused activities' played a positive role (Gill, 2018). New Zealand practitioners took the opposite view, opining that targets could derail progress because the emphasis on 'hitting the target means that you miss the mark'. Stretch goals risk creating a sense of failure if not achieved, and there was a perceived tension between long-term relationships working on emergent issues with short-term targets.

### Box 3.5: Greater Cooperation Does Not Lead to Harmonisation

Trans-Tasman competition law	
<b>What was it?</b>	Trans-Tasman competition cooperation initially focused on trade remedies and competition policy, but its focus has now shifted to the regulatory practices of the competition authorities: the Australian Competition and Consumer Commission and New Zealand Commerce Commission. This cooperation is selective, particularly focused on enforcement including investigation and remedies for mergers and cartels. There is limited cooperation in other areas (e.g. restrictive trade practices and organisational management).
<b>What happened?</b>	Cooperation occurred in two overlapping phases: <ul style="list-style-type: none"> <li>• In the first 'big policy' phase, the policy challenge was to achieve a single economic market and the imperative was to ensure that competition policy and trade remedies enabled rather than obstructed closer economic integration.</li> <li>• In the second phase, the focus was on regulatory practices and the application of competition policy. This involved addressing a range of technical challenges for the legal infrastructure around evidence, sharing of information, and enforcement of judgments. Full harmonisation was reviewed and explicitly rejected.</li> </ul>
What were the enablers?	
<b>Political mandate</b>	Closer Economic Relations was a wide-ranging political commitment to greater economic integration.
<b>Legal mandate</b>	Greater cooperation on enforcement required amendments to legislation, as this is a sector where there are extensive legal challenges.
<b>Cultural context</b>	Australia and New Zealand have a shared history, language, and values.
<b>Capability</b>	New Zealand had already unilaterally adopted a competition policy framework from Australia.
<b>Mandated targets</b>	Formal management targets were little used.
Lessons learnt	
	Focus IRC where the mutual gains are greatest—IRC on regulatory practices does not require full policy harmonisation.
	Keep moving—the initial focus was on policy (which precluded trade remedies such as anti-dumping actions) but moved on to regulatory practices.
	IRC is a long game and requires sustained commitment—it takes time and effort to build up trust and networks and these soft factors are the hardest to manage.
	Trust is crucial—it is critically important to choose partners where there is mutual confidence in the two sets of institutions, or at least good prospects for building it.
	Start small—cooperation is costly, and costs markedly increase with the intensity of IRC while the marginal benefits diminish.
	Mandate—a shared public commitment lends legitimacy and keeps up the momentum on IRC.

IRC = international regulatory cooperation.  
Source: Authors.

## 7. Conclusion

This study has identified five key factors that drive the success of IRC. Practitioners need to address the following practical questions:

- (i) Why do participants want IRC?  
IRC should be a win-win for all participants.
- (ii) What should IRC focus on?  
The 'sweet spot' of mutual gain, which arises from being selective, involves starting small and growing forward, and new areas are easier than existing regimes.
- (iii) Which type of IRC is most suitable?  
Choose the type of IRC where initial net gains are the greatest. Consider lower intensity options for getting the first stage across the line.
- (iv) What are the key drivers?  
While hard factors such as membership, leadership, and secretariat are key, they are relatively easy to achieve compared to the essential soft factors of relationships, trust, and sustained commitment.
- (v) What are the enablers?  
A political mandate is very important in the initiation phase, but is not enough to sustain momentum in subsequent phases. For ASEAN countries, political mandate also seems more important. At the same time, cooperation is more likely with a legal mandate. Resourcing encourages IRC, and partnership with industry can help speed up the IRC process. Capability and context matter with respect to whether stakeholders can or want to cooperate. Managing these and the associated power balances is an important and often difficult part of the job.

Alongside these findings, four caveats should be mentioned:

- (i) Context matters. Unique political, social, and domain-specific factors may limit how broadly the lessons from a small set of cases can be applied. The lists in Box 3.6 are intended as tools rather than rules, and as lines of inquiry rather than hard and fast prescriptions.
- (ii) Dynamics matter. IRC, like any form of inter-agency collaboration, is a dynamic process, and the 'sweet spot' moves over time. The balance of advantage from IRC can shift over time, and if the perceived overall advantage disappears for one country, then the IRC may lose momentum or even break down. Like all group dynamics, this can include 'forming, storming, norming, performing, and then potentially deforming'. The lessons learned in Figure 3.1 apply throughout the 20-year life of IRC processes. Different critical success factors apply at different stages of the process.
- (iii) Generalisation from cases is hard. Every rule has an exception, meaning that the lessons presented are, at best, rules of thumb that apply in general and on average to a range of circumstances, but not necessarily in every case. For example, starting small did not apply in the case of ASEAN cosmetics, which showed how full regulatory policy harmonisation based on trading up is a valid regulatory policy option.
- (iv) IRC is essentially a special case of inter-agency cooperation. IRC is a reasonably standard practice that has been extensively researched (see Bryson, Crosby, and Stone [2006] for a synthesis). IRC is a special case because factors like differences in culture, context, country capabilities, and the tyranny of distance are more important for IRC. However, the role of drivers like leadership, trust, and relationships are equally important for IRC and interagency cooperation in general.

## Box 3.6: Summary of Lessons Learned

Why have IRC?	
	Range of drivers. A key lesson from the case studies is that the reasons for IRC participation can differ for different countries and the imperatives can change over time. However, each participating country must have at least one win to ensure that they will continue to want to participate. If those wins disappear, the IRC will lose all momentum.
When to have IRC?	
	Sweet spot. IRC should focus on areas with the greatest initial mutual gains rather than spreading effort too widely.
	Be selective. IRC offers a choice of whether to focus cooperation on regulatory policy regimes or specific regulatory practices such as enforcement. Policy convergence is not essential or a precondition for cooperation.
	New is easier than existing. It is easier to cooperate on new domains where no regulatory policy regime is in place than on areas where existing regulatory policy regimes and practices are well entrenched.
	Start small and keep moving. Focusing cooperation on selected areas with clear tangible benefits builds trust and confidence and 'can be a springboard for more formal (and integrated) forms of cooperation over time'.
Which type of IRC is most suitable?	
	Consider all types. Use all the keys on the piano—full harmonisation is not the only option as there are several other types of IRC.
	80/20 rule. Select the least demanding form of IRC that gets you over the line initially rather than 'shooting for the moon' and missing altogether.
	Diminishing marginal returns. Select the type of IRC with the greatest initial net gains. This is because cooperation is costly, and costs increase markedly with the intensity of IRC while the marginal benefits often diminish.
What are the drivers?	
	Membership. Membership is important, both in terms of the right countries and the right people in the room from those countries.
	Leadership. While leadership is crucial, the style of leadership was very varied: one public entrepreneur championed the initiative (Asia Region Funds Passport), another championed distributed leadership and individual country champions (ASEAN intellectual property), and another championed rolling leadership (trans-Tasman competition law).
	Secretariat. A well functioning secretariat provides vital glue and continuity, since what happens 'after the IRC meeting is over is just as important as what happens in the meeting'.
	Relationships. 'It's a hearts and minds game; relationships underpin the network.'
	Trust. 'It's critically important to choose partners where there is mutual confidence..., or at least good prospects for building it.'
	Sustained commitment. IRC, like most good things, takes time and sustained commitment.

What are the enablers?	
	Political mandate helps but is insufficient. A shared public commitment lends legitimacy to and keeps up momentum on IRC.
	Legal mandate matters. If the regulatory regime explicitly accommodates cooperation (e.g. mutual recognition) or gives the regulator an explicit mandate, then cooperation is more likely.
	Resourcing matters. Cooperation involves additional work and takes resources that could be applied elsewhere. In only one case was extra resourcing made available to encourage IRC.
	Partnership with industry. While all the cases were largely driven at the regulator-to-regulator level, working with industry and other stakeholders can lay the groundwork to facilitate faster implementation.
	Power imbalances. IRC is more likely to succeed when the parties manage conflict effectively and use mechanisms to address power imbalances.
	Capability matters. IRC between economies at different levels of development can be particularly difficult when mutual recognition of the equivalence of other regimes is required.
	Context matters. While all of the case studies are about cross-government networks driven by public officials, contextual differences in cultures, traditions, and institutions shaped how the officials engaged and behaved.

IRC = international regulatory cooperation.  
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 Source: Authors.

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